
Appeal Decision

Site visit made on 31 January 2023

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/U4230/W/22/3308321
171 Station Road, Swinton M27 6BU

- 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 Sirwan Ismail against the decision of Salford City Council.
 - The application Ref: 22/79702/FUL, dated 6 April 2022, was refused by notice dated 17 August 2022.
 - The development proposed was originally described as the reconfiguring of 1st floor 2 bedroom flat to 2no. 1 Bedroom flats, set on First Floor and Loft Space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning application form. As well as the residential element, the proposal also involves the reconfiguration of a shop unit at ground floor level. The reconfiguration of the premises is referred to in the description that is set out on the Council's decision notice, as well as on the appeal form. Accordingly, I have considered the appeal on this basis.
3. The Salford Local Plan: Development Management Policies and Designations (DMPD) was adopted by the Council on 18 January 2023. The DMPD replaces the saved policies of the Salford Unitary Development Plan, including the policy which is contained in the Council's reasons for refusal. The main parties were given the opportunity to comment on this matter.

Main Issues

4. The main issues are whether the proposal would provide suitable living conditions for its future occupiers by way of (i) noise and the related effect on the operation of nearby commercial premises; and (ii) the provision of internal space.

Reasons

Noise

5. The appeal property consists of a shop unit that is used as a hot food takeaway with a flat above. The roof space is not currently in use. The rear of the property contains various additions, including a garage which is accessed by the street to the rear. It is located on a narrow plot and is in close proximity

- on either side to a social club and a martial arts studio. There are also a number of other commercial uses in the area, as well as properties that are in residential use.
6. With the proximity of the hot food takeaway in the reconfigured shop unit, the social club and the martial arts studio, there is the potential for noise and disturbance from the operation of these uses to impact on the living conditions of the future occupiers of the proposed flats. A noise impact assessment (NIA) was thus prepared by the appellant for the purposes of the planning application. It is not though clear what methodology the NIA is based on, whether BS4142:2014+A1: 2019¹ or an equivalent methodology. Whilst there is reference to BS8223:2014 and World Health Organisation guidance, they are simply used to gauge what levels of noise are considered acceptable.
 7. As a consequence, there are a number of uncertainties over how the NIA has sought to examine the proposal and the impact from noise. There is no detail over current background noise levels, including with regard to the neighbouring uses, and while a commercial extraction fan would be provided for the hot food takeaway, the NIA relies on generic noise levels for such equipment. How the proposal would meet the noise level limits that the NIA considers acceptable is thus doubtful because it is not evident on precisely what it is basing its conclusions.
 8. The noise mitigation that has been put forward is similarly open to question. Even accepting an 11pm closing time for the hot food takeaway use, there would still be a great deal of the evening period when it would be in operation and where the future occupiers would reasonably expect some degree of peace and quiet. Clearly no such restrictions can be reasonably applied to the social club. Limited consideration has also been given to the routing of the extraction duct as there is a reliance on the roof construction, which is not specified to any great detail, and simply the extraction point itself.
 9. The appellant seeks to deal with detailed noise matters through the imposition of a planning condition, principally due to issues of cost. However, there is no certainty if such an approach is followed that not unacceptable levels of noise can be achieved, because of the site circumstances and lack of noise detail before me. Even if I was minded to allow the appeal, a related planning condition would therefore have the potential to nullify a planning permission. Relying on double glazing to mitigate noise also does not account for when occupiers may wish to open the windows for access to fresh air or for other reasons. Nor are such actions within the control of either the appellant or the Council.
 10. That the appeal property is already in residential use does not account for either the intensification of the residential use that would occur as a result of the proposal or what the potential effects from noise and disturbance might be, based on what is proposed. That other commercial properties along Station Road have residential uses above does not lead to a different finding because each needs to be considered with regard to the particular site circumstances. In this case, the proposed flats would be very close to a number of noise emitting uses.

¹ BS4142:2014+A1:2019 Methods for rating and assessing Industrial and Commercial Sound

11. In taking these considerations together, there is insufficient information before me to find in favour of the proposal on this issue. As a result, there is not sufficient assurance that a significant adverse impact would not occur.
12. In the event that noise would be emanating from the neighbouring uses, it would also be unsurprising if the future occupiers made a nuisance complaint to the Council, which the Council would be obliged to investigate and take action as appropriate, even if there is no history of previous complaints. The National Planning Policy Framework (Framework) is however clear that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. This would not be a satisfactory state of affairs.
13. I conclude that the proposal would not provide suitable living conditions for its future occupiers by way of noise and the related effect on the operation of nearby commercial premises would be unacceptable. Therefore, it would not comply with Policy D5 of the DMPD where it seeks to ensure that development provides potential users with an acceptable level of amenity.
14. The proposal would also not accord with paragraphs 130 and 187 of the Framework because it would not provide a high standard of amenity for the future occupiers and with the potential unreasonable restriction that it would place on existing businesses.

Internal Space

15. The proposed accommodation for each flat would be set over 2 floors and would partially make use of the current roof space. The rear flat would be the more spacious containing a kitchen and living room area, with the bedroom above benefitting from a new dormer window. The flat at the front would be more confined, in particular the bedroom as it would have to rely on the existing roof space.
16. Policy H2 of the DMPD incorporates the nationally described space standards, including the minimum gross internal floor areas. The main parties have put forward contrasting views on whether the proposal would meet such standards. Both however ostensibly rely on the same floor area figures. These are below the space standards, based on the number of bedspaces shown for 2 storey dwellings.
17. The application of the space standards is not absolute under Policy H2 in that it does have regard to the physical constraints of the existing building, changes of use and conversions. This is applicable in this case. Given that the rear flat is fairly spacious in its layout, incorporates a dormer to provide headroom and useable space in the bedroom, and has an internal layout that would allow for the reasonable separation of domestic functions, it would not be unacceptable in this respect.
18. However, the same cannot be said of the flat at the front. There would be limited space for circulation and further constraints on its layout imposed by the roof slope, especially concerning the headroom in the bedroom. Further assessment by way of the standards does not take my decision any further in this regard. The flat at the front would not provide accommodation of a reasonable standard.

19. I conclude that the proposal would not provide suitable living conditions for its future occupiers by way of the provision of internal space. As a result, it would not comply with Policies H2 and D5 where they concern enabling people to access housing with sufficient space to meet their needs and support good health, including how the space standards are applied, and providing all potential users with an acceptable level of amenity, including internal space. It would also not comply with paragraph 130 of the Framework where it concerns a high standard of amenity for future users.

Other Matters

20. The proposal would result in an additional dwelling, as a small entry level windfall site on previously developed land, and would contribute towards housing supply. It would make use of roof space that is not currently utilised in relation to an effective use of land. However, support in these respects is not unqualified because suitable living conditions still need to be provided, which would not be achieved in this case.
21. The proposal would provide a level of visual improvement to the property, in particular to the rear, and it would be found in a location that is accessible to local services and public open space. It would modestly increase the size of the local community, support local services, and potentially make the area more secure through usage. It would also though be of potential detriment to the operation of other local businesses by way of the noise issue.
22. Overall, what benefits would occur attract moderate weight and would not outweigh the significant level of harm that would arise.

Conclusion

23. For the reasons set out above and having regard to all matters that have been raised, the appeal should be dismissed.

Darren Hendley

INSPECTOR