



Appeal Decision

Site visit made on 16 May 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/Z1775/W/22/3308643

175-177 Copnor Road, Portsmouth, Hampshire PO3 5BT

- 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 Mehmet Ulucan against the decision of Portsmouth City Council.
 - The application Ref 22/00409/PLAREG, dated 17 March 2022, was refused by notice dated 29 July 2022.
 - The development is canopy over rear yard for smoking area and also seating when required.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was made retrospectively. The development has already been implemented, although not completed and, therefore, I have determined the appeal on this basis.
3. The description of development in the banner heading above is taken from the planning application form, albeit with superfluous information not referring to an act of development removed. The appellant's grounds of appeal statement advises that the description of development does not need to include the use of rear yard for additional seating, because it is considered that the use for seating has already been permitted under an existing planning permission¹. I return to this matter in my reasoning below.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of 179 Copnor Road (No 179), with particular regard to outlook, sunlight, noise, disturbance, fumes and odours.

Reasons

5. The appeal site lies at one end of a row of buildings fronting onto Copnor Road. The row of buildings comprise business uses at the front and on the ground floor. There are enclosed courtyards to the rear. The site occupies a corner plot adjacent to the junction with Laburnum Grove. No 179 is an adjoining property to the north and comprises a barbershop on the ground floor with residential accommodation accessed from the rear and extending to a first floor.

¹ Ref 17/01913/FUL

6. I noticed during my site visit that the rear courtyard of No 179 is tightly enclosed with high boundary walls/fences. I observed that the courtyard is used for sitting out and, due to its position to the rear of the building away from the business entrances on the main street, Copnor Road, it is relatively peaceful. Although it is limited in size, the courtyard makes an important contribution to the quality of the occupiers of No 179 living conditions in terms of both outlook and sunlight.
7. The roof canopy was closed during my site visit, and I observed that it covers the whole area of the rear courtyard of the appeal site. Whilst I acknowledge the retractable nature of the canopy, it extends along the full length of the boundary, is considerably taller than the boundary and looms larger over the outside area of No 179. This is significant in terms of creating a dominant and overbearing sense of enclosure despite the intention to install a glazed wall to the northern side of the structure.
8. In addition to the above, due to the overall scale of the development, its close proximity to the boundary and owing to its location to the south, the development causes overshadowing thereby resulting in a material loss of sunlight to the courtyard of No 179. Thus, for these reasons, the development causes significant harm to the living conditions of the occupiers of No 179 with particular regard to outlook and sunlight.
9. Whilst there is already an outbuilding within the courtyard of No 179 and within the rear courtyards of the adjoining row of buildings, these are of a different scale and orientation. As such, these do not have such an imposing presence and have a less harmful impact on sunlight received to the courtyard of No 179.
10. The lawful use of the appeal property would remain the same irrespective of the outcome of this appeal. Nevertheless, even if the courtyard of the appeal site could be used for seating by virtue of the existing planning permission, it is reasonable to expect that the provision of the canopy over the rear yard would be likely to result in more people visiting and using the space, because it is more enclosed and protected from the elements and with lighting installed.
11. Consequently, more activity such as eating, socialising, cleaning and servicing would take place in the courtyard. Inevitably, this would mean among other things more people entering, leaving and moving around the courtyard and closing doors. It would also mean more potentially noise, fume and odour generating activity and associated disturbance over longer periods within the courtyard at the rear of the premises. All of which, according to the appellant, could take place up to 23:00 at night when residents living nearby might reasonably be expected to be sleeping and not to be disturbed.
12. Although in a row of commercial properties within a local centre, the appeal scheme would be likely to lead to an intensification of use of the courtyard and the site lies adjacent to residential properties.
13. Therefore, without substantive evidence to the contrary, it is unlikely that the fallback position of the use of the courtyard without a canopy over, would be more harmful than the appeal scheme in this regard. As such, the scheme of development would be likely to cause significant harm to the living conditions of the occupiers of No 179 with particular regard to noise, disturbance, fumes and odours.

14. Consequently, the appeal scheme is contrary to Policy PCS23 of The Portsmouth Plan (2012) (TPP) which insofar as is relevant to this appeal seeks to ensure development does not harm the amenities of neighbouring occupiers. There is also conflict with the provisions of the National Planning Policy Framework 2021 (Framework) in relation to creating places that promote health and well-being, with a high standard of amenity for existing and future users.
15. My attention has been drawn to Policy PCS18 of TPP which is supportive of development that will help local centres to continue to fulfil their role. However, this is on the basis that there is no unacceptable adverse impact on the amenity of adjoining residents. As such, for the reasons given above, there is also conflict with this policy.

Other Matters

16. I appreciate that the COVID-19 pandemic led to the appellant seeking to use other land within the premises to provide additional customer seating and that they did not realise that planning permission would be required for the canopy.
17. I acknowledge that paragraph 81 of the Framework states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Nonetheless, I have found that the proposal would conflict with paragraph 130(f) of the Framework which seeks to ensure that developments provide a high standard of amenity for existing and future users.
18. Moreover, there is no evidence before me of the extent of potential spending and job creation. As a result, having regard to the scale of the proposal, I cannot be satisfied that the extent of benefits would be anything more than modest. I afford them limited weight, and these do not carry sufficient weight to alter my conclusions on the main issue.

Conclusion

19. Based on the evidence before me and for the reasons outlined above, I cannot be satisfied that the benefits of the scheme outweigh the substantial harm I have identified in respect of the living conditions of the occupiers of No 179.
20. In light of the extent of the development's conflict with the policies of the development plan and the Framework when read as a whole, the other considerations identified are not of a significant magnitude that outweigh the conflict. As a result, the development should be determined in accordance with the development plan.
21. For the reasons given above I conclude that the appeal should be dismissed.

J White

INSPECTOR