
Appeal Decision

Site visit made on 24 September 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Ref: APP/J2210/W/19/3225872
118 Mortimer Street, Herne Bay CT6 5EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by J C Rook & Sons Ltd against the decision of Canterbury City Council.
 - The application Ref 18/01774, dated 23 August 2018, was refused by the Council by notice dated 20 December 2018.
 - The development proposed is alterations to shop and change of use of floors above into 3No dwellings forming 2No one bed units and 1No two beds.
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Decision

1. I dismiss the appeal.

Main Issues

2. These are;
 - The effect of the proposal on the living conditions of adjoining and prospective residential occupiers.
 - The effect of the proposal on the Thanet Coast and Sandwich Bay Special Protection Area.

Reasons

3. The proposal would bring into use currently vacant rooms above the shop, together with an area used as staff accommodation, office and plant rooms, with an element of new build to the rear encompassing these last-mentioned areas and projecting upward beyond the existing building envelope. To gain access to these areas independently of the shop, a new door would be formed in place of part of the shopfront with a corridor to new stairs to the rear. The Council accept the principle of the change of use and do not object to the physical changes, with the reasons for refusal being those matters set out in the main issues above. That appraisal is concurred with in this Decision.

Living Conditions

4. Policy DBE3 of the Canterbury District Local Plan on the principles of design includes the need for high quality design appropriate to the site and consideration for the privacy and amenity of neighbouring buildings and future occupiers. Paragraph 124 of the 2019 National Planning Policy Framework states that good design is a key aspect of sustainable development, creates

better places in which to live and work and helps make development acceptable to communities.

5. There is an existing window on the rear elevation of the building lighting an office and stairway, giving onto a flat roof housing condensers and a lantern light, and with a view to the rear windows to habitable rooms of number 163 High Street, as well as to an area of outdoor amenity space. The latter has a rudimentary screen and the users appear to be aware of an existing threat to privacy from an adjoining building. The present use of the stair and office to commercial premises would limit the risk of harm to privacy from this window.
6. There is no cross-section drawing to confirm levels, but it appears that the appeal scheme makes use of this window, or one in a similar location, to light the first floor living area of Unit 2, and hence the possibility of harm to privacy would increase due to the use of the room during the same times as the residential use of number 163 would occur, and with a risk of a more prolonged view out of the window than is likely as part of the existing commercial use. However, whilst the relationship between the windows across the flat roof could be solved by the suggested glazed screen, that would not be sufficient to overcome the availability of a view towards the outdoor amenity area to the High Street properties where there would be an increased perception of harmful overlooking.
7. Unit 2 has an upper floor in the new-build addition at second floor level, and in that case window W5 to a bedroom would have the same but elevated view and the glazed screen would not overcome the threat to the privacy of number 163 and the outdoor amenity space. The use of obscured glazing has been suggested, up to a level of 1550mm, and opening arrangement could also be restricted by condition. As the only window to a room, the lack of clear glass at eye level would risk appearing oppressive, even in a bedroom. For that reason it is not possible to conclude that replacing the bathroom with a bedroom to the rear of Unit 2 as the alternative layout, would be sufficient of an improvement.
8. There is also a relationship of windows across the 'communal external area' and 'open void' above. Window W1 to Unit 1 and window W2 to Unit 2 on the first floor, as well as window W3 to Unit 3 and window W4 to Unit 2 on the second floor would all look into the 'communal external area', and are noted to be the same arrangement of obscure glazing, with the alternative of blocking W2 and having a fully obscured W4 to a bathroom instead of a bedroom. The same comment applies as to obscure glazing not providing an acceptable standard of living.
9. The Council cite noise and disturbance between the proposed flats and the 'communal external area' would be immediately adjacent to the window W1 serving a bedroom in Unit 1, and below window W3 serving a bedroom in Unit 3. The alternative layout would avoid similar harm to Unit 2. Within the restricted and somewhat 'hemmed-in' location of this open area, there would be an unacceptable risk of harmful noise and disturbance to prospective occupiers.
10. To conclude on this main issue, the analysis above finds no real harm from the formation of Units 1 and 3 in the presently unused but one-time residential part of the commercial premises. However, the location and layout of Unit 2, including the alternative layout, risks harmful overlooking of properties on High

Street and causes harm through noise and disturbance, as it results in the outdoor amenity area being largely surrounded by built form, which would exacerbate noise and disturbance at bedroom windows. The proposal does not reach the standard of design sought in the Development Plan and national policies previously detailed, and conditions are not able to satisfactorily overcome the failings. For that reason alone, the appeal should be dismissed.

Special Protection Area

11. The Council have set out the requirements of the Habitats Regulations with regard to the Thanet Coast and Sandwich Bay Special Protection Area, on the advice of Natural England. As the Competent Authority the Secretary of State or the appointed Inspector would need to carry out a Habitats Regulation Assessment before permission may be granted, and be satisfied as to any mitigation through a contribution secured by Obligation, as appears to be the possibility here. However, in view of the conclusion to dismiss the appeal for other reasons, no further consideration of a Habitats Regulation Assessment is required.

Conclusions

12. The principle of the development is acceptable and would bring back into use vacant premises, boosting the supply of housing in a sustainable and accessible location. Units 1 and 3 alone would provide an acceptable standard of living conditions and would not cause harm through overlooking. Unit 2 however does cause harm and this cannot be wholly overcome by restrictions secured by conditions. For the reasons given above, it is concluded that the appeal should be dismissed and there is no need to consider the effect on the Special Protection Areas.

S J Papworth

INSPECTOR