



Appeal Decision

Site visit made on 25 August 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/D5120/W/22/3295056

The Pheasant Public House, 27 Belmont Road, Erith, Kent DA8 1JY

- 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 Lucky Ricky Co Ltd against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/01492/FUL, dated 27 April 2021, was refused by notice dated 25 August 2021.
 - The development proposed is described on the planning application form as "extension to existing building (formerly The Pheasant Public House) to provide two 2 bedroom flats and two one bedroom flats with associated works".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Various descriptions of the development have been provided on the planning application form, decision notice and appeal form. The description as given in the appellant's statement of case reflects that on the Council's decision notice, although the appellant states that there is an error in respect of the number of bedrooms in the maisonettes. On that basis, I have used the description as given on the application form.
3. The 'Existing Site Plan' provided with the appeal does not reflect the circumstances of the site which I observed on my visit. However, I have proceeded to determine this appeal on the basis of the description of the development and the relevant plans, and have had regard to the submitted details and observations on my visit.

Main Issues

4. The main issues are:
 - The effect of the proposal on the living conditions of future and existing residents with regards to amenity space;
 - The living conditions of residents of Brook Vale with regards to privacy;
 - Whether sufficient information has been provided in respect of fire safety; and

- Whether it has been demonstrated that the proposal would be of an accessible and inclusive design.

Reasons

Amenity Space - Future Residents

5. Policy D6 of the London Plan 2021 specifies that a minimum of 5 sq.m of private outdoor space should be provided for 1-2 person dwellings and an extra 1 sq.m should be provided for each additional occupant. The proposed flats would not provide any private outdoor space, and on that basis the proposal would conflict with the requirements of policy D6.
6. The appellant refers to a communal garden area to the rear which residents of the proposed flats would have access to. However, while communal open space would be a benefit for residents, this would not supplant the requirement of policy D6 for private open space.
7. The appellant also refers to issues relating to the provision of balconies, particularly due to overlooking of nearby properties. However, they have not explored other options for private amenity space which could be achieved within the constraints of the site.
8. In conclusion on this issue, the appeal proposal would not provide suitable private amenity space for future residents of the proposed flats. The proposal would therefore be contrary to policy D6 of the London Plan and policy H6 of the Unitary Development Plan 2004 (the UDP) with regards to the provision of adequate private outside space. Although policy H6 of the UDP does not specifically refer to private amenity space, this does not lead me to a different conclusion in respect of the provisions of policy D6 of the London Plan or the wider consideration of amenity space for the proposed flats.

Amenity Space - Existing Residents

9. The Council's Design for Living SPD¹ (the SPD) sets out that in flat development, amenity space should be a minimum of 45% of the plot area, including balconies, decks and roof gardens.
10. The Pheasant Public House has been converted to 9 flats. Based on the evidence before me, the original planning permission for the conversion of the building to flats included an 'L' shaped communal garden extending around a corner of the building and which included part of the appeal site. The Council states that this original layout represented approximately 25% of the plot being used for amenity space, with a Section 106 contribution in lieu of the required on-site amenity space.
11. However, on the basis of what I have seen and read, the communal garden and other elements of the layout of the development as originally proposed have not been implemented. The Council refers to a current investigation into a lack of details in respect of landscaping which were required to be submitted by condition on the original permission. That said, there is a communal garden to the rear of the building which serves the existing flats.
12. However, the Council refers to the proposal resulting in a further reduction in amenity space, representing around 15% of the plot. Notwithstanding the

¹ Design of Living - Bexley's residential design guide Supplementary Planning Document 2006

specific proportions of amenity space, it is clear that the proposal would be constructed on part of the site which was intended as a communal garden. An extent of parking as shown on the proposed site plan would also reduce the size of the existing rear garden. The appeal proposal would result in a significant reduction of the communal amenity area, which would then have to serve both the existing flats and the appeal proposal. Given the total number of dwellings, and with regard to the advice of the SPD, the resulting extent of amenity space would not be of an adequate size for the existing residents, with commensurate harm to their residential amenity.

13. The appellant contends that the appeal site is surplus to the needs of occupants of the existing building. However, they have provided no substantive evidence to demonstrate this, especially in the light of the originally proposed layout for the conversion of the public house. Reference is also made to the site being used to dump rubbish, although it has not been demonstrated why this cannot be addressed by the suitable management of the site within the terms of the original approval for the conversion of the public house.
14. I conclude that the proposal would result in an unacceptable reduction in the amenity space to be provided for existing residents of the flats in the adjacent building. The proposal would therefore be contrary to policies ENV39, H6 and H8 of the UDP in respect of the provision of usable amenity space and the protection of the environment of occupiers of adjacent property.

Privacy

15. The SPD recommends a separation distance of 22m between elevations containing windows serving habitable rooms. As set out by the Council, the separation distance between the appeal proposal and the rear elevations of dwellings at 18 and 19 Brook Vale would be approximately 16.5m, which is significantly less than the recommended distance, with commensurate harm to the privacy of residents. The intermittent occupancy of the rooms involved does not diminish their importance as main habitable rooms of the respective dwellings.
16. In particular, the proposal would include windows to a living room at first floor level, which would enable an intrusive degree of overlooking of dwellings to the rear. This would be the case even given the boundary treatment and trees to the rear of the existing flats, and in any event I saw that there are no trees between the appeal site and Nos 18 and 19. Even if planting to the rear was provided as proposed by the appellant, this would take some time to establish and may not provide screening at all times of the year. Dense planting on the boundary may also harm the amenity of residents of Nos 18 and 19 due to loss of light.
17. The appellant submits that the Council did not object on grounds of overlooking in respect of the conversion of the public house. However, the windows of the appeal proposal would be closer to Brook Vale than those of the converted building, and the circumstances of the conversion are therefore materially different to the proposal before me.
18. In conclusion on this issue, due to the inadequate separation distance between windows of habitable rooms, the proposal would lead to significant harm to the privacy of residents of Nos 18 and 19 with commensurate harm to their living conditions. The proposal would therefore be contrary to policy D6 of the

London Plan and policies ENV39 and H7 of the UDP with regard to the provision of privacy for residents of adjacent property.

Fire Safety

19. Policy D12 of the London Plan states that all development proposals must achieve the highest standards of fire safety. Although matters of fire safety are also addressed by the Building Regulations, mindful of the requirements of policy D12 it is also appropriate that this issue is considered as part of the planning process.
20. The appellant refers to elements of the proposal including the lack of external cladding, the use of concrete floors and walls of sufficient fire resistance. However, these comments are set out in general terms, and do not represent a robust demonstration that the requirements of Policy D12 have been addressed. Some matters in respect of fire safety could be addressed by condition, but it has not been demonstrated that such conditions would be enforceable or address this main issue given the limited evidence submitted in respect of fire safety.
21. I therefore conclude that sufficient evidence has not been submitted to demonstrate that the proposal would achieve the highest standards of fire safety. The proposal would therefore be contrary to policy D12 of the London Plan.

Accessible and Inclusive Design

22. Policy D5 of the London Plan requires that development proposals should achieve the highest standards of accessible and inclusive design. It goes on to state that Design and Access Statements, submitted as part of development proposals, should include an inclusive design statement.
23. An inclusive design statement was not included in the Design and Planning Statement submitted by the appellant. They refer to the proposals meeting the criteria for internal floor area and storage space, and that the layout of the accommodation speaks for itself. However, while the detail required should be proportionate to the scale and type of development, the information submitted by the appellant does not represent a robust assessment of inclusive design within the terms of the London Plan.
24. I conclude that sufficient evidence in respect of inclusive design has not been submitted, and that the proposal would therefore be contrary to policy D5 of the London Plan in respect of inclusive design.

Conclusion

25. I am mindful of the benefits of the proposal. It would add to the supply and mix of housing in the area, and the appellant refers to the use of an underused and unkempt brownfield site. The proposal would also be of a design which would complement the existing building and would not harm the character and appearance of the area. However, the benefits arising from the number of dwellings proposed would be limited, and the positive considerations assessed as a whole would not be sufficient to outweigh the significant harm I have identified.

26. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR