



Appeal Decision

Site visit made on 21 November 2023

by N Bromley BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2024

Appeal Ref: APP/W4325/W/23/3322218

90A Market Street, Hoylake CH47 3BD

- 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 Sekander Ahmed against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/21/01994, dated 28 September 2021, was refused by notice dated 8 March 2023.
 - The development proposed is conversion of first floor to apartments, with additional second floor, creating 6 nr one bedroom apartments and 2 two bedroom apartments. Eight apartments in total with ground floor access and amenity areas. Ground floor of building to remain as retail units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, the Government published a revised National Planning Policy Framework (the Framework). Those parts of the Framework most relevant to this appeal have not been amended. As a result, there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.
3. The description of development in the fourth bullet point of the above header is taken from the original planning application form. However, prior to the Council's decision being issued the appellant amended the proposed development and the description on the Council's decision notice is "*Change of use and conversion of first floor, and the construction of an additional storey, to form 6 apartments with external alterations to comprise roof terrace, additional windows and the formation of a covered external access stair.*" I have determined the appeal on that basis.
4. The appellant has submitted an amended plan as part of the appeal, which seeks to change the design and size of a bedroom window to apartment 5, proposed in the side elevation at second floor. The appeals procedural guide¹ makes it clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority (the Council), and on which interested people's views were sought.

¹ Procedural Guide: Planning Appeals – England (2023)

5. Having regard to the principles established in *Holborn Studios Ltd*², the changes to the size of the bedroom window of apartment 5, as shown on the amended plans, is materially different from what was considered by the LPA when it made its decision. The change would also raise fresh overlooking issues which have not been consulted on and properly addressed. Therefore, in the interests of fairness, this appeal must be determined based on the plans on which the Council made its decision, and which have been subject to consultation. To do otherwise could unacceptably prejudice the interests of other parties.
6. Both main parties refer to the emerging Wirral Local Plan (2021 - 2037) (ELP), which has been submitted for examination by the Secretary of State. I have been provided with copies of policies WS 3.2, WS7.1, WS7.2, WS 11.1, WP6.2 and WD6 of the ELP. These policies are consistent with the policy approach set out in the existing development plan. Paragraph 48 of the Framework enables me to ascribe weight to the policies of an emerging plan depending on its progress, extent of objections against a particular policy, and degree of consistency with the Framework.
7. The Council suggests that following the conclusions of the Inspector in the *Leverhulme* Appeal Decision, the Local Plan is at an advanced stage, and I am advised that a series of hearing sessions have been conducted. Consequently, while there is no certainty about the outcome of the ELP and the policies most relevant to this appeal, I have afforded them moderate weight.
8. The appellant asserts that the UDP is out of date by virtue of its age, and it not being prepared in light of the Framework. However, the Council has reviewed the policies against the Framework and finds them to be consistent. I have had regard to the Council's review and see no reason to disagree. Therefore, while I have had regard to the emerging policies, I have determined the appeal on the basis of the adopted development plan at the time of my decision which should be afforded full weight.

Main Issues

9. The main issues are:
 - i. the effect of the proposed development on the living conditions of the neighbouring occupiers of 8A Hadfield Avenue and 92A Market Street, with particular regard to privacy and outlook; and
 - ii. whether appropriate living conditions would be provided for the future occupiers of apartment 5, with particular reference to outlook from a bedroom window.

Reasons

Living conditions of the neighbouring occupiers

10. Apartment 4 would be located at first floor at the rear of the building, which is currently used as a storage area and additional floor space to the ground floor retail use. This part of the building has an existing window, along with a door which provides access to an external staircase. I observed at my site visit that

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

the window was covered to prevent an outlook, and the door did not appear to be in frequent use.

