

Appeal Decision

Site visit made on 13 May 2021

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/M2270/W/20/3261248

**Pennington Manor, Vicarage Road, Southborough, Tunbridge Wells,
Kent TN4 0SP**

- 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 M R Consultancy Ltd against the decision of Tunbridge Wells Borough Council.
 - The application, Ref. 20/01380/FULL, dated 18 May 2020 was refused by notice dated 25 September 2020.
 - The development proposed is the formation of 3 apartments at lower ground floor level.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are (i) whether the proposal would intensify the use of the site with a consequential impact on the residential amenity of neighbouring properties and (ii) the adequacy of the living conditions for future occupiers of the three proposed apartments as regards sunlight and privacy.

Reasons

Issue (i): Residential Amenity of neighbouring properties

3. On the first issue, the Council considers that the occupancy of the building is currently at or above capacity. Partly as a result of this, there have been problems in relation to car parking, refuse storage (including issues of vermin and odour) and noise and disturbance and a further three flats would be an overdevelopment of the site that would make matters worse.
 4. There is a substantial body of evidence in this appeal from the Council's Housing and Environmental Health departments and also many local residents that these problems are associated with the occupancy of the flats as temporary accommodation for those in housing need and in particular the view that they are housed at too great an intensity. This occurs in a building designed for, and initially used as, social rented housing for the elderly.
 5. From all that I have seen and read I share the view that at the heart of the problems is the transient nature of the occupancy with its associated lack of social cohesion, combined with the limited quantity and quality of living space in the flats and the low level of car parking provision. The size of the flats and the
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parking were both based on the building's original use for the elderly, whereas with the present use the activity at the site is much higher and the rooms frequently shared by parents and their children.

6. In this situation, I consider that the proposed addition of three apartments, bringing the original capacity of 30 units through its present 33 to a new total of 36, would inevitably increase the demand for parking space and refuse storage. As regards parking, the proposal, including the addition of the light wells for the basement flats, would reduce the existing car park capacity from 12 to 10, but at the same time increase the demand by at least 3. This is on the reasonable assumption that each flat would require at least one car parking space on the site (if open market housing as stated in section 16 of the application form).
7. I have not been supplied with a parking standard for people in transient occupancy including those in housing need, but I acknowledge that it would not be at the same level as if the accommodation were for occupiers who are owners or tenants with formal rental agreements. Be that as it may, there is detailed and credible evidence from local residents that they experience parking problems in the area, in particular Vicarage Road but also at other locations including Pennington Road.
8. A significant shortfall in parking spaces at the appeal site is considered to be a major part of this problem and in a number of cases this is supported by photographs of parking overspill. This includes additional cars parked on the site when all the spaces were occupied and inconsiderate parking in Vicarage Road. However, for the appellant it is pointed out that a Parking Stress Survey carried out in March 2019 for an earlier appeal (referred to in paragraph 22 below) demonstrates spare capacity in the area.
9. Whilst I accept that for a number of different reasons there may well be substantial variations in parking demand on the site at any one time, I take the view that the addition of three flats, whilst at the same time reducing the car park capacity by two spaces, would be unacceptable for a building that would have 36 separate households. As is often the case with parking congestion, the evenings and overnight periods are particularly susceptible to incidents of excess parking. There may well be occasions when the car park is not full, but the Council's objections and the number and detail of residents' objections on this issue are persuasive in my coming to the conclusion that parking overspill occurs on a regular basis and is harmful to residential amenity.
10. The second matter to be considered under the first issue is refuse storage. For the appellant it is argued that following problems of inadequate storage and management, the operation of the facility is now improved with no problems of vermin or odour. In addition, an amended plan has been submitted with the appeal and proposes the relocation of the storage area to the northern side of the car park. The plan also illustrates how this area would accommodate the full quota of 6 no. 11 litre bins and 10 no. 240 litre bins on the site.
11. However, whilst if properly managed this would reduce any adverse effect on the amenity of nearby properties, I agree with the Council's reservations that in this new position collections could be missed as a result of any cars being parked outside the designated spaces and causing an obstruction to refuse collection vehicles. Furthermore, there is no additional capacity mentioned for

the three new flats and no provision for the reintroduction of recycling. I also have some doubts, as does the Council, regarding the feasibility and safety of refuse vehicles having to reverse either into or out of the car park.

12. The third potential impact on the residential amenity of neighbours cited by the Council is noise and disturbance. The officer's report says that since the last appeal there have been regular reports of both this and other anti-social behaviour which have required interventions by the Council and emergency services. This is confirmed in the objections from local residents. In particular, the Council's evidence refers to noise caused by residents of Pennington Manor congregating outside the front of the property in the car park, and also noise including amplified music from the open windows of the flats.
13. As with refuse storage, the appellants say that measures have been taken to reduce the noise and disturbance, including a security patrol. Nonetheless, an additional three dwellings on the site have the potential to increase the problem, not least because of the proximity of the private open space of the light wells to the area where residents gather. This may well be the cause of conflict, particularly if the flats are for long term rather than temporary residency.
14. Whilst I consider it is difficult to establish a definite causal relationship between another three flats and the likelihood of an increase in noise and disturbance, the addition of almost a 10% increase in the intensity of use of the site combined with the experience of these problems in recent years does indicate there is a reasonable cause for concern. This adds weight to the overall picture of the incompatibility of the intensity of use Pennington Manor with its lower density residential surroundings.
15. As regards this intensity, I am aware that this has now reduced from previous peaks and this has helped to alleviate some of the earlier problems. But there are no measures including planning conditions that can realistically regulate and enforce the maximum numbers of people in the 36 flats at any particular time. Accordingly, the planning judgement on the first issue should have regard to the possibility that the three proposed apartments in Pennington Manor could be occupied in conjunction with similar levels of occupancy in the remaining 33 units that have occurred in the last couple of years. This would have an unacceptably adverse effect on the residential amenity of neighbouring properties.

Issue (ii): Living conditions for occupiers of the proposed flats

16. In respect of sunlight, the appellant's technical assessment compares the three apartments with the recommendations in the guidelines of the Building Research Establishment. These recommend that that the centre of a living room window receives 25% annual probable sunlight hours in the summer and at least 5% annual probable sunlight hours in the winter.
17. The results of the study are 16% summer and 0% winter for Unit 1; 20% summer and 3% winter for Unit 2, and 17% summer and 0% winter for Unit 3. Whilst paragraph 123 of the National Planning Policy Framework 2019 ('the Framework') encourages a flexible approach where a new building would otherwise make an efficient use of the site, I consider that the below-guideline figure for both winter and summer in all three flats would be unacceptable.

18. In particular, the situation here is rather more one of the inappropriate intensification of the site than its efficiency. And as the Council says, the outlook from the flats would also be poor, whilst I have already concluded that the flats are likely to suffer noise and disturbance from residents congregating in the car park. In my opinion these factors reduce the flexibility that should be given to the acceptability of the below-guideline sunlight hours, because in the final analysis it is the living conditions as a whole that count for the occupier of the dwelling.
19. In this context, an additional factor raised by the Council is privacy, especially due to the fact that residents and visitors would be able to look down over the railings towards the patios at the bottom of the light wells. Quite apart from the comings and goings to Pennington Manor being focused on the car park in close proximity to the light wells, if the previous pattern of residents congregating at the front of the property were to be repeated I regard it as highly likely that the occupiers of the flats would be subject to a significant loss of privacy. For example, summer evenings when residents might be expected to enjoy their small area of 'outside' space, is also the time when residents are more likely to congregate at the front of the building.
20. On this issue I consider that there would be inadequate living conditions for future occupiers of the three proposed apartments as regards sunlight and privacy.

Other Matters

21. The Council currently has a 4.8 year rather than a 5-year housing supply as required by Government Policy. However, whilst paragraph 11(ii) of the Framework thereby applies, I consider that in this case the adverse impacts of granting planning permission for three additional flats at Pennington Manor would significantly and demonstrably outweigh the housing benefits, when assessed against policies in the Framework taken as a whole.
22. I have had regard to the Inspector's comments and findings in appeal decision ref. APP/MM270/W/19/3239484 insofar as they are relevant to the current scheme, but I have primarily come to my conclusions on the basis of the evidence in this appeal and observations at my visit to the property and its surroundings. The focus of that appeal was a third floor extension for 6 flats (dismissed) and the retention of two studio flats in the building (allowed). Moreover, many of the events leading to complaints have occurred since that appeal decision. I do not therefore regard my findings as being inconsistent with those of the previous Inspector insofar as there is an overlap of the issues.

Conclusions

23. As already mentioned, I have taken account of recent improvements in the management of Pennington Manor. But leaving aside the point that these were introduced only after intervention by the authorities and during the overall period of restraint associated with the Covid pandemic, there is a more fundamental consideration that is the determining factor in this appeal. This is that the appeal site is demonstrably already at capacity (as defined above) and any increase in the existing number of 33 flats would be likely to exacerbate the residential amenity of neighbours and provide unsatisfactory living conditions

for the future occupiers of the three proposed apartments as regards sunlight and privacy.

24. As a result, there would be unacceptably harmful conflict with criteria 1 & 2 of Policy EN1 of the Tunbridge Wells Local Plan 2006 and Government Policy in Section 11: 'Making Effective Use of Land' and Section 12: 'Achieving Well-Designed Places' of the Framework.
25. The appeal is therefore dismissed.

Martin Andrews

INSPECTOR