



Appeal Decision

Site visit made on 20 September 2023

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th October 2023

Appeal Ref: APP/D1265/W/23/3318660

10 Institute Road, Swanage, Dorset BH19 1BX

- 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. and Mrs. John Woolston against the decision of Dorset Council.
 - The application Ref P/FUL/2022/02087, dated 29 March 2022, was refused by notice dated 22 December 2022.
 - The development proposed is change of use from store ancillary to shop (Use Class E) to a single person studio apartment.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the development on the living conditions of both the existing occupiers of surrounding residential properties, and on the living conditions of future occupiers of the proposed dwelling; and
 - whether the site is an appropriate location for the development with regards to managing flood risk.

Reasons

Living Conditions

3. The existing store is single storey and is located to the rear of the retail unit on the ground floor at no 10 Institute Road. The western gable end wall of the store faces onto Commercial Lane which is a narrow pedestrian path adjacent to the site. The store is separated from the lane by a small yard area and stone boundary wall. There is a single door in the end wall of the store. A private access path from Commercial Lane to the rear of the retail unit at no 10 runs along the northern flank elevation of the store. The surrounding area is a mix of residential and commercial uses typical of a town centre location. A modern development, with commercial units at ground floor level and flats above, faces the western elevation of the store.
4. Development of the studio apartment would introduce 2 windows into the western gable end wall. These windows would face towards the first floor windows of the existing flats on the opposite side of the pathway. Whilst views between the facing windows would be offset both vertically and horizontally,

the limited distance between the facing windows means that harmful overlooking between the windows would occur nevertheless. The loss of privacy would be most pronounced when considering views between the full-length Juliet balcony windows opposite the site and the facing studio apartment windows. The loss of privacy would be harmful to both the existing occupants opposite the site and future residents of the studio apartment. In particular, future occupiers of the studio apartment would have limited opportunity for daytime privacy given the small scale of the living accommodation.

5. I note that the Inspector in the 2018 appeal decision¹ for a similar proposal found the introduction of French doors in the western elevation would result in a degree of overlooking due to the facing windows. I do not consider that the smaller windows proposed for the western elevation, in combination with the main entrance and additional windows on the northern flank, would address the related concerns regarding loss of privacy set out in the 2018 appeal.
6. Whilst the use of curtains or obscure glazing in windows on the western elevation would address privacy concerns, it is a solution that would harmfully constrain future occupiers' outlook. Furthermore, planting a tree in the small garden would limit daylight reaching the studio windows and there is no guarantee that any planting would endure in perpetuity. As such, planting a tree represents an unsatisfactory way to mitigate the overlooking between the facing windows.
7. The outlook from the additional windows on the northern elevation would be onto the shared access to the rear of the retail unit, and some overlooking to these windows would result from the adjacent exterior metal staircase. I note that it is proposed to obscure glaze these windows below the transom for privacy purposes. Whilst this would mitigate privacy concerns for these windows, it would also limit outlook and result in a harmful sense of enclosure.
8. I acknowledge that in town centre areas with a higher density of built form, constraints may necessitate that bringing forward appropriate development requires some flexibility in privacy and outlook standards. In this case, however, the degree of overlooking, and the subsequent loss of privacy, would have a significantly harmful effect on the living conditions of both existing surrounding occupiers and future occupiers of the studio apartment.
9. For these reasons the proposal would be contrary to Policy D of the Purbeck Local Plan Part 1 (2012) (PLP) and to the aims of the National Planning Policy Framework (the Framework), including paragraph 130. These together seek to ensure good design that avoids and mitigates the effects of overlooking, creating places with a high standard of amenity for existing and future users.

Flood Risk

10. The Framework seeks to ensure that inappropriate development in areas at risk of flooding now, or in the future, should be avoided. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The Environment Agency (EA) flood maps indicate the site is in Flood Zone 3 where there is a high risk of flooding.
11. Framework paragraph 168 advises that applications for changes of use should not be subject to the sequential or exception tests but should still meet the

¹ Appeal Ref: APP/B1225/W/18/3193644

requirements for site-specific flood risk assessments. The appellants' documents include a site-specific Flood Risk Assessment (FRA).

12. The EA consultation response to the application advises that the present day 1 in 200 year still water tidal flood level for Swanage is 2.00m AOD, and that this will rise to 3.36m AOD over the 100 year lifetime of the development. In response to concerns raised by the EA regarding flood risk, the proposal was amended to raise the finished floor level from 3.14m AOD to 3.381m AOD to allow for protection of the dwelling and to provide a safe space for the users of the flat. The appellants' submissions also include a Flood Management and Evacuation Plan that identifies required actions and a safe access/egress route in case of a flood warning. No updated response from the EA has been submitted in relation to this appeal.
13. The small scale of the proposal would not significantly increase the number of people present in the local area at risk of flooding. Furthermore, as a change of use, the development would not have a physical displacement effect on flood waters. As such, I am satisfied, that the FRA is proportionate to the anticipated degree of flood risk, and is appropriate to the scale, nature and location of the development. The appellants have identified measures to mitigate the degree of exposure of future occupiers, and of the dwelling, to flood water to an acceptable degree. Appropriate final details of the flood resilience and evacuation measures could be appropriately secured by condition.
14. Consequently, in relation to this main issue, I do not find the proposal to conflict with paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the Planning Practice Guidance, paragraphs 159 and 167 of the Framework, or with PLP Policy FR. Taken together, amongst other things, these policies and guidance require that development should be made safe for its lifetime without increasing flood risk elsewhere.

Planning Balance

15. There is agreement between the main parties that the Council is unable to demonstrate a 5-year housing land supply (5YHLS) for the relevant area, and that Paragraph 11 of the Framework is therefore engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.
16. I have been provided with no substantive evidence as to what the extent of the current shortfall in the relevant 5YHLS measurement is. The appellants advise that, as of April 2021, the housing land supply was just 1.23 years. The Council has not disputed this figure or provided a more recent assessment. As such, I can only assume that the shortfall in the 5YHLS measurement remains substantial.
17. I acknowledge that the proposal would contribute towards housing supply in a location with good access to services and facilities by sustainable transport modes. Being for one property, however, it would only make a very limited contribution to housing supply and this significantly limits the weight I attach to this benefit.
18. The proposal would redevelop previously developed land (PDL) and I acknowledge the increasing frequency of former retail space being occupied by non-retail uses, often through permitted development rights. The Framework,

however, is clear that the use of PDL is encouraged subject to suitable opportunities existing. Due to the identified policy conflicts regarding living conditions, the development as proposed cannot be viewed to represent a suitable opportunity and only limited weight is therefore afforded to this consideration.

19. I am also mindful of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that decision makers pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. Given the limited external changes proposed, the character and appearance of the Conservation Area would be appropriately preserved.
20. Weighing against these benefits would be the above identified harms in relation to the effect of the proposal on living conditions. PLP Policy D is broadly consistent with the Framework insofar as the Framework also seeks development to secure a high standard of amenity. The identified conflict with the development plan, and with the Framework, by virtue of the harm to the living conditions of existing and future residents therefore attracts significant weight.
21. I acknowledge that a key aim of the Framework is to significantly boost the supply of housing. When read as a whole, however, the Framework does not suggest this should happen at the expense of other considerations. Even if there is a shortfall in the 5YHLS on the scale stated by the appellants, the identified adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations, including the Framework, indicate otherwise. The proposal would conflict with the development plan when read as a whole and there are no other considerations that outweigh that identified conflict, nor do they indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

23. For the reasons given above, the appeal is dismissed.

S D Castle

INSPECTOR