



Appeal Decision

Site visit made on 4 January 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2023

Appeal Ref: APP/W2465/W/22/3305981

26 Melton Road, Leicester LE4 5EA

- 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 Mitesh Singala against the decision of Leicester City Council.
 - The application Ref 20220004, dated 31 December 2021, was refused by notice dated 10 June 2022.
 - The development proposed is change of use from shop (A1) to dwellings (C3), 2 x 2 bed flats and 1 x 1 bedroom flat, internal and external alteration, double and single storey extension at rear.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the header is taken from the application form. It is different to that on the Council's decision notice but there is no record that this revised description has been agreed with the appellant. As such, my assessment is based on the original description.
3. The appeal plans indicate that the rear part of the ground floor of the appeal property and the first floor areas are used for residential purposes. However, on my visit I saw these rooms being used for purposes associated with the retail shop at the front of the property, with little evidence to demonstrate residential occupation. I have had regard to the plans as well as my observations in the assessment of the appeal.

Main Issue

4. The main issue is whether the development would provide appropriate living conditions for occupiers having regard to outlook, light, privacy and noise.

Reasons

5. The appeal property is a 2 storey high building with a ground floor shop to the front. Buildings in the vicinity tend to be 2 or 3 storeys high with shops at ground floor level. Melton Road is a busy urban highway.
6. To the rear of the appeal property is a 2 storey high projection with a single storey store room extension to its side. The development includes the demolition of the existing store and the erection of a narrower single storey extension in its place. Also, the existing 2 storey projection would be extended further to the rear. A slightly smaller shop area would be retained and a 2 bedroom flat provided to the rear of the ground floor (shown as flat 1 on the

appeal plans). At first floor level a 2 bedroom flat would be provided to the front (flat 2) and a single bedroom flat to the rear (flat 3).

Flat 1

7. Flat 1's bedrooms would be to the rear of the property with windows in the end wall. There is no dispute that these windows would provide adequate views and access to light.
8. However, the main living area and kitchen would be located more centrally in the building and without the benefit of windows in the rear elevation. The only window serving this area would be in the side wall where there would also be a glazed door leading to an open but narrow alleyway. Even if the side boundary wall is reduced in height as indicated by the appellant, views from the window and glazed door would look out onto the 2 storey high side wall of the neighbouring property. By virtue of its close proximity, its height and its significant depth of projection to the rear, this flank wall would appear overbearing in views from the side window and door. Any outlook would be highly restricted with no meaningful sight of the sky or any distant features.
9. The proposed extension would include a lantern rooflight over the kitchen area. However, this would only provide views straight upwards and it would not provide the typical vistas that can normally be seen from traditional vertical windows.
10. Moreover, the side window and glazed door would face approximately north eastwards and so are unlikely to receive much direct sunlight. The level of daylight received by this fenestration would also be restricted due to the overshadowing and enclosing effect of the adjacent building. The lantern rooflight is unlikely to allow satisfactory light to the room below as it would be surrounded on 3 sides by the upper floors of the appeal property and the neighbouring building. In any event, the lantern would only be over the kitchen area with the main lounge and dining area away from the rooflight.
11. The alleyway to the side of flat 1 would be used by the occupiers of the shop as well as residents of the other proposed flats. The side window would potentially allow nearby views from the alleyway into the interior of flat 1, thereby compromising the privacy of its occupants. However, it is likely the alleyway would be used infrequently and mainly by people who are walking to and from the building rather than gathering outside the window. Also, the windows in the rear elevation would be at a height above the ground to avoid easy viewing in towards the bedrooms. As such, I am satisfied flat 1 would provide an adequate level of privacy for its occupants.
12. Moreover, the retained shop would be separated from flat 1's main living and sleeping rooms by storage, toilet and bathroom areas. As such, it is unlikely that activities in the retail unit would unacceptably disturb occupiers of the flat. No noise survey has been provided but from my observations the rear part of the appeal property is not subject to any excessive noise. The Council refers to the commercial premises surrounding the site but no particular noisy use has been identified that would potentially affect flat 1.
13. However, for the reasons given, the main living area of flat 1 would provide a poor outlook and it is likely that occupiers would need to rely on artificial lighting in order to use the living space. Therefore, I conclude that flat 1 would

not provide satisfactory living conditions for occupiers in terms of outlook and light. As such, the development would not accord with saved policies H07 and PS10 of the City of Leicester Local Plan 2006 (the LP) and CS policy 3 of the Leicester City Core Strategy 2014 (the CS). Amongst other things, these look to ensure developments are high quality and that flats provide adequate living environments.

Flat 2

14. The living and kitchen area would be served by 2 rear facing windows. These would provide views towards properties to the back of the site as well as the skyline. As such, there would be an acceptable outlook from the main living area for occupants of flat 2.
15. The bedrooms would be to the front of the property where I noted that road traffic noise can be heard. No noise survey information has been provided and no noise mitigation measures have been outlined. However, the Council's Noise Team has raised no objections to the development. Also, the evidence submitted by the appellant indicates that residential accommodation has been provided above other nearby shops on Melton Road. There is no contention from the Council that these residences are unacceptably affected by traffic noise. As such, I am satisfied that the impact of noise on flat 2 could be appropriately mitigated so as to provide an acceptable living environment for residents. Any required noise mitigation measures could be reasonably secured through a planning condition.
16. Therefore, I conclude that flat 2 would provide satisfactory living conditions in terms of outlook and noise. Accordingly, this element of the proposal would comply with LP policies H07 and PS10 as well as CS policy 3.

Flat 3

17. This flat would be to the rear of the property and so away from the source of road traffic noise. Similar to flat 1, there is no clear evidence of any nearby noise generating use that would affect the interior of flat 3. As such, I conclude that this element of the proposal would provide acceptable living conditions.

Other Matters and Planning Balance

18. I have found that flats 2 and 3 would provide satisfactory living conditions. Acceptability in these regards is a neutral factor in my assessment. However, flat 1 would provide unsatisfactory conditions for its occupants in terms of outlook and light to its main living space. As such, the proposal when considered as a whole would not accord with development plan policies. It follows to consider whether there is justification to grant planning permission contrary to the development plan.
19. In support of the scheme, the appellant refers to residential flat developments on the upper floor of the adjoining property as well as at 45 Melton Road and 58 Rosedale Avenue. The plans for the flats on the site adjoining the appeal property show restricted outlook from kitchens but it seems the living rooms are served by windows that provide satisfactory light and views. The submitted plans and information for 45 Melton Road and 58 Rosedale Avenue do not demonstrate the extent of views from windows to the living areas and so I am unable to draw accurate comparisons with the appeal scheme. However, from the information before me, I am unconvinced that these other schemes include

a situation similar to the main living area to proposed flat 1. As such, they do not set a precedent that I am bound to follow in my assessment of the appeal.

20. As a consequence of the development, the condition of the appeal property would be improved, although there is no obvious sign the building is in a particularly poor state. Also, the proposal would provide new residential units in an urban location near to facilities and public transport links. It would provide a boost to the housing stock and would help meet the needs of small households.
21. No information has been provided on whether the Council can demonstrate a 5 years' supply of housing land as required under the National Planning Policy Framework (the Framework). As such, there is no clear evidence on whether the tilted balance as set out at paragraph 11 of the Framework is engaged. However, even if there is a shortage of housing land, the benefits of the proposal would be modest given the small number of proposed flats.
22. The Framework states that the creation of high quality places is fundamental to what the planning process should achieve. This includes ensuring places provide a high standard of amenity for future users. As such, I attach significant weight to the failure of the proposal to provide satisfactory living conditions for the residents of flat 1. This harm significantly and demonstrably outweighs the benefits of the scheme. As such, even if the tilted balance is engaged, the presumption in favour of sustainable development as set out at paragraph 11 of the Framework does not apply. Therefore, insufficient justification exists to grant planning permission contrary to development plan policies.

Conclusion

23. For the reasons given above, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR