



Appeal Decision

Site visit made on 6 June 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2023

Appeal Ref: APP/M4320/W/22/3311668

6A-6B The Cloisters, Halsall Lane, Formby L373PX

- 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 John Lawson [The Cloisters (Formby) Ltd] against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2021/01831, dated 28 September 2021, was refused by notice dated 31 October 2022.
 - The development proposed is change of use of the existing first-floor commercial space from a gym (E) to 8 self-contained flats (C3) including external alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. The description of the proposed development is taken from the Council's decision notice as it more accurately and succinctly describes the development proposed.
3. The Council indicates that the principle of residential development in the upper floor of a building within a district centre is acceptable. Based on all that I have seen and read, I see no reason to disagree with this view. The main issue of this appeal has flowed from the Council's concerns. In addition, following consideration of the submitted plans and my visit, I have also included the effect of the proposal on the living conditions of future occupiers, with regard to noise and disturbance. The parties were given the opportunity to comment on this matter during the appeal process, and I have taken into account the responses received.
4. The main issue of this appeal is therefore, the effect of the proposed development upon the living conditions of future occupiers with regard to the provision of outdoor space, and noise and disturbance.

Reasons

Provision of Outdoor Space

5. The Council's Flats and Houses in Multiple Occupation Supplementary Planning Document 2018 (SPD) provides detailed guidance on how Policy HC4 of A Local Plan for Sefton 2017 (LP) is to be implemented. Amongst other things, this policy requires the conversion of buildings to flats to not cause significant harm to the living conditions for the occupiers of the property.

6. The SPD advises that proposals involving the creation of new flats should provide access to an area of private outdoor amenity space. The minimum standard for such space is 20sqm per flat, equating to 160sqm for the proposed development of 8 flats. The SPD advises that the space can be communal, private or a combination.
7. The scheme proposes a communal terrace of 20sqm for the whole development, as well as 17sqm of private outdoor space for Flat 7. Whilst the SPD provides flexibility to accept a lower amount of outdoor space based on site specific factors, it is clear that the provision of outdoor space that is significantly below the standard will not be accepted under any circumstances. 37sqm's of outdoor space for 8 flats would be exceptionally meagre, and significantly below the minimum standard of the SPD. Sandwiched between 2 flats, the proposed outdoor terrace would also be relatively narrow in composition, limiting its quality and useability. 20sqm's of communal space could not be considered to be a sufficiently sized space for typical domestic activities such as socialising with friends and family, children playing or drying washing, particularly if in use by the occupants of multiple flats simultaneously. Significant harm would therefore be caused to the living conditions of the future occupiers of the proposed development.

Noise and Disturbance

8. The proposed outdoor communal space would be located in a recessed area between Flat's 7 and 8. It would be positioned directly outside and within 1m of the windows serving the living area of Flat 7, as well as within close proximity to the windows serving the 2 bedrooms of this flat.¹ The use of this space by other residents for domestic activities and social gatherings is likely to result in significant noise and disturbance for the future occupants of Flat 7, from the sound of conversation and enjoyment, which may at times be loud. Noise is likely to be exacerbated by the small area of the communal space and amplified by its location within a recess between external walls. Given the arrangement of Flat 7, there would be no habitable rooms positioned away from the communal area that the future occupiers could go to, to escape any such noise. Whilst external patios or balconies may be located side by side in a new build property, the proposed scenario would in effect result in a neighbour's outdoor space being directly outside another occupants' windows to their main living area. As such, I do not find it to be a comparable scenario.
9. Fencing could provide acoustic attenuation and prevent overlooking from the communal space. However, it would need to be positioned directly outside the main living room windows to Flat 7 and be consistent with or above average head height to have any meaningful effect. This is likely to severely restrict the outlook from the main living space of Flat 7, creating inferior and claustrophobic living conditions for the future occupiers.
10. The Appellant suggests high-quality glazing units with acoustic vents could be used to mitigate noise from the outdoor communal area. Whilst the use of acoustic glass is likely to be of benefit, there is no substantive evidence before me that it would reduce noise to an acceptable level, given the very close relationship between the windows of Flat 7 and the communal space. Such glazing would not prevent noise being audible when the windows are open. Signage to restrict access to the terrace from 11pm whilst commendable, is

¹ As shown on proposed first floor unit and bedroom areas drawing, number 22124-0120 Rev P-02.

unlikely to be enforceable in practice without further measures to ensure the future occupants of the flats comply. Even so, the comings and goings and use of the outdoor space until 11pm potentially every day of the week is unlikely to be congenial to the living conditions of the future residents of Flat 7, given that a home should provide a place of peace and sanctuary, even when positioned within a local centre.

11. I have considered the Appellant's suggestion that acoustic detailing and calculations could be secured by a planning condition. However, the outcome of any assessment is currently unknown. So too is the extent of any required mitigation, and the further implications such mitigation may have on other aspects of the living conditions of the future occupants of Flat 7, namely outlook. Such a condition is unlikely to be reasonable or enforceable and it would not therefore, meet the tests set out in paragraph 54 of the National Planning Policy Framework (the Framework) and the Planning Practice Guide.²

Conclusion – Living Conditions of Future Occupiers

12. For the above reasons, the proposed development's failure to provide sufficient private outdoor space, and noise and disturbance to the future occupants of Flat 7 arising from the location of the proposed communal space, would cause significant harm to the living conditions of the future occupiers. Consequently, the proposal would conflict with Policy HC4 of the LP and the SPD as set out above, along with Policy ESD2 of the Formby and Little Altcar Neighbourhood Development Plan 2012-2030 (2019), which seeks amongst other things, high quality design that demonstrates consideration of residential amenity. Conflict is also found with paragraph 130 of the Framework which seeks a high standard of amenity for future users.

Other Matters

13. The SPD is clear that outdoor space that is significantly below the minimum standard will not be accepted under any circumstances. Lower amounts of space will only be considered in limited exceptional circumstances, where justified by a specific proposal. The appeal site is located above a parade of shops forming part of a wider local centre, that has a good range of facilities and services and access to public transport that would no doubt be of benefit to the future occupiers of the proposed flats. This would weigh modestly in the proposal's favour.
14. The Appellant suggests that the provision of 160sqm private outdoor space is unachievable for the conversion of an existing building in a central location. However, there is no substantive evidence before me to demonstrate that all opportunities to maximise outdoor space within the development have been considered, as required by the SPD. For example, it is not clear whether any existing extensions could be removed to provide additional space, whether adjacent land or roof space could be obtained, or alternative designs could incorporate additional communal space and/or private balconies.
15. A map indicates the availability of public open space within the wider Formby area including Duke Street Park, Bills Lane, Barkfield Park and Deansgate Park with Formby beach further afield. The Appellant considers these to be within a convenient walking distance to the appeal site. Nevertheless, they are public

² Paragraph: 003 Reference ID: 21a-003-20190723.

spaces that would not provide all of the functions associated with private residential space, including the facilitation of socialising at home, gardening and drying washing. Moreover, these existing areas of outdoor space are not necessarily conveniently located for families with children or people with mobility concerns, where even a short distance could be problematic for access. As such, the availability of public open space would not offset the need for private outdoor space that is readily accessible to the future occupiers of the proposed development.

16. Reference is made to the conversion of the existing building having a low environmental and CO² impact when compared to a new build development. This may well be the case, but no substantive evidence has been presented to corroborate this assertion. There may be other ways of achieving similar benefits through alternative schemes, that would avoid the harm identified above.

Planning Balance and Conclusion

17. The proposed development would result in significant harm to the living conditions of the future occupiers, with regard to the provision of outdoor space and noise and disturbance. This conflict with the development plan would not be outweighed by the modest benefit of the proximity to the shops and services of a local centre. There are no material considerations in this instance that lead me to find other than in accordance with the development plan. The appeal is dismissed accordingly.

M Clowes

INSPECTOR