11. The proposed apartment would utilise the existing window. It would serve the only bedroom to apartment 4. A new window would replace the door opening, and would serve an open plan dining, lounge, and kitchen. These are the only windows to the apartment.
12. The bedroom window would be located adjacent to the shared boundary with 8A Hadfield Avenue, which has first floor bedroom windows located close to the boundary. Therefore, whilst the outlook from the bedroom window of apartment 4 would be on an angle, the short separation distance and juxtaposition between the two windows would allow intervisibility between the windows, which are habitable rooms. Consequently, the proposed bedroom window would result in an unacceptable loss of privacy to the occupiers of 8A Hadfield Avenue.
13. I acknowledge that the appeal site is located in a town centre location whereby many shops have residential accommodation above and the interfacing distances between windows of residential accommodation may be less than in other areas. I also note the examples provided by the appellant of separation distances between properties in Hoylake Town Centre. However, none of these examples demonstrate a separation distance that is comparable to the appeal scheme and the windows of 8A Hadfield Avenue. Therefore, as I am required to do, I have determined this appeal on the evidence before me and on its own merits.
14. Flat 1 at 92A Market Street (No 92A), has a kitchen and secondary lounge window in its side wall, which is separated from the host building by a narrow alleyway. The outlook from the windows is towards the side wall of the host building and its flat roof.
15. The proposal would increase the height of the building and introduce a hip style roof which would slope away from the neighbouring windows. The proposed roof arrangement would therefore ensure that the proposed development would not result in an unacceptable and harmful enclosing or overbearing effect on the windows of No 92A.
16. For the above reasons, whilst no significant harm would be caused to the living conditions of the occupiers of 92A Market Street, the proposed development would unacceptably harm the living conditions of the neighbouring occupiers of 8A Hadfield Avenue, with particular regard to privacy. Therefore, the proposal would fail to accord with Policies HS4, HS13 and SH7 of the Wirral Unitary Development Plan (UDP), Policies HS5 and H1 of the Hoylake Neighbourhood Plan (NP) and the principles set out in the Wirral Supplementary Planning Document 2 – Designing for Self-Contained Flat Development and Conversions (SPD), which together and amongst other things, seeks development that achieves adequate separation from adjacent properties so as to ensure a good standard of amenity.
17. In addition, the proposal would fail to accord with the objectives of the Framework, which seeks to ensure a high standard of amenity for existing and future users of land and buildings.

Living conditions of future occupiers

18. Apartment 5 is proposed to be a 1-bed unit within the roof space of the development. The bedroom would be served by a 3-panel roof light. No other windows are proposed for the bedroom and therefore, by virtue of its limited size and height above floor level the rooflight would offer a limited and unsatisfactory outlook for its future occupants.
19. Given the above, I conclude that the development fails to provide satisfactory living conditions for future occupiers of apartment 5 with particular reference to outlook. Therefore, the proposal would fail to accord with policies HS4, HS13 and SH7 of the UDP, policies HS5 and H1 of the NP and the principles set out in the SPD, which together, amongst other things, seek to ensure that flats have a reasonable outlook, so as to ensure a good standard of amenity.
20. In addition, the proposal would fail to accord with the objectives of the Framework, which seeks to ensure a high standard of amenity for existing and future users of land and buildings.

Other Matters

21. The appellant suggests that permitted development rights could be used to convert the upper floors of the host building to residential use without planning permission, but the appeal scheme provides several improvements and small extensions, which would have a visually preferable appearance to a permitted development scheme. Therefore, full planning permission has been sought instead.
22. Nonetheless, the appellant has not submitted plans or details and without any substantive evidence of what development could be carried out to the building, under permitted development, I have not been able to draw any comparisons. Therefore, I can only give limited weight to this point in my assessment of the appeal scheme.
23. I acknowledge the appellants comments with regard to the Council's handling of the planning application, in particular, not been given a further opportunity to amend the plans to address concerns during the application process. However, I confirm that I have considered the proposed development on its planning merits.

Planning Balance and Conclusion

24. I acknowledge that the proposed scheme would enhance the visual appearance of the building and that it would provide six new dwellings which would contribute to the mix and type of accommodation on offer in the area. It would also contribute to boosting housing supply in a sustainable town centre location by virtue of its proximity to local services on foot, along with access to public transport opportunities. The construction of new dwellings would also provide both short and long term associated social, economic, and environmental benefits during the construction phases and following occupation. Nonetheless, in the balancing exercise, the above benefits would be fairly modest, thereby attracting limited weight.
25. The proposed development would unacceptably harm the living conditions of neighbouring occupiers and provide unsatisfactory living conditions for the future occupiers of flat 5. I attach substantial weight to that harm.

26. Notwithstanding that the appellant asserts that the UDP is out of date by virtue of its age, and that the Council has an out-of-date Strategic Housing Market Assessment and cannot demonstrate a 5-year supply of housing land, I have no substantive evidence before me to demonstrate that is the case. However, even if I were to accept that were to be the case, the harm that I have identified would significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the Framework when taken as a whole.
27. Consequently, I conclude that the proposed development would conflict with the development plan as a whole and there are no material considerations, including the Framework, that indicate that the development should be determined otherwise than in accordance with it. For these reasons, the appeal is dismissed.

N Bromley

INSPECTOR