



Appeal Decision

Site visit made on 5 April 2023

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

Appeal Ref: APP/K0235/W/22/3306821

Gurvur House, 2-8 Cauldwell Street and 5-7 St Johns Street, Bedford, MK42 9AD

- 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 Sandeep Sira (S Sira Group Limited) against the decision of Bedford Borough Council.
 - The application Ref 21/00875/FUL, dated 24 March 2021, was refused by notice dated 8 April 2022.
 - The development proposed is a second and third floor extension to form 8 apartments and external alterations including new staircase and lift block.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would provide acceptable living conditions, in relation to odour; and
 - the effect of the proposed development on highway safety, in respect of the collection of waste.

Reasons

Living Conditions – Odour

3. The application site is a commercial building located on the corner between Cauldwell Street and St. John's Street. The proposed development would extend the existing building by two storeys, resulting in eight new dwellings.
4. The primary concern of the Council relates to food related odours from the adjacent restaurant, as their kitchen ventilation system immediately abuts the appeal site. Due to the close proximity of this ventilation system and the long opening hours of the restaurant, odour issues from the use of the kitchen restaurant are likely to frequently affect future potential occupiers of the eight dwellings, which could harm living conditions.
5. The appellant acknowledges this and thus the proposal includes a mechanical ventilation system which seeks to mitigate the effects. This system would provide a continuous flow of air to the dwellings but would not preclude occupants from opening windows to maintain climate control if they wish. Nevertheless, the continuing operations of the restaurant and long hours of

operation would risk creating a closed window environment due to the continuous presence of odours. This would result in a confined environment and for future occupiers, create a material change in behaviour, such as keeping windows closed for most of the time to achieve acceptable living conditions with respect to odour. Conversely, it could introduce an odour nuisance issue into the homes of future occupiers if they choose to open their windows.

6. Although it is not directly correlative with odour issues, I have considered the appellant's reference to the National Planning Practice Guidance (NPPG) on noise as analogous guidance, with regard to keeping windows closed and using alternative ventilation systems. I have also considered various appeal decisions (including APP/K0235/W/21/3288726, APP/X1545/W/20/3259936, APP/B0230/W/20/3253139 and APP/Q3305/W/18/3200826) which the appellant has referenced regarding the acceptability of using mechanical ventilation only.
7. However, the primary issue is not whether the use of the ventilation system is capable of effectively mitigating odour, but the ability for future occupiers to effectively create a pathway from their dwellings to external odours by opening their windows. In contrast, the decision at 4 Ashburnham Road, Bedford (20/02220/FUL) related to use of a mechanical ventilation system which required all windows to be sealed. This is not the same situation at the proposed development, specifically as future occupiers would have the ability to introduce odours into their homes by opening windows.
8. Due to the close proximity of the restaurant to the appeal site, their long hours of operation and the positioning of the existing ventilation system along the roofline, it is likely that there will be persistent odour issues in the area. Although the mechanical ventilation facilities may suffice to filter the air and mitigate odour issues, it would not address the potential for future occupiers to introduce an additional pathway for odour, which would result in poor living conditions. While future occupiers have the choice whether or not to open their windows, it cannot be expected that they would keep them closed when they have the option to open them, thereby opening a pathway to the prevailing odour issues in the area.
9. In conclusion, I find that the proposed development would fail to provide acceptable living conditions, in relation to future occupiers being exposed to odour issues. This would conflict with policies 2S, 32 and 47S of the Bedford Borough Local Plan 2030, which amongst other things, requires development to promote health, minimise the effects of disturbance though the suitability of the existing environment and to reduce odour issues as far as practicable.

Highways safety – Waste and recycling

10. It is not disputed by the parties that the Council collects commercial waste from the appeal site, albeit this occurs early in the morning when there is less traffic on the roads, which reduces the risk of harm. There is no evidence before me that any residential waste is collected from the appeal site, notwithstanding the presence of a residential apartment above the restaurant, which likely uses the commercial waste service. Therefore, due to the number of apartments, it is likely that an additional collection service would be required to pick up the residential waste from the proposed development.

11. Cauldwell Street is a one way street with two lanes of traffic. It is well trafficked and relatively busy. There is a parking area at the rear of the appeal site which is accessible from Cauldwell Street, which would be used to collect domestic waste. Waste collection vehicles would access the appeal site by moving forward and reversing out or by reversing into the site, both of which methods would temporarily halt the traffic on Cauldwell Street.
12. The evidence before me indicates that the residential waste collection service accesses the appeal site at a busier time of day than the current commercial service. Accordingly, this would have a significantly greater impact on highways safety and the road network due to the busier time at which it would occur, which would be dangerous given the high frequency of traffic along a one-way system. Additionally, due to the need to reverse when entering/leaving the appeal site and the limited visibility of traffic along the highway and adjacent footway, there will be an unacceptable increase in the increased risk of collision.
13. The appellant has drawn my attention to the fact this was not a reason for refusal in previous applications. Be that as it may, this has been raised as a concern here and, based on the evidence before me and my own observations, I am satisfied that there would be highway safety issues.
14. In conclusion, I find that the proposed development would have a harmful effect on highways safety, in relation to residential waste collection. This would conflict with policies 29, 31 and 32 of the Bedford Borough Local Plan 2030, which amongst other things, requires development to promote community safety and minimise the effects of disturbance in relation to dealing with waste collection. Additionally, it would be contrary to paragraph 111 of the National Planning Policy Framework, as it would lead to an unacceptable impact on highway safety.

Other Matters

15. The site sits on the boundary of the Bedford Conservation Area (BCA) and is within the setting of several listed buildings, including the House on the north side of Saint Mary's square, 2-8 Cardington Road, the King's Arms public house and St. Mary's Church. The Council raised no objections in relation to the effect of the development on the settings of these heritage impacts and I have no reason to come to a different conclusion.
16. I have considered the benefits that would arise from the proposed development. The provision of employment whilst the building is being constructed and the creation of eight new dwellings would provide some economic benefits. I have also considered the apartments would be designed to provide the highest combination of green energy, comfort levels, noise mitigation and indoor air quality. However, having taken these considerations into account, and given the scale and nature of the development proposed, I find that the benefits would be relatively limited and thus neither outweigh the harm I have identified nor the conflict with the development plan.

Conclusion

17. For the reasons given above, and having regard to all other matters raised, I find that the proposal conflicts with the development plan read as a whole. There are no material considerations, including the policies of the Framework

that have been shown to carry sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. I, therefore, conclude that the appeal should be dismissed.

S Lo

INSPECTOR