
Appeal Decision

Site visit made on 12 July 2022

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 15th July 2022

Appeal Ref: APP/J1915/W/21/3278763

27 Bell Street, Sawbridgeworth, Herts CM21 9AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of decisions on an application for planning permission.
 - The appeal is made by Mr Peter Bennett against East Hertfordshire District Council.
 - The application Ref 3/21/1041/FUL (now 21/00069/NONDET), is dated 21 April 2021.
 - The development proposed is a single storey detached outbuilding, lowering of rear terrace and installation of connecting pergolas.
-

Preliminary matters

1. The application was made for planning permission and listed building consent. I have not been advised of whether a decision has been made on the application for listed building consent, ref 3/21/1042/LBC. The appeal is submitted against the failure to make a decision on the planning application alone and I have considered it accordingly.
2. Had it been in a position to make a decision, the Council would have refused planning permission on grounds of the effect on the living conditions of adjacent occupiers due to noise and disturbance. Local residents object on grounds of natural light, privacy and noise. I have considered these matters in the decision.

Decision

3. The appeal is allowed and planning permission is granted for a single storey detached outbuilding, lowering of rear terrace and installation of connecting pergolas at 27 Bell Street, Sawbridgeworth, Herts CM21 9AR in accordance with the terms of the application, Ref 3/21/1041/FUL, dated 21 April 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issue

4. Having regard to all the representations, the main issue is the effect of the proposed development on the living conditions of adjacent occupiers in terms of noise and disturbance, overlooking and natural light.

Reasons

The site and surroundings

5. The building is a 16/17th century house, listed Grade II, once converted to shop use before being used for financial services. Since closure of the bank, the building is now used as a café on the ground floor and the paved rear yard is

being used as an outdoor seating area. It lies in the main shopping street in Sawbridgeworth and is surrounded by residential properties including a development of small flats for the elderly and other retail uses. The proposal involves erecting a building in the rear yard for seating.

Noise and disturbance

6. A narrow passageway separates The Gables retirement housing from the wall and fence at the back of the outdoor seating area. At present, customers of the café sit at tables near the boundary and would be easily heard by residents of the nearest 2 flats through their windows facing south. The appellant has erected an interwoven fencing panel on top of the wall but this would have virtually no effect on noise transmission. I consider that this situation would be very different from when the yard at the rear of the bank was unused and it is unsurprising that residents feel the need to close windows facing the yard from time to time. Even then, noise from customers would be a constant murmur heard through west facing windows of the same flats. Residents using the external terrace behind the west wall of the flats would hear customers of the café and the noise would be hard to avoid.
7. The drawings for the proposed detached outbuilding indicate a solid wall on 3 sides and an impervious roof facing The Gables. The appellants indicate that these would have an acoustic value to mitigate the effect of customers talking but provide no details. I consider that it would be possible to impose a condition requiring a certain level of construction density or acoustic insulation and providing this is done, the level of noise from the number of customers in the building along with those that could occupy the outside space is unlikely to have an unacceptable effect on living standards. Any customers sitting outside in periods of fine weather in normal opening hours, indulging in normal conversation, would be far enough away to avoid unacceptable nuisance. In considering this matter I have had regard to the status of Bell Street as a Secondary Shopping Frontage in the 2018 East Herts District Plan, where a mix of uses is expected and considered desirable. Residents of such areas where housing is situated adjacent to retail activities have the benefit of easy access to services but may notice a degree of noise from time to time from pubs, restaurants and cafés. A condition is imposed to limit the hours of use of the rear area. If a high and unacceptable level of noise occurred at any hour, local occupiers would have recourse to the Environmental Health Department of the Council in the usual way.

Privacy

8. The existing brick wall at the rear of the yard separating the appeal property from The Gables has been raised with interwoven fencing panels to a height of around 1720 millimetres (mm) above the outdoor seating area. This is insufficient to prevent some curious customers, if they wished to, from being able to look over into the secondary window of a living area of a single ground floor flat. Another window is glazed with obscured glass. The proposed scheme would address this issue by lowering the ground level and erecting a building across the plot, preventing any overlooking. I do not consider that the level of intervisibility between the terrace of the flat and the remaining outdoor area of the café would pose any issues.
9. Neighbouring occupiers' concerns on privacy relate to the present situation but also run in harness with concerns about daylight. It is clear that raising the

fence element has proportionally reduced the amount of daylight reaching the ground floor windows.

Natural light

10. Turning to natural light, I am conscious that the window in question is very near the west end of the fence and also receives some natural daylight over the boundary at No. 25. Recognising that there has been a change in the boundary height and the way this has been perceived by some occupiers of The Gables, I do not find that the levels of daylight and sunlight have been unacceptably compromised. In a dense area of development such as this with conflicting uses, a level of compromise is necessary.
11. The proposed scheme would involve a significant reduction of ground levels in the yard and the edge of the roof would be no higher than the existing fence. A condition can be imposed to ensure the roof would not exceed this height. In these circumstances, whilst there would be a change, it has not been shown that the living conditions of occupiers of The Gables would be altered to the extent that there would be a conflict with planning guidance or policy.

Conclusion

12. I have taken account of all the other matters raised including the planning application process and the images shown on the application drawings, but find nothing to outweigh my conclusion that the proposed building would be acceptable in planning terms. The stability of the brick wall during the works is not a planning matter but one which should be discussed between the parties and their respective surveyors.
13. Conditions are imposed to control the external materials and to ensure that an archaeological investigation takes place. The hours of operation of the rear building need to be controlled and use of speakers and amplification equipment avoided for the benefit of local residents. The height of the rear edge of the roof is controlled in accordance with the application drawings to prevent any further impact on natural light. The walls and roof need to meet a minimum acoustic standard and this is anticipated by the appellant. The figure of 43dB (A) is used as there are common forms of construction deemed to meet this standard. Given the proposed use, the location and noise rating of any future extract fans or air conditioning units need to be controlled. Finally, the development needs to be constructed in accordance with the approved drawings, for the avoidance of doubt.
14. For all the above reasons, the appeal should be allowed.

Paul Jackson

INSPECTOR

Schedule of 9 conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

- 2) The development hereby approved shall be carried out in accordance with the following approved plans: 00/101 Floor plans; 10/101 Sections; 30/100 Detail at north boundary.
- 3) Prior to any building works being commenced details of the external materials shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be implemented in accordance with the approved materials.
- 4) No permanent or temporary sound amplification or speaker systems shall be installed in the proposed detached outbuilding or in the external space.
- 5) No development or groundworks shall take place until the applicant, or their agents, or their successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme, and this condition will only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.
- 6) The development hereby approved shall not be used for the sale and consumption of food and beverages outside the hours of 0830 - 2000 hours Sunday to Thursday and 0830 - 2200 hours on Fridays, Saturdays and Bank Holidays.
- 7) In accordance with drawing ref 30/100, the height of the top of the edge of the roof at the rear of the extension shall not exceed the height of the existing wall and fence panel forming a boundary to The Gables.
- 8) No plant, extract fans or air conditioning units shall be installed in the building without details being submitted to and approved in writing by the Local Planning Authority. Any such equipment shall be installed in accordance with the approved details.
- 9) The building shall be constructed so as to provide sound insulation against internally generated noise of not less than 43 dB(A), with windows shut and other means of ventilation provided. The sound insulation works shall be completed before the use of the building begins and retained thereafter.