



Appeal Decision

Site visit made on 23 June 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 14th July 2020

Appeal Ref: APP/Z4718/W/20/3245797

The Co Operative Food, 91-95 Leymoor Road, Longwood, Huddersfield HD3 4SJ

- 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 Mr Inder Bhullar against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/62/92788/W, dated 12 August 2019, was refused by notice dated 20 December 2019.
 - The development proposed is change of use from vacant retail storage at roof space to form C3 residential apartments with 4 car parking spaces.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have adopted the description of the development from the application form in the banner heading above. Although the description does not specify the number of units, the decision notice and the appeal form refer to 4 apartments and I have therefore determined the appeal on this basis.

Main Issue

3. The main issue is whether the proposal would provide adequate living conditions for future occupiers, with particular reference to noise and disturbance, outlook and light.

Reasons

4. The appeal site is in the roof space of a single storey commercial building that has 3 hot food takeaway premises in its front elevation. The appeal building is attached to a traditional 2 storey building that has a commercial ground floor use and residential accommodation above. The appeal site is set back from Sycamore Avenue behind an area of car parking. It is in a predominantly residential area.
5. The proposal is the change of use of the mansard roof space to provide residential accommodation, with 2 flats in the front part facing Sycamore Avenue and 2 in the rear overlooking an area of open green space. There would be new rooflights in the upper and lower roof slopes. Residential access would be via a door to the side of the commercial premises in the Sycamore Avenue elevation.

6. The flats facing Sycamore Avenue would be directly above the hot food takeaways. Consequently, the habitable room windows in the front elevation would be in close proximity to the commercial frontages and to the car park. The windows serving the flats in the rear of the building would be well separated from the commercial frontages. However, they would be above commercial store rooms and the habitable room windows would be close to the air ventilation systems on the rear elevation of the building.
7. The takeaway premises operate extended opening hours, including into the late evening. Consequently, future occupiers could be adversely affected by noise generated within the premises below. The flats directly above the takeaways would also be subject to external noise and disturbance arising from delivery drivers and their vehicles and the comings and goings of customers, including congregating on foot outside and the revving of engines and slamming of car doors. This type of activity would be likely to disturb residential occupiers, particularly at otherwise quieter times of the day or week when they might reasonably expect to enjoy their homes free from significant disturbance.
8. The Council's Environmental Health Officer has raised concerns in relation to noise and disturbance and has recommended that a noise assessment should be carried out to establish the measures necessary to protect future residential occupiers from unacceptable adverse effects. In response, evidence submitted with the appeal states that the building could be adequately soundproofed to minimise internal noise disturbance and suggests that takeaway operators could monitor the behaviour of their customers.
9. However, no assessment of noise has been submitted and there is no substantive evidence that adverse impacts on future occupiers could be avoided. The National planning Policy Framework (the Framework) advises that new development should be integrated with existing businesses, which should not have unreasonable restrictions placed on them as a result of development permitted after they were established. In this case, it would not be reasonable to require takeaway operators to monitor customers in order to protect the living conditions of future occupiers of the scheme. The proposal would therefore be likely to give rise to noise complaints.
10. Consequently, while it may be possible to soundproof the building internally, I am not satisfied that the assessment and mitigation of noise and disturbance is a matter that could be satisfactorily addressed by planning condition.
11. The Council accepted amended plans that increased the size and the number of windows and rooflights. The revised scheme would provide adequate levels of natural light and an acceptable outlook to the flats in the rear elevation. However, habitable room windows in the front elevation lower roof slope would be partly behind commercial fascia signs, resulting in diminished light levels and outlook. Furthermore, the windows in the front elevation appear to extend below the eaves line, and therefore the guttering, of the roof. No information has been provided to demonstrate that the functioning of the windows and the gutters could be maintained. While the appellant would accept a planning condition requiring the fascia

signs to be reduced in height, I am not satisfied that this would adequately mitigate the adverse effects of the proposal.

12. Therefore, it has not been satisfactorily demonstrated that the proposal would provide adequate living conditions for future residential occupiers, with particular regard to noise and disturbance, light and outlook. It would conflict with Policies LP24 (b) and LP52 of the Kirklees Local Plan Strategy and Policies Adopted February 2019. These require, among other things, that development provides a high standard of amenity for future occupiers and that it should demonstrably not reduce quality of life and well-being to an unacceptable level. It would also conflict with the residential amenity aims of the Framework.

Other Considerations

13. The Framework supports opportunities to use the airspace above commercial premises for new homes, including where the development is well-designed and complies with local policies and standards. In this case, the proposal would not provide adequate living conditions for future occupiers. Therefore, converting the roof space is not a matter that weighs in favour of the proposal.
14. The proposal would make a small contribution to the supply of housing and there would be short-term economic benefits during construction. Notwithstanding acknowledged shortfalls in the delivery of housing, the Council is able to demonstrate a 5 year housing land supply. In any case, the adverse impacts of the proposal would significantly and demonstrably outweigh the limited benefits, when assessed against the policies in the Framework taken as a whole.
15. On the basis of the evidence, the appeal site is in a sustainable location with regard to services and facilities and public transport. The proposal would not harm the character and appearance of the area or the safe operation of the highway. It would provide adequate levels of privacy and internal living space for future occupiers. Security measures to reduce crime and the fear of crime could be secured by condition. However, these are policy requirements that do not weigh in favour of the scheme.

Conclusion

16. For the reasons set out above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR