



Appeal Decision

Site visit made on 30 November 2022

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 JANUARY 2023

Appeal Ref: APP/Q3630/W/22/3294573

66 Brox Road, Ottershaw KT16 0HH

- 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 Paul Smith on behalf of Maxika Homes (Ottershaw) against the decision of Runnymede Borough Council.
 - The application Ref RU.21/1067, dated 21 June 2021, was refused by notice dated 25 February 2022.
 - The development proposed is described as 'demolition of the existing buildings and erection of a convenience retail shop (E(a)) with residential flats (C3) above'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form before me does not include a valid declaration date. I have therefore used the date of the application stated on the appeal form in the banner heading above.
3. The appellant submitted revised plans with the appeal that seek to address the Council's reasons for refusal, which include the provision of privacy screens. Whilst the amendments do not materially alter the nature of the proposed development, this appeal relates to the proposal determined by the Council. Accepting amendments at appeal stage could deprive parties of the opportunity to comment on the changes. Taking the revised plans into account could therefore prejudice other parties' interests. The Planning Inspectorate's Procedural Guide (Planning Appeals – England, updated 21 December 2021) also sets out that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Consequently, I have determined the appeal on the basis of the proposal determined by the Council and have not taken into account the revised plans.

Main Issues

4. The main issues are:
 - the effect of the proposal on the living conditions of the occupants of Nos 62 and 64 Brox Road, with particular regard to privacy; and
 - the effect of the proposal on the living conditions of the occupants of No. 64 Brox Road and whether the proposal would provide acceptable living

standards for future occupants, with particular regard to noise and disturbance.

Reasons

Privacy

5. The proposal comprises a convenience retail shop with 3 x 1-bedroom residential flats above sited at the rear of the appeal site. The flats would be accessed via an external staircase and walkway. The staircase would be positioned next to the rear garden boundaries of Nos 62 and 64 Brox Road. Given the proximity, and despite topography and boundary treatment, there would be direct views from the staircase and walkway into the rear gardens of these properties as well as their rear first floor windows.
6. It may be that No. 64 has a limited amount of rear garden space that is bounded by buildings on 3 sides, including an office to the rear. However, the building to the rear of the garden is single storey with a flat roof, and taking into account the height, position and proximity of the proposed staircase to No. 64's rear garden, direct views from the appeal proposal are therefore likely. In addition, given the limited size of the space, occupants of No. 64 would be unlikely to have much garden space that would not be directly overlooked by the proposal.
7. Based on the available evidence, it seems to me that such overlooking of the rears of Nos 62 and 64 could not occur under the lawful use of the site as a builders' merchant. The appeal proposal would therefore result in an unacceptable loss of privacy for the occupants of both properties. In coming to this view, I have taken into account the built-up nature of the area and that some mutual overlooking thus may not be uncommon. The potential for employees and customers of the former builders' merchant use to look into the side windows of No. 64, and for those windows to be altered in the future, does also not lead me to a different conclusion.
8. Notwithstanding my decision not to accept the revised plans as part of this appeal, I note that the appellant considers that privacy screens could be secured by condition and would address the loss of privacy arising from the proposal. However, even if such an approach was acceptable with regards to privacy, there is no certainty that it would be acceptable with regards to other aspects of the proposal, and I note that the Council consider this approach would compromise outlook and light. Imposing such a condition would therefore not be reasonable in this instance.
9. For the reasons above, the proposal would result in an unacceptable loss of privacy for the occupants of Nos 62 and 64 Brox Road. It would conflict with Policies EE1 and EE2 of the Runnymede 2030 Local Plan and Runnymede Design SPD (2021). These seek to, amongst other things, ensure that development has no adverse impact to neighbouring property or uses, including impacts on privacy. The proposal would also conflict with the aim of the National Planning Policy Framework (the Framework) to create places with a high standard of amenity for existing and future users.

Noise and Disturbance

10. The appeal site is located a short walk from the Ottershaw Primary Shopping Area, which comprises some local shops and services. While the area

immediate to the appeal site is largely residential, it forms part of a small cluster of commercial uses in this location.

11. This section of Brox Road has relatively frequent vehicle and pedestrian movements, which gives it a degree of vibrancy. However, the evidence before me demonstrates that, despite the highway and nearby commercial uses, the site and immediate area are not characterised by high levels of background noise. Furthermore, I experienced the rear section of the site, away from the public highway, despite some intermittent noise from machinery associated with the commercial uses, to be relatively quiet, particularly during breaks in the traffic.
12. The hours of operation of the proposed convenience store are stated on the application form as 6:00 to 23:00. I also understand that the Refuse and Servicing Plan submitted with the application states that all deliveries for the convenience store would take place before 9:00 and after 21:00 to ensure implications on the customer parking is reduced. This is because when lorries are unloading, they would block several of the customer parking spaces including the disabled and family spaces.
13. I have carefully considered the Noise Impact Assessment (NIA) prepared by Clarke Saunders Acoustics dated 7 May 2021, which assesses the effect of the potential noise that would be produced by the commercial deliveries on future occupants of the proposed flats. I note that the NIA does not assess the effect on the occupants of neighbouring properties or noise and disturbance resulting from other activities associated with the proposal other than deliveries. Furthermore, paragraph 10.1.5 of the NIA states that the background noise levels have been based on the assumption that deliveries would not occur before 5:00 or after 19:00, which appears to conflict with the details provided in the Refuse and Servicing Plan.
14. The NIA shows that with regards to the commercial deliveries, there is a possibility of an adverse impact to future occupants of the proposed flats during the day and a significant adverse impact at night. Paragraph 10.4.3 of the assessment explains that predicted absolute levels would only be reduced within the recommended values of the Professional Practice Guidance on Planning & Noise: New Residential Development (2017) (ProPG) with the inclusion of standard double glazing and trickle ventilators. Therefore, to meet the recommended levels, the windows would need to be closed, and given the frequency and unpredictable timing of the deliveries, the occupants would have no certainty that they could open the windows without experiencing detrimental noise levels. This would likely greatly restrict when future occupants would be likely to feel comfortable opening the windows, particularly at night, given the bedrooms would be positioned at the front of the units and the likelihood of deliveries at this time would, according to the Refuse and Servicing Plan, be greater. For these reasons, the proposal would result in unacceptable living standards for future occupants of the flats.
15. The NIA considers the possibility of adverse sound impacts being caused by the proposed retail unit deliveries and servicing activity would be reduced due to the relatively low absolute levels. Yet, the conclusions of the NIA do not appear to consider other sources of noise and disturbance such as the comings and goings of customers, the disposing and collection of refuse, or the proposed air conditioning units. The NIA also considers the adverse sound impacts would be

reduced due to the benefit future occupants of the flats would get by living in close proximity to a convenience store. However, this benefit neither addresses nor outweighs the unacceptable living standards resulting from the adverse sound impacts.

16. It has been put to me that these adverse impacts could have been dealt with during the application, with input from building control, or addressed by condition. For example, a condition requiring triple glazing or restricting delivery hours. At appeal, the Council have suggested some conditions, including conditions restricting the opening hours, delivery times and the movement of wheeled cages. Some of these conditions, such as the condition relating to the air conditioning units, would likely address the resulting noise and disturbance to a degree. Yet, to meet the ProPG recommended noise levels, future occupants would need to keep the windows closed during various noise generating activities regardless of the time of day. Accordingly, conditions necessary to make the development acceptable in relation to this matter, such as restricting the time that activities could take place at the site, and deliveries, would, it seems to me, based on the available evidence, have to be so restrictive that they would not be reasonable.
17. The appellant refers to several examples of mixed-use developments in the wider area and sets out ways in which the Council have overcome initial concerns regarding noise. While I do not have the full details of these applications before me, the examples provided do not appear to be directly comparable to the proposal. For example, although most are not far from the appeal site, their contexts appear to be quite different from the appeal site, as they are located within local and town centres whereas the appeal site is not. These examples therefore can be afforded only limited weight in my decision. I recognise that residential units above commercial uses are a common form of development, that permitted development allows for commercial space to be converted to residential, and that mixed-use development is supported by the Framework and national guidance. However, I must judge the appeal on its own merits, and from the evidence before me and my own observations, I have found the proposal would result in unacceptable living conditions for future occupants of the flats.
18. I acknowledge that the lawful use of the appeal site as a builders' merchants would produce noise, such as the movement of materials using a forklift, that could disturb the occupants of No. 64 Brox Road. Nevertheless, given the typical nature of a convenience store, such as the proposal, it would likely attract more customers on a more frequent basis than a builder's merchants. This is demonstrated by the trip generation data set out in the appellant's Transport Statement. Typically, a builder's merchants would also be open for fewer hours a day than a convenience store, opening later in the morning and closing earlier in the evening. It is therefore reasonable to conclude, despite there being no restrictions on the lawful use or its layout, that in comparison to the lawful use, the convenience store would result in more frequent noise and disturbance to the occupants of the adjacent property, No.64 Brox Road, and across a longer period each day.
19. The proposed parking for the convenience store would be located along the flank wall of No.64 Brox Road and some of the parking spaces would be positioned very close to the ground floor and first floor windows. While this arrangement could be put in place to serve the lawful use, given the proposed

- convenience store is likely to result in a more frequent amount of and longer period of noise and disturbance, this would result in unacceptable living standards for occupants of No. 64 Brox Road. Furthermore, in addition to the noise and disturbance associated with customers accessing the store, the deliveries would also take place close to the flank wall of No. 64 Brox Road.
20. The appellant considers that the noise and disturbance could be addressed by reducing the number of parking spaces. Yet, the full details of such an approach are not before me and therefore I am unable to judge the potential suitability of this approach. In any event, this approach has not been considered by the Council or other interested parties and to consider the appeal on this basis would deprive them of the opportunity of such consultation.
21. It has also been put to me that the existing owners of No. 64 Brox Road were aware of the proposed development when they purchased the property and have not raised any objections to the proposal. However, I must consider the effect of the proposal on all future occupants and not just the current occupiers of the site. The absence of an objection is therefore a neutral factor in this case.
22. For the reasons above, the proposal would result in unacceptable levels of noise and disturbance for future occupants, as well as the occupants of No.64 Brox Road. Accordingly, the living standards for future occupants and neighbouring occupants would be unacceptable. It would therefore conflict with Policies EE1 and EE2 of the Runnymede 2030 Local Plan and Runnymede Design SPD (2021). These seek to, amongst other things, ensure that development has no adverse impact on the amenities of occupiers of the development proposed or to the occupiers of neighbouring properties, including impacts from noise. The proposal would also conflict with the aim of the Framework to create places with a high standard of amenity for existing and future users.

Other Matters

23. The appeal site is located within 5kms of the Thames Basin Heath Special Protection Area (TBHSPA). The Council advise that the appeal proposal is 'screened in' to the need for appropriate assessment as it lies within a zone of influence where recreational disturbance arising from new occupation in proximity to the TBHSPA is likely to have an adverse effect. They have undertaken an appropriate assessment and consider that there would be permanent effects arising from increasing the number of residential units within 5km of the TBHSPA.
24. The appellant has agreed to provide mitigation measures and submitted a completed Unilateral Undertaking in respect of SAMM payment and contribution towards SANG to the Council as part of the application. Yet, a copy of the completed Unilateral Undertaking is not before me. Nevertheless, given I am dismissing the appeal due to unacceptable living standards for future and neighbouring occupants, no pathways to significant likely effects on the TBHSPA would arise from my decision. I therefore do not need to consider this issue further.
25. In terms of benefits, the proposal would provide 3 residential units on a brownfield site in an accessible location. While this type of development is supported by the Framework and national guidance, as is locating residential

units above commercial uses, the Framework is clear that the effective use of land should also ensure safe and healthy living conditions. The provision of 3 residential units weighs in favour of the proposal. However, the contribution to the borough's housing supply would be relatively modest and does not outweigh the resulting unacceptable living standards that I have identified above.

26. The appellant notes that the proposal would be located close to 2 allocated housing sites and considers that it would address a clear shortfall of retail in the area. Also, that the Co-op chose the site due to the likely increase in the number of residents in the catchment due to this planned housing. I acknowledge that the proposal would be closer to the allocated housing sites than Ottershaw Primary Shopping Area and therefore could be of benefit to future residents of these sites. Nonetheless, there is little substantive evidence before me that there is a shortfall of retail in the area and Ottershaw Primary Shopping Area is only located slightly further away than the site. This benefit therefore does not outweigh the resulting unacceptable living standards that I have identified above.
27. Although not a reason for refusal, the Council have also raised concerns regarding the amount of private external space provided for future occupants of the proposal. Each flat would have a balcony to the rear, and although the depth of the balconies could be considered limited at 1.3m, they would provide some usable private external space for future occupants. Furthermore, the residential units would comprise 1-bedroom flats rather than family-sized units and there are public open spaces within walking distance of the site. Given this, the limited depth of the balconies would not result in unacceptable living conditions for future occupants in this regard. Nevertheless, this does not address the unacceptable living standards with regards to privacy and noise that I have identified above.
28. The appellant contends that the comments of the Environmental Health Officer were not posted on line and that this is a clear indication the Council purposely sought reasons for refusal in order to appease neighbours that had objected to the proposal. However, there is no substantive evidence before me demonstrating this in any event. Whether or not this was the case, I must consider the appeal before me and have found that it would result in unacceptable living standards for future occupants and occupants of neighbouring properties.

Conclusion

29. The proposal would conflict with the development plan, read as a whole. It has not been demonstrated that there are any material considerations of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR