



Appeal Decision

Site visit made on 9 August 2022

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Appeal Ref: APP/W2465/W/22/3292556

70 Berners Street, Leicester LE2 0AF

- 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 Raziya Mirza against the decision of Leicester City Council.
 - The application Ref 20212489, dated 1 October 2021, was refused by notice dated 6 January 2022.
 - The development proposed is change of use of ground floor of building from storage to 1x1 bed flat and external alteration to rear (Use Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Reason for Refusal on the Council's Decision notice relates to the living conditions of the future occupiers of the proposed flat. The appellant's original appeal submission put forward a number of amendments to address these matters, including the use of unobscured glass in the rear kitchen/dining area windows, enlargement of the front windows, refurbishment of the outdoor amenity space and the installation of outdoor lighting in the shared alleyway into the site. Having regard to the 'Wheatcroft' principles, as all parties have been consulted and provided with an opportunity to comments on these changes, that are referred to in the Council's appeal statement, I consider that there would be no prejudice to any party by considering these amendments. I have determined the appeal on this basis accordingly.
3. The appellant's final appeal submission refers to an amended alternative scheme involving the removal of a wooden shed and the enlargement of the shared outdoor amenity space associated with the proposed development. As, however, all parties have not been consulted nor provided with an opportunity to comments on these changes, having regard to the 'Wheatcroft' principles, I consider this would potentially prejudice interested parties. As such, I have determined the appeal on the basis of the same details that were before the Council when it made its decision and those referred to the appellant's original appeal submission and the Council's appeal statement as outlined above.
4. The appellant's submission indicates that the 2 bed flat at first floor level in the appeal building is incorrectly shown on the original submitted drawing (Ref. MIRLE2002). It is currently used as storage and will remain in storage use as part of the proposal. I have determined the appeal on this basis accordingly.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of the future occupiers of the flat with particular regard to light, outlook, privacy, outdoor amenity space and access arrangements.

Reasons

6. The appeal site consists of a two storey outbuilding located at the rear of No. 70 Berners Street (No. 70), a traditional mid-terrace property with a commercial use at ground floor level and residential use above. It is located in a predominantly residential area of high density Victorian terraced properties on the northern side of the road and is accessed via a shared yard and narrow pedestrian alleyway between Nos. 68 and 70 serving the appeal property, the commercial use at No. 70 and the residential use above (No. 70a).
7. The proposed development would create a reasonable sized area for the ground floor flat with a kitchen/dining area, bedroom and a bathroom. The shared yard enclosed by the surrounding terraced buildings and high boundary walls would be utilised as the outdoor amenity space for the proposed flat.
8. The kitchen/dining area would be served by full height patio doors directly facing the shared outdoor amenity space and 2 no. unobscured windows on the rear northern elevation overlooking a vacant overgrown area of land to the rear of the appeal site. The bedroom would be served by a glazed door and window directly facing the shared amenity space and the bin and bike storage area.
9. Whilst I accept that there would be some impact on the future occupiers of the flat, given the overall modest scale, design and layout of the proposed flat and the surrounding uses and the access arrangements at No. 70 and 70a, I do not consider the users and visitors would cause significant harm to the privacy, nor result in significant overlooking of the future occupiers in the rooms and shared amenity space at the front of the proposed flat. The shared yard is already overlooked from the existing windows at the rear of No. 70a and the principal access to the commercial use at No. 70 is from the front of the premises onto Berners Street. However, this is not determinative factor on its own.
10. Given the overall design and layout of the proposed flat and the orientation of the building together with the modest size of the enclosed shared outdoor amenity space, I consider that the proposed development would impact on the views and available light enjoyed by the future occupiers.
11. The windows and doors on the front elevation of the proposed flat would be positioned in close proximity to the surrounding terraced buildings and high boundary walls around the shared outdoor amenity space. The surrounding buildings and boundary walls would result in a dominant and enclosing structure that would severely restrict the outlook and available light within the kitchen/dining area and bedroom of the proposed flat. The proposed bin and bike storage area would also restrict the outlook, to a more limited extent, from window and door on the front elevation of the bedroom. I therefore consider that the proposal would result in a poor quality living environment and unacceptable living conditions for the future occupiers of the proposed flat.
12. The proposed outdoor amenity space for the proposed 1 bed flat and existing flat at No. 70a would meet the Residential Amenity Space Standards as set out in the Council's Residential Amenity Supplementary Planning Document 2008

- (SPD). However, there would still be a need for the outdoor amenity space to be useable and provide adequate space for the occupiers to carry out leisure and household activities such as hanging out their washing if they wish, particularly during the summer months.
13. In this context, I consider that the outdoor amenity space for the proposed flat would be contextually very small and hemmed in by the surrounding terraced buildings and the high boundary walls. Notwithstanding the reduced expectation for outdoor amenity space when it comes to one bedroom properties more generally, I consider that the users of the shared outdoor amenity space would experience an enclosed environment, lacking in quality as usable, private outdoor amenity space.
14. In terms of the access arrangements to the site. Whilst a lockable entrance gate is provided to the shared alleyway, in its current state, as a consequence of the poor lighting and the lack of surveillance, the alleyway would not provide a welcoming, safe and secure access for potential future occupants of the proposed development. The appellant has indicated that the current proposal would provide an opportunity to improve the condition of the alleyway and carry out alterations, including new outdoor lighting. However, I do not consider this would be sufficient to ensure future users have a welcoming, safe and secure entrance via the shared alleyway.
15. I have considered the appellant's arguments that the design and layout of the proposed flat has been carefully considered in order to minimise any impacts on future occupiers of the proposed flat and the existing occupiers of the adjacent properties. Whilst such design and layout features within the flat and the proposed amendments would reduce the impact of the proposal to some degree, these aspects do not overcome the adverse effects outlined above.
16. Consequently, I conclude that the proposed development would result in an unacceptable impact on the living conditions of the future occupiers of the proposed flat with particular regard to light, outlook, outdoor amenity space and the access arrangements. It would be contrary to the overall aims of Policy CS Policy 3 of the Leicester City Core Strategy 2014, Saved Policies H07 and PS10 of the City of Leicester Local Plan 2006 and the SPD. These policies and guidance, amongst other things, seek to ensure that development proposals provide the highest quality design and places, create a satisfactory living environment and take into the impact on the amenity of existing and proposed occupiers. In addition, it would not accord with the National Planning Policy Framework that development should seek to create places that promote health and well-being, with a high standard of amenity for existing and future users (paragraph 130).

Other Matters

17. I have considered the appellant's comments regarding the previous uses of the building, its current unused condition, lack of alternative uses and the support from the local neighbourhood for the appeal proposal. Whilst this maybe so, this does not preclude the proper planning assessment of the impact of the proposal on the living conditions of the future occupiers and is not a determinative factor on its own.
18. I have considered the various benefits put forward by the appellant that the proposal would bring, including the scheme's design, the effective and efficient

re-use of a vacant building in an accessible location, additional Council tax revenue and through contributing to the local housing supply and needs in the area. While I have given them some weight, these modest benefits would not be sufficient to outweigh the harm I have identified in this case. For all these reasons, there are no other material considerations to outweigh the development plan conflicts identified.

Conclusion

19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR