



Appeal Decision

Site visit made on 27 July 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2021

Appeal Ref: APP/X2410/W/21/3275186
7 Sibson Road, Birstall LE4 4DX

- 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 Harjap Riyat against the decision of Charnwood Borough Council.
 - The application Ref P/21/0103/2, dated 13 January 2021, was refused by notice dated 10 March 2021.
 - The development proposed is Single storey rear extension to form a one bed self-contained flat + first floor bedroom to kitchen conversion to an existing flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's reason for refusal alleges that the orientation, design, and outlook of the development would result in harm to the living conditions of future occupiers. Therefore, I have had regard to the Council's delegated report to identify the specific living conditions about which concerns are raised, to inform my setting out of the main issues below. The appellant has had the opportunity to respond to those matters through the appeal process, so would not be prejudiced by this approach.
3. Since the appeal was lodged the revised National Planning Policy Framework (2021) (the Framework) was published (on 20 July 2021). I have given the Council and the appellant the opportunity to comment upon its implications and taken any views into account in determining this appeal.

Main Issues

4. The main issues are whether the development would provide adequate living conditions for:
 - the future occupiers of the proposed ground floor flat with particular reference to outlook, daylight, and outdoor space provision; and,
 - the occupiers of the first floor flat with particular reference to outdoor space provision.

Reasons

5. The appeal site comprises one of a pair of buildings hosting commercial ground floor uses, with a split level dwelling above and rear of the takeaway and cafe. The proposed rear extension would facilitate the provision of a new one bedroom flat on the ground floor. The largest window of the new kitchen/living area would have an outlook out onto the side boundary fence and two storey outrigger of No 9 at close proximity. The smaller window of the new kitchen/living area would look out onto the new extension at close proximity.
6. The distances between the kitchen/living area windows and nearest buildings (No 9 and the extension) would be considerably less than advised separation distances to avoid overbearing impacts for single and two storey flank walls (9.5m and 12.5m respectively) in the Design Supplementary Planning Document (2020). The replacement of the large hedge with a fence would be a limited improvement and could be secured by a suitably worded planning condition. However, it would not be sufficient to mitigate or overcome the poor quality of outlook from the proximity to the boundary and nearest buildings.
7. The main bedroom window would face the rear fence and mature trees. The trees are of a considerable height and spread, making a positive contribution to the character and appearance of the area, so their loss would not be desirable. To the side/rear of the appeal site is part of the flank elevation of No 4 Wanlip Lane. In combination the trees and No 4 considerably limit outlook, such that the bedroom would have a poor quality of outlook. Even if the new door provided some outlook it would be towards the appeal site building and would be poor. Consequently, the development would result in a poor quality of outlook that would feel somewhat oppressive, providing harmful living conditions for the future occupiers in respect of outlook.
8. The mature trees and the position and height of No 4 provides a significant barrier to daylight entering the appeal site. Outlook to the west is also constrained by neighbouring buildings. Even if the hedge were removed and replaced with a fence, given the size and aspect of the windows, there would still be poor levels of daylight serving the internal space of the new dwelling. As a consequence, the development would provide harmful living conditions to the future occupiers.
9. Notwithstanding the removal the hedge, new fencing, and block paving, based upon the evidence before me, the development is likely to result in an overall reduction in rear amenity space. The Council suggests that fencing of the existing bin store would ensure some degree of privacy of the space, which could be secured by a suitably worded planning condition. The Council does not appear to specifically raise an objection to the amenity space due to privacy, outlook, or the overall amount. Its expressed concern relates to the proximity to the flue, which is likely to be required by the commercial uses, emitting audible noise.
10. However, the existing outdoor space is already used by the existing two bedroom dwelling and I see no substantive evidence this arrangement with the use of the flue, results in harmful living conditions to the existing occupiers. The 2no. one bedroom flats are likely to have only limited external space requirements. The Council has not demonstrated that subject to the imposition of suitable conditions, this development could not provide an adequate quality

useable outdoor space for each of the dwellings. However, this does not overcome the other harm I have found.

11. The appellant has referred me to a previously approved development at No 11 Sibson Road. I do not have the full details and circumstances that lead to its approval, so cannot make a fully reasoned comparison with the appeal proposal. However, No 11 does not have the large trees in such close proximity and so the resultant effects upon daylight and outlook are not the same. Therefore, it is not directly comparable to and does not justify allowing this appeal proposal. No 11 also appears to be an isolated example of such a development. Furthermore, its approval pre-dates the Charnwood Local Plan Core Strategy (2015) (the CS), the Framework and the National Design Guide (2021) (the NDG), which contain the policies I have been referred to in considering this appeal.
12. For the reasons set out above the development would provide harmful living conditions to the future occupiers of the ground floor flat with reference to daylight and outlook, therefore these would not be adequate. Therefore, it would conflict with Policy CS2 of CS which expects development to protect the living conditions of future occupiers. It would also conflict with paragraph 130f) of the Framework which seeks development promotes health and well-being with a high standard of amenity for existing and future users, and section H1 of the NDG which has similar objectives.

Other Matters

13. The application form indicates the proposed new dwelling would be a social, affordable, or intermediate rented property. This would add weight in favour of the proposal. However, there is no mechanism such as a planning obligation, offered to or before me, to secure the tenure of the new dwelling. Therefore, there is no certainty that it would be retained as such.
14. The Council has made reference to the quantity of internal space being below the amount set out in the Nationally Described Space Standard (2015) and a reference to overlooking. However, these are not expressly stated as reasons for objecting to the proposal. Therefore, as I am dismissing this appeal for other reasons, I have not considered these matters further.

Planning Balance

15. I am informed the Council has a housing land supply of 3.34 years, therefore, there is an acute need for additional housing and the tilted balance in paragraph 11d) of the Framework applies. This development would result in a small economic benefit during construction and a small sustained benefit to the local economy once occupied. Even if I had a mechanism before me to secure the new flat as a social, affordable, or intermediate rented dwelling, this would be a moderate social benefit. If I were to agree the appellant's suggested works would be an improvement, given their minor nature and limited visibility, it would be a minor benefit to the character and appearance of the area.
16. Overall, the benefits of the development attract moderate weight in favour of the scheme. Compliance with parking standards and policies such as those relating to outdoor space and accessibility would be neutral matters. However, the policy compliance and benefits of the development do not outweigh the harmful living conditions for the future occupiers of the new ground floor

dwelling in respect of daylight and outlook, which are such that they attract significant weight against the scheme. Therefore, the harm significantly and demonstrably outweighs the benefits of the development when assessed against the policies in the Framework taken as a whole.

Conclusion

17. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR