



Appeal Decision

Site visit made on 10 January 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2023

Appeal Ref: APP/K0235/W/22/3303682

71/73 Ford End Road, Queens Park, Bedford, Beds MK40 4JG

- 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 S Rupal against the decision of Bedford Borough Council.
 - The application Ref 20/02298/S73A, dated 1 October 2020, was refused by notice dated 4 July 2022.
 - The development proposed is timber boundary fencing and free-standing open-sided cover area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Within the description of development identified on the application form, it is indicated that the development has already been carried out. The Council have considered the development as retrospective, and I have considered the appeal on that basis. I have condensed the description of the development in the above banner to include only the acts of development.
3. No certificate of lawfulness for the use of the appeal site has been provided in connection with this appeal. The Council indicates that there is an open enforcement investigation in respect of the use of the appeal site. That is a separate matter, which is not before me. From the evidence before me, I have determined this appeal on the basis that, although currently closed, the appeal site has been used to provide a mixed use of sit-down food provision and as a shisha lounge.
4. The appellant seeks a determination on the development as indicated on the submitted plans, as well as an alternative and lower 2.8m boundary fence. Annex M.1. of the Procedural Guide – Planning Appeals – England advises that if an applicant thinks that amending their proposals will overcome the local planning authority's (LPA) reasons for refusal, they should normally make a fresh application.
5. Annex M.1.2 of the same guide further advises that if an appeal is made, 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 LPA, and on which interested people's views were sought. This appeal has therefore been determined based on the plans submitted both in support of the application and this subsequent appeal, and which do not include a lower 2.8m

boundary fence. I have had regard to the Wheatcroft¹ principles and the degree of engagement for all parties.

Main Issues

6. The main issues are the effect of the development on;
- the conditions experienced by users of the Jamia Masjid Hanfia Ghousia Mosque (the mosque) and 2 Cromwell Road, as well as the living conditions of the occupiers of numbers 73-69 Ford End Road, with particular regard to light, outlook, noise and pollution; and,
 - the character and appearance of the area.

Reasons

Users of neighbouring properties

7. The appeal site is located within a built-up area mainly comprising a mix of housing; roads; and community, commercial and retail facilities.
8. A narrow alleyway separates the side of the building within the appeal site and the neighbouring mosque. The appellant indicates that the property at number 2 Cromwell Road is a vacant and derelict commercial property, and I have no basis to find differently. Albeit that at ground floor level, number 69 Ford End Road (number 69) appears to be in use as a jeweller's shop, both main parties agree that there is a flat over the shop and that there is a flat within the first floor of the appeal site.
9. Prior to the use of the ground floor of the appeal site as a shisha bar and sit-in food establishment, I have been provided with no cogent evidence from which to conclude that the rear courtyard area was used for customer seating purposes. Even if it were used as such, as an uncovered space, it's level and frequency of use was likely to be limited.
10. The provision of a large covered area within the courtyard substantially increases the attractiveness of the use of the outside space by customers, and especially so during periods of inclement weather. Also, and although details of hours operation have not been provided, in the event that the premises is open in the evenings, the provision of the covered area would encourage additional use of the outside space at such times. The tall close boarded boundary treatment affords greater levels of privacy and an increased sense of intimacy within the space, which further increases the attractiveness of the use of this area.
11. Both the neighbouring mosque and residential properties are sensitive receptors for noise and pollution. The evidence suggests that one of the Council's Senior Planning Officer's did not raise concern regarding the covered area during a site meeting on 12 Jan 2021. However, an increase in both the number and frequency of customers using the outside space, would result in an increased level and frequency of noise and pollutants being emitted from the site. This would be harmful to the experience of users of the mosque, and to the living conditions of occupiers of neighbouring residential properties.
12. I accept that the acoustic boundary fencing would reduce the level of noise disturbance and pollutants experienced by users of the neighbouring properties

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

than an equivalent lower and/or non-solid fence. However, no cogent evidence has been submitted from which I can conclude that the level and frequency of noise or pollution would be at a level which would not cause undue harm to the living conditions of the occupiers of the neighbouring residential properties or to users of the mosque.

13. The construction of the tall close boarded fence along a large proportion of the exterior boundary between numbers 69 and 71 Ford End Road significantly reduces the level of light and the outlook available from within the comparatively long and narrow outside space serving number 69. Although no compelling evidence has been provided regarding the existing uses of the outside space at number 69, the extent of the reduction to the levels of light and outlook from this area would be such that it would prevent a high standard of amenity being achieved for existing or future users of this space.
14. To a lesser extent, the boundary fencing also reduces the level of light available within the outside space serving number 2 Cromwell Road (number 2). However, as only a limited proportion of the outside area is so affected, I do not find that it would cause unacceptable harm to the amenities available to future users of number 2, with particular regard to loss of daylight or outlook.
15. A series of small obscure glazed windows are present within the appeal site facing side wall of the mosque. Even if these windows were opened, then due to the separation distance between the windows and the development, the outlook and light available to users of this part of the mosque building would not be unacceptably harmed by the development.
16. With particular regard to outlook and light, I have found that the conditions experienced by users of the mosque, and future users of the outside space at number 2, would not be unacceptably harmed by the development. However, and in respect of these matters I have also found that unacceptable harm is caused to the users of the outside space at number 69. In addition, I have found that the development would lead to an increased frequency and level of noise and pollution being generated from the site. This would cause unacceptable harm to the experience of users of the neighbouring mosque and to the living conditions of occupiers of the neighbouring residential properties.
17. For the aforementioned reasons, and with particular regard to noise and pollution, the development would cause an unacceptable harmful effect upon the conditions which would be experienced by users of the mosque and the living conditions of the occupiers of neighbouring residential properties. Furthermore, and with particular regard to light and outlook it causes unacceptable harm to the conditions experienced by users of the outside space at number 69 Ford End Road. Consequently, it conflicts with policy 32 of the Bedford Borough Local Plan 2030 (the Local Plan) where it seeks to ensure that development minimises and takes account of the effects of pollution and disturbance. It also conflicts with the aims of policies E6 and E7 of the Bedford Borough Council Residential Extensions, New Dwellings and Small Infill Developments (2000) supplementary design guidance, which seek to ensure that developments; will not cause harm to daylight or sunlight available to the occupiers of neighbouring residential properties; or, have an overbearing effect on another property. In addition, it conflicts with paragraph 130 of the Framework where it seeks to ensure that development provides a high standard of amenity for existing and future users.

Character and appearance

18. The appeal site comprises a 2-storey building at the end of a short terrace of similar such properties in a built-up area. It fronts on to a section of Ford End Road within which the prevailing pattern of development comprises terraces of 2 storey buildings. The terraces are interspersed with narrow uncovered alleyways which provide rear and side access to properties. Development within neighbouring streets off Ford End Road also mainly comprises 2 storey terraced buildings. The character and appearance of the area is positively informed by the general regularity in the form and scale of development that is visible from within the public realm.
19. Due to the narrowness of the alleyways, and the mainly terraced nature of development within the area, only glimpses of the rear of the appeal site and boundary fencing can be seen from public vantages within the surrounding streets. The boundary fencing has been constructed of close boarded timber, and has a height similar to that of the single storey section of the adjacent mosque where it borders the courtyard within the appeal site. Although it is significantly taller than that which the Council advise is typical of the area, i.e. 2m high boundary treatments, it is lower than that of the prevailing 2 storey buildings within the area. Furthermore, and due to the structure of the covered seating area being of a lower height lower than the proposed boundary fencing, this element of the proposed development is not readily visible from public vantages outside of the appeal site.
20. With a height similar to that of the single storey part of the Mosque building directly adjacent to the courtyard within the appeal site, and of materials commonly used to demark rear boundaries between properties, the boundary fencing positively responds to the site context. Furthermore, it is not excessively dominant or overbearing, from vantages within the public realm. As such it would not detract from the established character and appearance of the area.
21. For the reasons given above, the development does not harm the character and appearance of the area. Accordingly, and in this respect, I find no conflict with the aims of policies 28S[i] and [ii], 29 [i] and [ii] or 30 [i] and [ii] of the Local Plan, where they seek to ensure that development is of a high quality of design which contributes towards good place making, and which positively responds to its context and reinforces local distinctiveness.

Other Matters

22. The development increases the privacy and security of the courtyard area. However, in the absence of compelling evidence demonstrating the extent of these benefits, the weight I attribute to them is limited.

Conclusion

23. I have found the development to be harmful to the conditions which either are or would be experienced by the users and occupiers of neighbouring properties. Whilst I have also concluded that the development is not harmful to the character and appearance of the area, the absence of harm associated with this consideration does not justify a different conclusion being reached regarding the acceptability of the development.

24. The development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

25. For the reasons given above, I conclude that this appeal should be dismissed.

V Simpson

INSPECTOR