



Appeal Decision

Site visit made on 8 February 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 MARCH 2023

Appeal Ref: APP/F3545/W/22/3306069

26 Angel Hill, Bury St Edmunds IP33 1UZ

- 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 Julian Thake, PCM Group, against the decision of West Suffolk Council.
 - The application Ref DC/20/2115/FUL, dated 26 November 2020, was refused by notice dated 4 March 2022.
 - The development is described as "Application for retrospective permission in respect of details to the approved scheme as built under application DC/18/0068/FUL".
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Decision

1. The appeal is allowed and planning permission is granted for Planning Application - a. ground floor retail unit; b. four flats on the first and second floor. (Revised submission to DC/18/0068/FUL to allow for amended window details, including for bedroom windows on the rear elevation to be fixed shut, provision of external ventilation grilles, and retention of first floor external maintenance door on the rear elevation). As amended by details received on 22 and 29 November 2021, at 26 Angel Hill, Bury St Edmunds IP33 1UZ, in accordance with the terms of the application, Ref DC/20/2115/FUL, dated 26 November 2020, subject to the following conditions:
 - 1) There shall be no use of, or access to, the first-floor flat roof area, apart from for the purposes of essential building maintenance.
 - 2) The bedroom windows in the rear elevation of flats 2 and 3 of the development hereby permitted shall remain fixed shut at all times, in accordance with approved drawing No. F982/03 Revision C.
 - 3) The acoustic ventilation to the bedrooms of flats 2 and 3 of the development hereby approved shall be retained at all times, in accordance with approved drawing No. 2140-M-01 Revision P1.
 - 4) The privacy screen on the flat roof area shall be retained for the life of the development, in accordance with approved drawing Nos. F982/15 Revision M and F982/04 Revision C.
 - 5) The cycle storage area shall be retained for the life of the development, in accordance with approved drawing No. F982/10 Revision A.
 - 6) The bin storage area shall be retained for the life of the development, in accordance with approved drawing No. F982/15 Revision M.

Application for costs

2. An application for costs was made on behalf of the appellant against West Suffolk Council. This application is the subject of a separate decision.

Procedural Matters

3. The description of development in the banner heading is taken from the application form. However, the development has been described on the decision notice, with the appellant's agreement, as "Planning Application - a.ground floor retail unit; b.four flats on the first and second floor. (Revised submission to DC/18/0068/FUL to allow for amended window details, including for bedroom windows on the rear elevation to be fixed shut, provision of external ventilation grilles, and retention of first floor external maintenance door on the rear elevation). As amended by details received on 22 and 29 November 2021". I have used this in my formal decision.
4. Planning permission was granted on 11 February 2019, under application ref. DC/18/0068/FUL, for a ground floor retail unit with four flats on the first and second floors above. At the time of my visit this development had been completed and the retail unit and flats were all occupied.
5. The appeal seeks to regularise minor amendments that were made to the approved scheme without planning permission. The amendments relate to the insertion of a first-floor door providing access to the flat roof for maintenance purposes; internal alterations to the bin store; and failure to install fixed non-opening windows and appropriate ventilation to the rear bedrooms.
6. The rear bedroom windows have now been fixed shut and an agreed ventilation system has been installed. The Council is satisfied with the revised internal bin storage area, which has been provided and is in use. The cycle storage area and privacy screen have also been provided, in accordance with the submitted drawings.

Main Issue

7. The main issue is the effect of the first-floor access door to the flat roof, on the living conditions of occupiers of the residential flat above the One Bull public house, with particular regard to privacy.

Reasons

8. The door in question is located at the end of a small communal corridor on the first floor of the building. It is a solid door, containing no glazing, and is installed in the side elevation of the building, providing safe access to the large flat roof area above the retail unit and to the rear of the flats. The door is required to provide access to the flat roof for essential maintenance purposes only. It is kept locked and alarmed at all other times. It is not a fire exit and occupiers of the flats do not have or need a key to this door. The alarm system, which is linked to the retail unit below, sends a message to the owner's mobile phone when it is triggered. Opening the door in question would trigger the alarm system. The only key to this door, which is kept on the site, is in a locked cabinet in the retail unit. This can only be obtained by prior arrangement with the owner.

9. The flat roof extends close to the boundary of neighbouring properties on either side and close to the boundary of the Abbey Gardens to the rear, which is a Grade II listed historic park and garden. There are several large, mature, deciduous trees in the Abbey Gardens, adjacent to the rear boundary of the appeal site. At the time of my visit the flat roof was covered with a large amount of leaves and debris from these trees.
10. The use of the flat roof by residents of the flats would result in some loss of privacy to the roof garden of the residential flat above the adjoining One Bull public house, albeit this is mitigated to some extent by the privacy screen. There is also a large roof lantern in the adjacent roof, which I could not clearly see into, but I understand serves the public house as opposed to the private residential accommodation connected to it.
11. A photograph of footprints in the snow on the flat roof has been submitted by a neighbour. This photograph does not demonstrate who the roof was accessed by, for what purpose or by what means access onto the roof was obtained. Whilst I have no reason to doubt the allegations of the neighbour that residents have at times used the roof, there is no claim (or evidence to demonstrate) that the roof was accessed by the door. It is feasible that occupiers of flat 2 have, on occasion, accessed the roof via their windows. Flat 2 is the only first floor flat with windows adjacent to the flat roof. The evidence before me suggests that although there have been instances of the roof being used by residents, these are quite rare.
12. There are currently no conditions to restrict the use of the flat roof. The imposition of such a condition would put the current owner and any future owners at risk of prosecution in the event of a breach. Consequently, any evidence of tenants using the roof is likely to lead to direct action by the owner.
13. As the primary concern is not the door itself but the effect of the potential use of the flat roof by residents, a planning condition to restrict the use of the roof would be more effective than the removal of the door. Such conditions are frequently used to control development with flat roofs and are enforceable.
14. I therefore conclude that the changes made to the originally approved scheme would accord with Policy DM2 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (February 2015). This requires amongst other things that development would not adversely affect residential amenity or the amenities of adjacent areas by reason of overlooking. The proposal would also accord with paragraph 130(f) of the National Planning Policy Framework (the Framework) which seeks to ensure that development incorporates high standards of amenity for existing and future users.

Other Matters

15. As the use of the flat roof by residents (other than for maintenance purposes) and the opening of rear bedroom windows would be unauthorised, a complaint about noise as a result of such unauthorised actions would not result in a justified complaint against noise from the adjacent public house and would not therefore compromise its viability.

16. The enclosed bin store used by occupiers of the flats is entirely internal and does not contain any windows or any external access door on to the flat roof. Accordingly, it would not result in odour nuisance or a need for access to the flat roof and it has no effect on the large roof light to the public house or the roof garden of the flat above it.
17. The need for the door and potential alternative ways of accessing the roof for maintenance purposes are not matters for my consideration. The issue is whether or not the door results in any harm and if so, whether the development could be made acceptable through the use of suitable planning conditions.

Conditions

18. The Council has suggested some conditions which the appellant has had the opportunity to comment upon. As the development is already completed and occupied it is not necessary to impose a time limit condition or a list of drawings that the development must be built in accordance with.
19. However, it is necessary to restrict the use of and access to the flat roof and to ensure that the privacy screen on the flat roof boundary is retained, in order to protect the privacy of occupiers of the flat above the One Bull public house. The retention of fixed glazed rear bedroom windows and ventilation, and retention of the approved bin and cycle storage areas is also necessary to ensure existing and future occupiers of the flats are not adversely affected by noise and have appropriate storage space.

Conclusion

20. For the reasons given above and having had regard to all matters raised, I conclude that the appeal should be allowed.

R Bartlett

INSPECTOR