



Appeal Decision

Site visit made on 24 January 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th February 2023

Appeal Ref: APP/B3410/W/22/3308844

70 Victoria Crescent, Burton Upon Trent DE14 2QD

- 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 & Mrs K Stanyon against the decision of East Staffordshire Borough Council.
 - The application Ref P/2020/01477, dated 17 December 2020, was refused by notice dated 12 April 2022.
 - The development proposed is for alterations to existing two-bedroom house to create a two-bedroom flat and vehicular access. Erection of four two-bedroom flats on land to the rear of 70 Victoria Crescent.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The main parties confirmed that the originally submitted floor plans and elevations for the four two-bedroom flats, drawings 005 Rev A and 006 were the plans the Council determined the application on, and I have determined the appeal on the same.
3. The appellants have also submitted a revised plan with the appeal for modifications to the existing dwelling, drawing 009. The plan amends the external appearance, internal layout and the number of bedrooms in the flat. I cannot be satisfied that all parties, including third parties, would have been aware of these changes or have had sufficient and fair opportunity to comment on them. To avoid prejudice to interested parties I have assessed the scheme on the plans that were before the Council at the time of their decision.

Main Issues

4. The main issues are:
 - whether the proposal would provide satisfactory living conditions for the future occupiers, with regard to internal space, amenity space, outlook, sunlight and daylight; and
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular regard to outlook, privacy and daylight to 75 Victoria Crescent; and noise and disturbance to numbers 75 to 78a Victoria Crescent.

Reasons

Future occupiers' living conditions – 70 Victoria Crescent

5. Both main parties have referenced two Supplementary Planning Documents – the East Staffordshire Design Guide SPD, 2008 (Design Guide) and the East Staffordshire Borough Council Separation Distances and Amenity SPD, 2019 (Separation Distances SPD). The Design Guide is referenced in Detailed Policy 3 of the East Staffordshire Borough Council Local Plan, 2015, (LP) and the policy seeks to ensure that all new development complies with the Design Guide, or any superseding documents. As such I have given the Design Guide significant weight in my decision.
6. Although the Separation Distances SPD is not referenced in the LP, I note that this SPD postdates the LP. The SPD does not specifically exclude conversion proposals and there is no compelling evidence before me that the proposed works to 70 Victoria Crescent (No. 70) would be permitted development. Either way, the SPD provides additional guidance relevant to the consideration of space standards internally and between buildings and is intended to ensure appropriate living conditions. I have therefore given the Separation Distances SPD moderate weight.
7. The Design Guide does not specify internal space standards or external separation distances; however, it does seek to ensure that development provides reasonable levels of amenity. The Separation Distances SPD details internal space standards to ensure that room sizes meet their function and are useable. Both bedrooms would fall below the standard within the SPD, and both would be constrained in size. The open plan kitchen/ living room is also substantially below the SPD standard for such a room. Furthermore, this room is also constrained by the position of the stairs and bathroom resulting in limited usable floorspace. As a two-bedroom flat, overall, it falls short of the total floor area recommended within the Separation Distances SPD. Therefore, the resultant flat would be cramped and contrived and would not provide appropriate internal living space for the future occupants.
8. This flat, due to the proposed vehicular access, parking and turning area, would also not have access to a private garden. The Separation Distances SPD does exclude the requirements for gardens from flats resulting from conversions. However, it advises that this is generally as conversion schemes do not have sufficient space. In the appeal case the existing house has a long garden area and the conversion of the house, to one flat, would have sufficient space to provide a garden.
9. I have no clear evidence that the occupants of No. 70 would use the garden to the rear of the proposed four new flats. Moreover, the location of that garden would not allow convenient access for the occupants of No. 70 due to the distance to it, the narrow access path and the close proximity of the garden to the rear windows of the four new flats. The reliance on nearby parks and play spaces would provide recreation space but not space with an acceptable level of privacy for personal use.
10. Due to the internal space provision, and the lack of garden area, the living conditions of the future occupants of the proposed two-bedroom flat would not be satisfactory. Accordingly, the proposal would not comply with the requirements of Strategic Policy 1 and Detailed Policy 3 of the LP, and both the

Design Guide and Separation Distances SPD which, taken together require, amongst other matters, development to protect the amenities of any future occupiers and provide appropriately sized gardens.

Future occupiers' living conditions – New build flats

11. The Separation Distances SPD recommends a 12m separation distance between elevations with habitable rooms facing walls without habitable rooms, such as blank gables, where the dwellings are the same number of storeys. The dance school building behind the site is neither a dwelling nor the same number of storeys. However, the proposal is for habitable windows facing an existing building and the distance between the rear of the proposed flats and the dance school is substantially below the recommended 12m. I have used the separation distances set out in the SPD as a guide in this matter but given limited weight to the non-compliance with the specific figure.
12. The windows in the rear elevation serve kitchens, bedrooms and bathrooms. Although bathrooms are not habitable rooms, kitchens and bedrooms are defined as principle habitable rooms within the Separation Distances SPD. The outlook from the rooms in the rear of the ground floor flats would be enclosed and dominated by the dance school building, the blockwork boundary wall, the outrigger at 75 Victoria Crescent (No. 75) and the proposed new building itself. The close proximity of all of these structures to the windows on the rear elevation would result in the bedrooms, at ground floor, having a very restricted outlook.
13. Moreover, the ground floor rooms at the rear would suffer from poor levels of both sunlight and daylight due to the orientation and close proximity of the surrounding buildings and boundary treatments. The windows in the rear are the only windows serving these ground floor bedrooms. This would result in dark and gloomy rooms which would be unpleasant for the future occupiers of the ground floor flats.
14. The rear windows to the first-floor flats would also have restricted outlook and poor levels of sunlight and daylight. This is lessened by the height of the dance school building and that its roof plane slopes away from the proposed flats. The kitchens at first floor are also open plan and therefore have a dual aspect with light and outlook provided from the front elevation. However, the proposal would still result in harm to the living conditions of the future occupiers of the first-floor flats.
15. The adjacent two houses, 75 and 76 Victoria Crescent, have rear elevations approximately the same distance from the dance school as the proposed new flats. However, these two existing houses, and the neighbouring properties at 77a and 78a are not new properties, and their construction was not assessed against the same local plan policies which the current appeal is being assessed. Furthermore, the presence of existing houses is not sufficient justification for developing new build units with poor living conditions.
16. For the reasons given above the proposal would fail to provide satisfactory living conditions for the future occupiers, with regard to outlook and levels of sunlight and daylight. Accordingly, the proposal would not comply with the requirements of Strategic Policy 1 of the LP or the Design Guide and Separation Distances SPD, which require, amongst other matters, development to protect the amenities of any future occupiers.

Neighbours' living conditions

17. Both main parties agree that there is no breach of the 45-degree code from the new building and I have no reason to disagree. The proposed new building sits adjacent to No. 75 but with its front elevation slightly forward of this neighbour. However, this forward projection would only be by a small amount. Moreover, the windows to the neighbouring dwelling are not immediately adjacent to, and are not orientated towards, the new building. As such the outlook from No. 75 would continue to be predominately over their front garden with only a limited, angled, view of the new building from within the rooms. Accordingly, the proposed new building would not cause unacceptable harm to the outlook or the levels of daylight to No. 75.
18. The neighbouring dwellings all have gardens to their frontages. The windows of the proposed flats would face the proposed parking area between the new flats and No. 70 and would therefore have oblique views over the gardens to 75 to 78a Victoria Crescent (neighbouring properties). However, this is the existing situation and not untypical in a tight-knit terrace layout. The forward projection of the new building would also reduce any overlooking. As such the new building would not result in harmful levels of overlooking of the gardens of the neighbouring properties.
19. The forward projection of the proposed flats would also limit the effect on the outlook from, and light to, the garden to No. 75. The position of the proposed building would not be overbearing from the neighbour's garden, nor would it significantly alter the outlook from, or overshadow, the majority of the garden.
20. There are currently no vehicular movements to the frontages of the neighbouring dwellings as only pedestrian access is provided from Victoria Crescent. The introduction of 8 parking spaces within the site, and associated vehicle movements, with 4 of the spaces being immediately adjacent to the low garden boundary of No. 75, would introduce vehicle movements into what is currently garden areas. A new boundary fence or wall would reduce the effect of vehicle lights, but it would not sufficiently reduce the noise, given the level of comings and goings that would arise from 8 parking spaces.
21. Although the gardens could be used for outdoor play and entertainment with resultant noise this would be expected from gardens and is not the same noise and disturbance as associated with vehicle movements. Regular noise and light disturbance from the comings and goings associated with the parking area would be experienced by the neighbouring occupiers which would result in a detrimental effect on their living conditions.
22. The proposed development would have an adverse effect on the living conditions of the occupiers of numbers 75 to 78a Victoria Crescent, with particular regard to noise and disturbance. As such, the proposed scheme would fail to comply with the requirements of Strategic Policy 1, Detailed Policy 3 and Detailed Policy 7 of the LP and both the Design Guide and Separation Distances SPD which, taken together, require development to protect the amenities of occupiers of residential properties nearby and not give rise to unacceptable levels of noise or light.

Other Matters

23. The appellants refer to attempts to negotiate and amend the scheme; however, the conduct of the Council does not affect my findings on the main issues.
24. There is no compelling evidence that elements of the scheme would be permitted development, such as a certificate of lawful development. Moreover, the proposal, as a whole, is before me. I have therefore not given any weight to this as a fallback position.
25. Even if I were to agree that there would be no harm to making more efficient use of the site; increasing densities; additional housing within the borough; and the energy efficient improvements proposed. Given the scale of the scheme the benefits are limited. It has, also, not been demonstrated that the appeal scheme is the only viable option for the site.

Conclusion

26. For the reasons given above I have found that the proposal would be contrary to the development plan as a whole, including the Framework. There are no other material considerations that would indicate that the proposal should be determined other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

K Townend

INSPECTOR