



Appeal Decision

Site visit made on 9 February 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal Ref: APP/F3545/W/22/3291126

2-3 Crown Walk, Newmarket CB8 8NG

- 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 Murat Yeter of Yeter Properties Holding Ltd against the decision of West Suffolk Council.
 - The application Ref DC/21/2009/FUL, dated 1 October 2021, was refused by notice dated 1 December 2021.
 - The development proposed is demolition of existing shop unit, erection of new single storey shop unit with 6 residential flats on 2 storeys above along with external stairs and landings and cycle store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Daylight and Sunlight Report¹ and a further revised version² which corrected errors in the first report have been submitted during the appeal process. The reports assess the effect of the development on the light received by the neighbouring properties. In considering whether to accept the reports I have had regard to the "Wheatcroft Principles". Given that the revised report dated 15 June 2022 does not alter the development that has been applied for, I see no reason why accepting it would prejudice any party and as such, I have had regard to the revised report in reaching my decision.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area including the setting of the Newmarket Conservation Area (NCA);
 - the effect of the proposal upon the living conditions of neighbouring occupiers, with regard to outlook, privacy and levels of daylight; and
 - whether the proposed development would provide satisfactory living conditions for the future occupiers with particular regard to odour.

¹ Daylight and Sunlight Reports dated 20 January 2022

² Daylight and Sunlight Reports dated 15 June 2022

Reasons

Character and Appearance

4. The appeal site is located outside, but close to, the NCA. From my observations on site the significance of this part of the NCA, lies, in part, in the traditional appearance of the buildings which are two and three stories running along High Street after which development to the rear gradually reduces in scale. This small scale includes more intimate alleyways cutting through the terrace sections along High Street.
5. In the wider area, outside the NCA, there is a mixed character with a variety of property types and sizes including modern infrastructure such as the nearby multi-storey carpark, and older development of a more commercial scale and appearance leading away from the NCA. The immediate context, with the exception of the three-storey/part two-storey block of flats (the Gallery) which the appeal building wraps around, is generally low-level allowing views into and through the NCA.
6. Whilst I cannot be sure they were built at the same time; the appeal building is one of a pair of modern properties linked by a canopy. While sharing an overall design with matching materials including, brick and glazed areas, they are not identical or symmetrical to all elevations but do share a general similar appearance. They contrast with much of the built form they are seen with, which is older in appearance but do not appear discordant given they are of a comparative height with some neighbouring buildings. As a result of the position of the appeal building, its shared scale with similar proportions to the attached building, it currently makes a neutral contribution to the setting of the CA.
7. The proposed development would replace the existing commercial building with a three-storey building with flats on the first and second floors and commercial space on the ground floor. At my site visit, I observed how the Gallery building adjacent is an imposing structure which visually dominates the space around the appeal site even with its stepped roof line. The proposed building would be both taller and wider than the Gallery emphasising its scale and massing within the immediate area which would contrast awkwardly with the primarily smaller-scale development found in the surrounding streetscape. The increase in height would also give this building an incongruously bulky emphasis dominating the Gallery building and views in and out of the surrounding area.
8. Furthermore, the incorporation of zinc cladding on the external elevations would harshly contrast with the brick and render found on the elevations of nearby buildings. This would further draw the eye and highlights the incongruousness of the building in its surroundings. There are some limited examples of zinc being incorporated into surrounding buildings. This includes the shallow sloping roof off the Gallery and the recessed top floor of the hotel to the north. However, these examples are more discrete in the incorporation of zinc and therefore are not directly comparable to the proposed scheme.
9. There is an array of differing roof forms found nearby and the asymmetrical roof form would assist in reducing the mass and height of the proposed building. Nonetheless, the scheme would be taller than much of its surroundings and its roof highly prominent. As such, a condition on materials would unlikely prevent it from appearing as a discordant feature.

10. The proposed scheme would also see a stair tower positioned within views of Crown Walk cutting across views of the Gallery. The tower would connect to the staircase and walkways of the flats all of which would be seen from within Crown Walk and to a lesser extent High Street and the access road off Exeter Road. Given the proposed materials incorporating sections of glazing and the detached location of the stair tower these elements would give off a somewhat displaced/disjointed appearance from the main building and out of keeping with the character and appearance of the area jarring with the street scene. Whilst a condition could be used to address the glazing element and other materials, this would not prevent the visually prominent stair tower from appearing as a discordant feature in this location.
11. The appeal scheme would retain some connection with the adjacent building through the retention of the canopy and would have a more active frontage adjacent the access road. It would also provide a more discrete bin storage area and a condition could be imposed for innkeeping signage. Nevertheless, I find the main building and associated components including the stair tower, exposed stairs and walkways fail to take into account the layout and function of the area. As a result, the appeal scheme would not be of an appropriate design, appearing cramped and contrived harming the character and appearance of the area and also the setting of the NCA.
12. For the purposes of the Framework, the NCA is a designated heritage asset. Within the overall context, I consider that the proposal would lead to less than substantial harm to the significance of this asset. The Framework indicates that such harm is to be weighed against the public benefits of a proposal. However, great weight should be given to an asset's conservation.
13. The proposed development would deliver benefits associated with the increase and choice in housing accommodation and soft landscaping. There would be a small increase in support for local services and facilities close by from occupiers of the flats having access to sustainable modes of transport. There would also be some temporary economic benefits through support for construction jobs. However, as with the benefits towards energy efficiency, the contribution would be modest given the scale of the proposal. Therefore, in this instance, the public benefits, even when taken collectively, do not outweigh the identified material harm to the designated heritage asset.
14. For the reasons set out above, I conclude that the proposal would harm the character and appearance of the area, including the setting of the NCA. In these regards, it would conflict with Policy CS5 of the Forest Heath Local Development Framework Core Strategy and Policies DM2, DM17 and DM22 of the Joint Development Management Policies Document (JDMPD). Together these seek, amongst other things, development is designed to a high quality, reinforces local distinctiveness and preserves or enhances the character or appearance of the Conservation Area or its setting. It would also be contrary to the Framework, in so far as it seeks new development to be, sympathetic to local character and the protection of heritage assets.

Living Conditions – Neighbouring Occupiers

15. The appeal scheme would not have a significantly greater footprint than the existing building and already shares a close relationship with the Gallery. Notwithstanding this, due to the proximity of the appeal scheme to the Gallery which it partially wraps around, and the increased height including the

- stairwell, the proposed development would dominate outlook from these properties, including windows facing the stairwell and those overlooking Crown Walk.
16. As a result, even taking into consideration how the proposed roof slopes away from the Gallery and open nature of the staircase/walkways, there would be no relief from the development in the outlook from within the rooms of the properties facing the appeal building. The resulting outlook would be restricted and uninviting. As such, the proposal would unacceptably harm living conditions in terms of privacy for existing occupiers.
 17. Having considered the relationship between the appeal building's staircase/walkway and the position of windows on the adjacent block of flats there would be a severely limited separation distance which would result in insufficient levels of privacy for occupants of the existing block of flats. This is because the future occupants would be able to look directly into existing window openings when using the external staircase/walkway,
 18. A revised daylight and sunlight assessment was submitted in support of the proposed development. The assessment has regard to the Building Research Establishment's (BRE) site layout planning for daylight and sunlight: a guide to good practice. With the exception of the window identified with the report as window No 37, which I address below, the assessment indicates that all other domestic windows would meet the criteria of the above guidance. I have no compelling evidence before me to suggest that the assessment is inaccurate or otherwise misleading.
 19. Turning to window 37, the Framework suggests a flexible approach in applying policies or guidance relating to daylight and sunlight. The assessment does not identify the use of the room which is served by window 37 but does set out the vertical sky component test (VSC) which identifies a loss of 22%. Given the value identified, it would in my view have a detrimental effect on existing occupiers. In the absence of evidence to show what room of the flat this window serves I am not persuaded that the appeal scheme would provide satisfactory conditions for the occupiers of the flat that window 37 serves.
 20. Consequently, the proposed development would unacceptably harm living conditions for existing occupiers with regard to outlook, privacy and daylight. It would fail to accord with Policy DM2 of the JDMPD. This, in part, seeks to protect the amenities of adjacent areas from harm to outlook, overlooking, and loss of light. The proposal would also fail to accord with the provisions of the Framework in so far as it relates to providing a high standard of amenity for existing users.
 21. JDMPD Policy DM14 deals with matters of emissions and other forms of pollution as such, in regard to this main issue I find no conflict with the policy with regard to this main issue.

Living Conditions – Future occupiers

22. There is already existing residential accommodation in closer proximity to the odour-generating equipment than the appeal site, and I have not been provided with any evidence of complaints which demonstrate there is an ongoing issue with odour in the area.

23. From my observations on site and the evidence and the policies put before me there is little to demonstrate why a condition requiring a scheme to provide adequate mitigation would not be acceptable in this case. I also note the Council's Environmental Health Officer has not raised an objection nor has a condition on odour mitigation been recommended.
24. For the above reasons and subject to a condition, were the appeal to be allowed subject to satisfactory mitigation on odour, the proposal would provide appropriate living conditions for future residential occupiers with respect to odour. Consequently, the proposal would accord with Policies DM2 and DM14 of the JDMPD which, amongst other things, requires no unacceptable impacts arising from the development on air quality or smells unless there is appropriate mitigation. The proposal would also accord with the provisions of the Framework in so far as it relates to providing a high standard of amenity for future users.

Other Matters

25. The proposal would enable the delivery of an additional six residential units adding to the Council's housing mix within an area least likely to flood. The proposed building would be of a modern internal design to reflect the needs of retailers and incorporate a number of energy efficiency measures. Subject to an appropriate condition, the scheme could also incorporate a green roof section.
26. There would also be social and economic benefits associated with employment during construction and from the replacement commercial element of the scheme as well as future occupants buoying up the local economy. This is a brownfield site within walking distance of local services and facilities and where there is good access to public transport. I attach moderate weight to these benefits. However, given limited scale of the scheme such benefits would be small.
27. From my observations on site, the surrounding area is presently viewed from a number of premises within a busy pedestrian and motorised area. I therefore attached little weight to any additional surveillance of the surrounding area that would occur from future occupiers.
28. I have not been provided with any evidence that the appeal scheme is the only way to overcome the building's current condition.

Conclusion

29. Whilst I have found no harm would result from the appeal scheme to future occupiers of the flats, the proposal 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.
30. For the above reasons, I conclude that the appeal should be dismissed.

A Hickey

INSPECTOR