



Appeal Decision

Site visit made on 6 June 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2023

Appeal Ref: APP/W2465/W/23/3314566

269 Abbey Lane, Leicester LE4 5QH

- 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 Paul Quinn against the decision of Leicester City Council.
 - The application Ref 20222025, dated 14 October 2022, was refused by notice dated 10 January 2023.
 - The development proposed is change of use from dwelling house and shop to 2 Flats (2 x 1 bed).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from dwelling house and shop to 2 Flats (2 x 1 bed) at 269 Abbey Lane, Leicester LE4 5QH in accordance with the terms of the application, Ref 20222025, dated 14 October 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan and document:
 - *Drawing No: QU1-21-A10; and Flood Risk Assessment*

Preliminary Matters

2. The appellant lodged this appeal on the basis that the Council failed to give notice of its decision within the appropriate period. However, the Council had issued its decision prior to the appeal being submitted and so I have determined this appeal on the basis that the Council refused planning permission for the development described above.

Main Issues

3. The main issues are the effects of the proposal on (1) the living conditions of future occupiers of the proposed flats with regard to noise; and (2) flooding.

Reasons

Living Conditions

4. The appeal site comprises a semi-detached property and land associated with it. The adjoining house No 267, is a dwelling whilst No 269 incorporates a shop in part of the ground floor with living accommodation in the rest of the ground floor and the first floor. Abbey Lane is a busy main road and adjacent to No 269 there is a motorcycle shop and there are other commercial uses close by

including a Public House, The Broadway, and a hand car wash on the other side of the road.

5. No information has been submitted with the application regarding existing noise levels and a reason for refusal is that there is insufficient evidence to demonstrate that noise levels would be unacceptable to the future occupiers of the proposed flats. The Council's Environmental Health consultee states that an acoustic survey should be undertaken to assess the existing noise climate, the results of which should be used to recommend an appropriate insulation scheme to prevent the transmission of noise into the development and between the commercial and residential properties. No acoustic survey has been carried out and the Council has stated that its preference would be for this to be dealt with prior to determination rather than subject to a condition (I shall return to this later).
6. Although an acoustic survey would have established ambient noise levels and allowed an assessment as to what mitigation may be required, given the scale and nature of this proposal, I do not consider that the lack of such information hinders my assessment of the likely impact on the living conditions of future occupiers of the proposed flats.
7. Proportionally the retail element takes up just one room with the dwelling taking up the rest of the floorspace. Also, the other half of the semi-detached pair, No 267 is a house. Although No 269 is immediately adjacent to the motorcycle shop, the area is generally a busy and active one with the other commercial uses, including The Broadway, and traffic noise. There are other residential properties on the opposite side of the road and so generally there is a mix of commercial and residential uses in the area.
8. From my observations, it is likely that future occupiers of the proposed flats would experience some impact from noise caused by the surrounding uses. Living close to a busy main road would inevitably mean that this would not be a particularly quiet place to live. However, whilst I have no technical evidence to establish noise levels, I do not consider that this would be more than what could reasonably be expected from living in such a location. Moreover, taking into account the existing residential use of the property and that of the adjoining semi-detached house, it is clear that there is an established mix of uses in this area, including residential. As such, I do not consider that the impact of any noise would be at an level above that which future occupiers could reasonably expect.
9. I conclude therefore, that the living conditions of future occupiers of the proposed flats with regard to noise would not be unacceptable. As such, the proposal would not conflict with saved Local Plan Policies H07, PS10 or PS11¹ which, amongst other things, seek to protect residential amenity taking into account the effects of factors including noise.

Flooding

10. The Council refer to a previous planning application² describing this site as having "fluvial and pluvial, and critical drainage area/final hotspot designations" and that the submitted flood risk assessment was insufficient. It

¹ City of Leicester Local Plan (Incorporating the City of Leicester Minerals Local Plan) 1996 – 2016, Adopted January 2006.

² Planning Application Ref: 20220951.

states that the flood risk assessment now submitted is unchanged from that submitted with the earlier application and so the same concern remains. However, although the submitted assessment is fairly limited in its details, it is not clear on what basis the Council consider it to be insufficient.

11. The submitted flood risk assessment indicates that the site is within Flood Zone 2 which the Planning Practice Guide (PPG) describes as having medium probability of flooding. The National Planning Policy Framework (the Framework) categorises dwellings as 'more vulnerable'. The PPG acknowledges that changes of use may have flood risk implications but the table in the PPG does not exclude more vulnerable uses in flood Zone 2 areas.
12. The appellant's flood risk assessment recommends reducing areas of hardstanding; improved drainage; regular checking of drains; flood protection at entrance doors; and advice to tenants regarding flood protection measures. These are modest steps that could easily be incorporated in the conversion works.
13. Whilst the evidence submitted regarding flood risk is limited, I am mindful of the nature of the proposal and the likely effects of flooding. A new flat would be created but this would be on the first floor. On the ground floor, only part of it would be changed from a commercial use to residential. On the basis of the evidence before me, I do not therefore consider that the likelihood of flooding would be so great as to withhold permission. As such, I do not consider that the proposal would conflict with the objectives of Core Strategy Policy 2 (CS02)³ which seeks to address climate change and flood risk.

Conditions

14. In addition to the standard time limit condition, I consider that a condition is necessary to ensure that the proposal is carried out in accordance with the submitted plans and also that of the recommendations in the submitted Flood Risk Assessment. The Council has suggested a pre-commencement condition requiring an insulation scheme to be approved by the Local Planning Authority and for the approved scheme to be subsequently carried out. The insulation would be required to prevent the transmission of noise from neighbouring commercial uses and road traffic. However, the suggested condition is not sufficiently precise in that it is not clear what level of insulation would be required as it has not been established that noise levels require mitigation. As stated above, the Council has indicated its preference against conditions requiring noise assessments. In any case, given that I have found the proposal to be acceptable with regard to the living conditions of future occupiers, I do not consider such a condition is necessary.

Conclusion

15. For the reasons given I conclude that the appeal should succeed.

J D Clark

INSPECTOR

³ Leicester City Council – Leicester City Local Development Framework Core Strategy, adopted July 2014.