



Appeal Decision

Site Visit made on 13 October 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2021

Appeal Ref: APP/M4510/W/21/3279839

58-66 West Road, Newcastle Upon Tyne NE4 9QB

- 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 Aobyed Kader Mohmood (Smartgate Int Limited) against the decision of Newcastle Upon Tyne City Council.
- The application Ref 2021/0435/01/DET, dated 1 March 2021, was refused by notice dated 5 July 2021.
- The development is subdivision of ground floor A1 retail into two units (Class E), conversion of first floor to create three apartments (Class C3), insertion of dormer to rear roof slope and conversion of roof void to create one apartment (Class C3) and erection of rear extension at first floor with external alterations (part retrospective) and installation of cycle storage and refuse storage within rear yard.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have adopted the Council's slightly more detailed description of development in the banner heading, above.
3. It is agreed between the main parties that the application the subject of this appeal was submitted retrospectively in relation to works carried out without the benefit of planning permission. It is also clear that that is the basis upon which the Council determined the application.
4. However, it is clear to me that the internal layout of the building as built, particularly at first and second floor levels, does not tally with the details shown on the submitted floor plans¹. In particular, the proportions of some of the rooms, the general arrangement and layout of each of the four apartments and the shared landing areas at both first and second floor levels all differ from the details shown on the submitted plan¹. Therefore, for the avoidance of doubt I confirm that my determination of the appeal is based on the drawings submitted and not on the works undertaken.

Main Issues

5. The main issues are the effects of the development upon:
 - The living conditions of occupiers of the resulting apartments, with particular regard to quality and quantity of internal accommodation; and
 - The character and appearance of the surrounding area.

¹ Drwg No: C-03 Rev D: 'Proposed Site and Ground Floor, Proposed First Floor, Proposed Second Floor Plan'

Reasons

Living conditions

6. Whilst there is agreement that the appeal scheme is comprised of two 1-bedroom apartments and two 2-bedroom apartments, the occupation levels of each of the apartments remains a matter of disagreement between the main parties. The submitted floor plans² helpfully show the overall floorspace for each of the four apartments but do not break those figures down by room.
7. The Council have assessed the appeal scheme on the basis that the apartments could be occupied in line with the approach set out in Table 1 of '*Technical housing standards – nationally described space standard*' (NDSS). Although the appellant has responded by suggesting that 'the most likely occupancy levels' would be less³, there is little in the way of explanation as to why that would be the case and no evidence to demonstrate how the bedrooms reflect the bedroom / bedspaces definitions set out in the NDSS. Thus, without a detailed breakdown of the gross floor areas for each bedroom or a mechanism to allow control over their potential occupancy levels in line with the levels set out in the NDSS, I do not find the Council's approach to be unreasonable.
8. Apartments 1 (No. 62) and 2 (No 64) would, on this basis, fall just short of, and comfortably exceed, the minimum gross internal floor areas set out within the NDSS, respectively. There may be circumstance where a small shortfall could be outweighed by other positive factors elsewhere within a development scheme. However, given that the levels of accommodation provided within apartment 3 (No. 66) and No. 66a (apartment 4) fall some way short of the NDSS minimum figures, particularly so in the case of apartment 3, the shortfall is symptomatic of a poor overall layout and an unreasonable expectation in terms of the quantum of development that the building envelope would be able to accommodate.
9. Nor does a marginal shortfall amount to an 'effective compliance' with the NDSS, as the appellant seeks to argue. Rather, it demonstrates an acceptance on the appellant's part that the scheme would not meet the NDSS's provisions for minimum gross internal floor space. That the appeal scheme fails to meet these provisions for three of the four apartments, significantly so in the cases of apartment 3 and No. 66a, underscores the unacceptable quantum of living accommodation provided overall.
10. The harm to long-term living conditions arising from the sub-standard gross internal floor areas is further compounded by the poor layout, positioning and outlook of the rooms, particularly in the case of apartment 3. The bedroom window for apartment 3 would look directly out, across a very short distance, towards the flank elevation of a two-storey outrigger and the ducting of an extraction system at the neighbouring building. Although the sole window serving the lounge / kitchen area of this unit would have a slightly more open outlook than the bedroom, it would still be heavily impacted by the neighbouring outrigger. Taken together, the two windows providing light and outlook to the main living areas of apartment 3 would be significantly compromised by their proximity to the outrigger at the neighbouring building.

² As 1, above

³ 1-bed / 1-person for apartment 3 and 2-bed / 3 person for apartment 4 (No. 66a)

11. Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (CSUCP) recognises the importance of the well-being and health of communities, whilst Development and Allocations Plan (DAP) policies DM7 and DM23 set out how developments will be expected to provide a high-quality environment and a good standard of residential amenity. To this end, DAP policy DM7 requires new homes to meet the NDSS requirements, whilst DAP policy DM23 seeks, amongst other things, to ensure good standards of outlook for all existing and future occupants of buildings. For the reasons I have set out, the appeal scheme would fail to do so, and is contrary to CSUCP policy CS14 and DAP policies DM7 and DM23.
12. I noted the secure access and entry arrangements provided for occupants of the units and the (visible) quality of workmanship, décor and furnishings through the development. I noted too, the scope for refuse and cycle storage arrangements that the sub-divided rear yard would provide, and which could be secured by appropriately worded conditions. However, these matters are essentially neutral factors, neither weighing in support of nor against the appeal scheme.
13. I also accept that there may be circumstances in which urban-apartment type development converting existing buildings can provide challenges in ensuring acceptable levels of amenity for existing and future residents. However, I have little evidence before me to demonstrate that the appeal building presented such insurmountable challenges and that the appeal scheme was the unavoidable result of those challenges. This is not a material consideration to which I give any significant weight.

Character and appearance

14. The appeal property lies within a block of commercial buildings fronting on to West Road. The residential streets of Gowland Avenue and Milvain Avenue lie to either end of the block, whilst a narrow service lane runs along the rear, parallel to West Road. The block itself is comprised of two storey buildings which bookend a distinctive gable-fronted tyre-fitting workshop.
15. Behind that façade, a large dual-pitched workshop building extends all the way to the rear lane with a peak rough equivalent to two storey height, whilst the two-storey outrigger at the corner of West Road and Gowland Avenue returns to a considerable depth along the latter, with a large, pitched roof double garage on the rear corner of that plot. Although a strong façade and consistent building line is maintained to West Road, the rear, seen from the rear lane and Gowland and Milvain Avenues, is altogether more fragmented and varied in its built form.
16. The Council are correct to acknowledge that properties have been extended at the rear on the northern side of West Road, and that many abut the rear service lane. Some of these extensions are large, take up the entire rear of the plot behind the West Road façade and incorporate walls and roller-shutter doors that are of a 'residential' scale and akin to residential rear yard wall.
17. The appeal scheme would present a similar elevation to the rear service lane. The roofline of the single storey, rearmost, element of the building would be higher than the residential garden wall opposite and slightly lower than the roller shutter door which provides access to the rear yard area. However, it would not be excessively so, whilst the scale and physical presence of the rear

elevation of the adjacent workshop building would continue to dominate the immediate rear lane streetscene. This element of the extension is in keeping with the general scale and nature of the rear lane and of buildings and structures to either side of it.

18. The first-floor element of the building would be pulled back from the rear lane, the rear dormer window even more so, resulting in a stepped rear elevation. Although both the first floor and dormer window extensions would be almost the full width of the plot, their progressively stepped nature would ensure that they would appear as recessive features in the context of neighbouring buildings, and the rear lane as a whole. That it would project beyond the build-out at the corner of West Road and Gowland Road would not be crucial, given its stepped nature, the presence of intervening roof structures when viewed from Gowland Road and the visually dominant presence of the workshop roof, beyond.
19. I am not persuaded therefore that the extensions would result in the level of harmful dominance that the Council maintain. It would without doubt represent a change at the rear of the appeal property, but it would not in my judgement be harmful or obtrusive within the streetscene. Nor, in the context of the mix of structures and built form at the rear of this block, would it amount to poor design or be visually unattractive.
20. There would not, for these reasons, be conflict with CSUCP policy CS15 or DAP policy DM20 which together seek to secure high quality design which responds positively to local distinctiveness and character, uses materials, colours and tones appropriate to the area's characteristics. I note too that the Council do not consider the proposal to cause harm to the character or appearance of the West Road frontage and this adds weight to my conclusions in this respect.

Other Matters

21. The Council do not object to the principle of the sub-division of the ground floor commercial units or the principle of residential accommodation on upper floors. Whilst noted, and indeed carrying some weight in support of the appeal scheme, this is not sufficient to overcome the harm that I have identified in respect of living conditions of occupiers of the apartments.
22. I am aware of the concerns, raised by occupiers of neighbouring properties, particularly 4 Gowland Avenue to the rear of the appeal site, regarding privacy and overlooking. The Council acknowledge this relationship and consider this matter in the officer report, albeit that the effects of the proposed development upon No. 4 in terms of privacy and overlooking are not reflected in either of the formal reasons for refusal.
23. I am advised that separation distances between habitable windows of opposing properties are guided informally by principles established by the 'Development Control Policy Statement 17 – Spacing Standards for Residential Dwellings'. However, this document is no longer extant, but is instead used informally on such matters in lieu of more formal forthcoming design guidance⁴. The weight that it carries is limited as a consequence.
24. There would be a degree of intervisibility between the appeal property and No. 4, particularly so between the first-floor rear windows, especially the bedroom

⁴ Paragraph 6.9.3 et seq as supporting text to DAP policy DM23

window, of apartment 3 and the property to the rear. However, as I have found harm in respect of the scheme's provisions for the living conditions of occupiers of the apartments, and as matters of privacy and overlooking between the apartments and No. 4 did not form part of the Council's formal reasons for refusal, I have not considered this matter any further at this time.

Conclusion

25. Although I have concluded that there would be no harm to the character and appearance of the surrounding area, the appeal scheme does not adequately demonstrate that the apartments would provide an acceptable standard of amenity and living conditions for occupants of the apartments, with particular regard to quality and quantity of accommodation provided.
26. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR