
Appeal Decision

Site visit made on 12 January 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Appeal Ref: APP/M2325/W/20/3260245

The Top House, Freckleton Street, Kirkham, Lancashire PR4 2SQ

- 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 James Waddington (Inglenook Inns and Taverns Limited) against the decision of Fylde Borough Council.
 - The application Ref 20/0096, dated 31 January 2020, was refused by notice dated 30 March 2020.
 - The development proposed is erection of 1. No two storey dwelling on existing pub car park area and re-configuration of beer garden to provide parking area and beer garden
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form describes the development as erection of 1 No. 2 Bedroom Dwellinghouse with associated soft and hard landscaping. However, I have adopted the description from the decision notice and the appeal form in the banner heading above in the interests of completeness and clarity.

Main Issues

3. The main issues are:
 - i) The effect of the proposal on the living conditions of neighbouring residential occupiers, with particular regard to privacy and outlook; and
 - ii) Whether or not the proposal would provide adequate living conditions for future occupiers, with particular regard to noise and disturbance and outlook.

Reasons

Living conditions of neighbouring occupiers

4. The appeal site comprises a car park and a beer garden to the rear of the appeal property, which is a public house in an area with a mix of commercial and residential properties. Access to the site is from Freckleton Street between the public house and No 85, which is part of a 2 storey block of residential dwellings. The beer garden is immediately to the rear of the public house and the car park extends sideways, sharing its boundaries with the rears of properties on Freckleton Street, Chapel Walks and Philip Avenue. By virtue of

- the change in ground levels, the appeal site is level with the land to the rear but markedly elevated above Freckleton Street and Chapel Walks.
5. The proposed dwelling would have a single storey elevation with first floor living accommodation in the roof space. It would face Freckleton Street, with car parking to the front and it would be set back in the plot close to the boundary with 7 Philip Avenue. There would be a narrow side garden adjacent to the Chapel Walks boundary.
 6. The front elevation would have a protruding gable feature housing a 2 storey glazed atrium and there would be rooflights to serve the first floor bedroom. As a result of the change in ground levels, the proposal would allow overlooking between the first floor atrium, the bedroom windows and the facing first floor habitable room windows to the rear of Freckleton Street. I have not been provided with guidance on acceptable separation distances. However, the approximately 13m separation between neighbouring habitable room windows would be less than the spacing between modern dwellings in the surrounding area. The relatively close and direct overlooking between windows would not provide an adequate level of privacy for neighbouring or future occupiers. It has not been demonstrated that this harm could be adequately mitigated.
 7. The side elevation would be roughly 13-14m from the rear elevations, and hence first floor habitable room windows, of Nos 4 and 6 Chapel Walks. While the neighbouring elevations would be close enough for overlooking between windows, the proposed first floor side-facing window would not serve a habitable room. Subject to this window being non-opening and obscurely glazed, there would be no overlooking or loss of privacy for the Chapel Walks neighbours.
 8. The rears of Nos 4 and 6 are at a lower ground level than the appeal site such that their rear gardens will be shaded by the elevated close-boarded boundary fence. By virtue of its orientation, additional height and proximity, the dwelling would be likely to result in a further loss of daylight and sunlight to the rear gardens of Nos 4 and 6 Chapel Walks. Moreover, given the change in ground levels, the increased height and bulk of the dwelling would be visually obtrusive and overbearing when viewed from the small rear gardens of Nos 4 and 6. The loss of light and diminished outlook would be detrimental to the neighbour occupiers when using their gardens.
 9. The close siting of the proposal to the boundary with 7 Philip Avenue would allow close and unobstructed overlooking into the neighbouring garden from the rear bedroom windows. Notwithstanding that No 7 has a relatively large garden, the neighbouring occupiers would experience a significant loss of privacy when using their private outdoor space. Given the requirements for natural light and ventilation in the proposed bedroom, it would not be possible to mitigate the harm by means of non-opening or obscurely glazed windows.
 10. Therefore, the proposal would harm the living conditions of neighbouring residential occupiers, with particular regard to privacy, outlook and light. It would conflict with the residential amenity aims of Policy GD7 of the Fylde Local Plan to 2032 Adopted 22 October 2018 (the LP). This requires, among other things, that proposals avoid adverse effects on amenity, being well related to the surrounding context and sympathetic to surrounding occupiers. It would also conflict with the aims of the National Planning Policy Framework (the

Framework) in relation to promoting health and well-being and high standards of amenity for existing and future users.

Living conditions of future occupiers

11. In addition to the dwelling, the proposal includes a beer garden and car parking provision for customers of the public house. While there would be no windows in the facing side elevation, the ground floor lounge window and the first floor bedroom windows to the front of the dwelling would be very close to the customer car parking area and the beer garden.
12. The submitted plans illustrate that the beer garden would be suitable to be used by a large number of people, resulting in potentially high levels of activity and associated noise every day of the week including during the day and late into the night. The parking and manoeuvring of vehicles immediately adjacent to the dwelling would also result in noise and disturbance to future occupiers, including through the revving and idling of engines and the slamming of car doors. Increased customer numbers during the evenings and at weekends would coincide with the times of day and week when future occupiers might reasonably expect to enjoy their properties free from noise and disturbance. Therefore, by virtue of proximity, the frequency, intensity and duration of the use of the beer garden and car park would result in levels of noise and disturbance that would be detrimental to future occupiers.
13. My attention has been drawn to a planning permission elsewhere for the conversion of an outbuilding to a dwellinghouse close to a public house, and where a condition was attached requiring the submission of a noise assessment and a scheme of noise mitigation. Full details have not been provided and I cannot be certain that it is directly comparable to the appeal proposal, including in terms of the physical arrangement or the submitted evidence. In the absence of evidence that noise and disturbance could be mitigated in this case, this is not a matter that could be dealt with by condition.
14. Therefore, the proposal would not provide an adequate standard of living conditions for future occupiers. In addition to the noise and disturbance from the neighbouring commercial use, and as dealt with above, there would also be overlooking and loss of privacy between neighbouring properties. The proposal would conflict with Policy GD7 of the LP which requires, among other things, that proposals provide high standards of amenity for occupiers having regard to factors including space and layout. It would conflict with the residential amenity aims of the Framework.

Other matters

15. The appeal site is in an accessible location in relation to services and facilities and public transport, and the location is therefore suitable for residential development. The evidence indicates that the car park is under-utilised land, the development of which is promoted by the Framework especially if it would help meet identified needs for housing. However, in October 2020 and after the appeal was made, the Council published its annual position statement which confirms that it can demonstrate in excess of a 5 year housing land supply. Therefore, the re-use of the land for 1 dwelling carries negligible weight in favour of the scheme.

16. Given the accessibility of the location by sustainable transport modes, and notwithstanding the concerns of third parties, the Council considers that the proposal would make adequate parking provision for the public house. While the design of the dwelling would not be in keeping with the prevailing character of the surrounding built environment, it would be unobtrusively sited away from the road and it would not harm townscape character. Avoidance of harm and compliance with policies in the development plan are neutral factors.
17. There is evidence that the activity associated with the public house has resulted in previous noise complaints from neighbouring residential occupiers. The proposed dwelling would be in closer proximity to the car park and beer garden than the existing neighbouring dwellings. Therefore, it seems likely that not only would future occupiers experience unacceptable levels of noise and disturbance but that the occupation of the dwelling would give rise to noise complaints, thereby placing a burden on the neighbouring business.

Conclusion

18. For the reasons set out above, the proposal would harm the living conditions of neighbouring residential occupiers and it would fail to provide adequate living conditions for future residential occupiers. The proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict.
19. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR