



Appeal Decision

Site visit made on 2 November 2021

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2021

Appeal Ref: APP/N4720/W/21/3279650

1B, Apartment 6, Hopewell View, Middleton, Leeds LS10 3TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Darren Hirst against the decision of Leeds City Council.
 - The application Ref 20/04636/FU, dated 28 July 2020, was refused by notice dated 8 July 2021.
 - The application sought planning permission for the change of use of former Church and hall to form 9 flats, including external alterations and partial demolition of ancillary buildings and on-site parking without complying with a condition attached to planning permission Ref 16/01480/FU, dated 17 February 2017.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application subject to this appeal is made under Section 73 of the Planning Act for the variation of a condition to make minor material amendments. This type of application is possible as a condition was imposed on the original permission specifying that the development shall be carried out in accordance with the schedule of plans attached to the decision. The appeal seeks the removal of the condition and to replace it with a condition specifying the plans that reflect the amendments to the development.

Main Issues

3. The main issues are the effect of the proposal on the living conditions of:
 - The neighbouring occupants with particular regard to overlooking and loss of privacy; and
 - The occupants of Flat 6 with particular regard to light levels.

Reasons

Living conditions - neighbouring residents

4. Within Flat 6, the amendments to the layout result in a kitchen and dining room at the rear of the property being served by a single obscure glazed window on the east facing elevation of the building. It is proposed to be fitted with clear glass.
5. The standards to be applied from Neighbourhoods for Living 2003 may be a guide, however this is adopted policy and therefore I apportion considerable weight to its design advice. To this end, the neighbouring gardens of Staithe Avenue are in close range to this window, and in order to protect the living conditions of these neighbours, obscure glazing was approved here as part of the original scheme.
6. Irrespective of what part of the garden the neighbouring occupants use, the installation of clear glass would result in overlooking across these rear gardens to the detriment of the privacy of residents living behind the site. Overlooking would be made more severe by an intervening 1.8m high boundary fence that would seek to only partially limit the amount of overlooking that would occur.
7. Furthermore, the internal layout indicates worktops arranged below the window, with the sink unit directly beneath the window. Occupants would be drawn to this area where more than a casual opportunity to overlook rear gardens would be presented by the use of clear glazing.
8. The appellant has asked me to consider a combination of one part obscure glazing and one part clear glazing. No specific detail has been provided. However, I would have concerns relating to the visual appearance of such along this rear elevation. How effective it would be as a means to prevent overlooking and loss of privacy cannot be determined. Therefore, without further information, I discount it as a real proposition.
9. The day room of Flat 8 is at first floor level and combines a kitchen and living space. The two windows that serve this room are set low to the floor and are relatively small compared to the size of the room they serve.
10. The low level and obscured glazing restricts the amount of natural light into the room. I share the Council's view that these windows currently provide no outlook for the occupants.
11. Given their locations, they do not provide the opportunity for casual overlooking across the rear gardens of the houses behind. However, given the development is taken as a whole, I cannot support the proposal for the aforementioned reasons.
12. The appellant considers they have a fallback position with regards to being able to change the obscure glazing through permitted development. Flats do not benefit from the same permitted development opportunities as other dwellings. Therefore, I discount this as a genuine fallback position.
13. Therefore, to conclude on this main issue, the proposal would not provide an acceptable level of privacy to the living conditions of local residents and would therefore not accord with Policy P10 of the Leeds Core Strategy (2014) and Saved Policies GP5 and BD5 of the Leeds Unitary Development Plan (2006), insofar as they relate to the quality of life and wellbeing with regards to the living conditions of occupants of neighbouring properties.

Living conditions - No 6

14. An additional window is proposed to be provided to the side elevation of the kitchen/dining area of this flat. The outlook from this window would be onto a vehicular access way into the development and the far side wall which would be in close range. Given part of the building overhangs this access, there would be a limited amount of light penetration through this window.
15. The living conditions of the occupants would be further compromised by the fact that the existing east facing window is obscurely glazed, to which I have found harm should it be glazed with clear glass. Therefore, as a combination of both windows, the living conditions of occupants would be harmfully compromised as a consequence.
16. For these reasons, I conclude that the revised layout and fenestration would fail to provide suitable living conditions for the occupants of the flat, and the proposal therefore would not accord with Policy P10 of the Leeds Core Strategy (2014) and Saved Policies GP5 and BD5 of the Leeds Unitary Development Plan (2006), insofar as they relate to the quality of life and wellbeing with regards to the living conditions of the occupants of the development.

Other Matters

17. Even though the appellant may be an experienced local developer and building regulations have dictated the layout and resulted in the changes they have applied for, this does not lead me to reach a favourable decision on the proposal. It is not within my jurisdiction to suggest changes to the scheme presented to me as I can only determine the proposal based on the evidence before me.
18. Issues with the Council regarding entering into discussions and enforcement proceedings should be referred to them in the first instance and is not within my scope to comment.
19. There is nothing before me to indicate the scheme is not capable of contributing towards housing need in the Borough.
20. The comments regarding Flat 6 and bedroom 4 are noted. However, the Council's comments relate to the overall effect of the proposal on the living conditions of the occupants of this flat.

Conclusion

21. Given the proposal results in conflict with development plan policies, I conclude that the development would be contrary to the development plan taken as a whole. As such, I conclude that the appeal should be dismissed.

Alison Scott

INSPECTOR