



Appeal Decision

Site visit made on 4 December 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal Ref: APP/J4525/W/23/3330235

5 Smyrna Place, East End, Sunderland SR1 2HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Steve Wilson against the decision of Sunderland City Council.
- The application Ref 23/01663/VAR, dated 23 July 2023, was refused by notice dated 18 September 2023.
- The application sought planning permission for the variation of condition 2 (plans) attached to planning application 21/02775/FUL for the conversion of existing shop into two 1no. bedroomed flats and construction on new commercial unit to front and single storey extension to rear.
- The condition in dispute is No 2 which states that:
The development hereby granted permission shall be carried out in full accordance with the following approved plans: Existing and proposed plans and elevations plan, drawing number rbd-006hen-PLAN-001 REV D, received 24.11.22.
- The reason given for the condition is:
In order to ensure that the completed development accords with the scheme approved and to comply with policy BH1 of the Core Strategy and Development Plan.

Decision

1. The appeal is allowed and planning application reference 23/01663/VAR for the variation of condition 2 (plans) of planning permission 21/02775/FUL at 5 Smyrna Place, East End, Sunderland, SR1 2HY is granted without compliance with condition 2 previously imposed on planning permission 21/02775/FUL dated 29 June 2023 subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. This does not materially change the planning policy context in respect of the main issues, and I have determined the appeal accordingly.
3. The development described above has been partially carried out insofar as work had commenced on internal and external alterations to the building. I am therefore proceeding on the basis that the development has, in part, already occurred.
4. For clarity I have amended the description of the development to include the original description of the development included in the decision for planning permission 21/02775/FUL.

Main Issue

5. The main issue is whether the proposed development would provide satisfactory living conditions for future occupiers with particular regard to the provision of adequate internal living accommodation, outlook, light and privacy.

Reasons

Living Conditions - Flat One (right-hand unit)

6. The approved living accommodation would provide a one bedroomed flat with a narrow bedroom with no window, a small bathroom with no window and a very small kitchen. A significant part of the floorspace in the flat would be a narrow corridor providing access to the bedroom, bathroom and a shared lobby. Although not shown on the plans before me, both parties state that the bedroom would have been served by a rooflight to be inserted into the flat roof of the building. No indication has been given of the size, design or location of the proposed rooflight.
7. The appellant states that the total floorspace of this unit would be approximately 29.2m². This would be well below the Nationally Described Space Standard (NDSS) of 37m² for a single person unit with a shower room. This figure has not been challenged by the Council and I have no reason to dispute it.
8. The revised proposal would provide a unit with an overall floorspace of approximately 27.3m². Whilst less than the approved scheme this is largely due to a much smaller corridor area, the converse is that living accommodation is greater in comparison. The revised scheme would also provide a bedroom with a window facing towards the street on the side elevation of the building and larger lounge, bathroom and kitchen areas. The bedroom, although only measuring 7m², would be wider than the minimum 2.15m set out in the NDSS. Whilst the windows in the lounge and kitchen area are at a high level, these do not differ in height or location from those in the original proposal.
9. The bathroom would not have a window, however, this is a common arrangement and provided that adequate ventilation is provided, this would not cause harm to the living conditions of future occupiers. Consequently, I have not been provided with any substantive evidence that the proposed layout would not provide occupiers with adequate light or outlook which would cause significant harm to their living conditions.
10. I have considered the fallback position of reverting to the layout approved by 21/02775/FUL and afford this considerable weight. Whilst the proposed layout is not ideal, it does provide a more practical arrangement to those of the approved scheme and would result in an overall better standard and quality of living accommodation.
11. Although, there would be conflict with criteria 14 of Policy BH1 of the Sunderland Core Strategy and Development Plan 2015-2033 (CSDP), in that the proposed layout would not meet NDSS standards, it would nevertheless ensure a reasonable standard of amenity for future occupiers of the building preferable to that which was granted planning permission in the first instance. I therefore conclude that the proposal would provide adequate living conditions for future occupiers with regard to internal layout, outlook and light.

Living Conditions – Flat Two (left-hand unit)

12. The bedroom in Flat Two would look out onto a small yard accessible by occupiers of a nearby shop unit which has the potential to impact on the privacy of the occupiers of that room. However, the floor level of the yard is significantly below that of the floor level of the building, therefore whilst it would be possible for occupiers of the bedroom to observe activities occurring in the yard area, it would be more difficult for users of the yard to observe users of the room. I am therefore satisfied that the living conditions of future occupiers of Flat Two would not be compromised to such a degree that they would be unacceptable.
13. The outlook from the bedroom would be onto high walls surrounding the small yard and the rear elevation of the neighbouring shop unit. Whilst the high walls would restrict the outlook of occupiers to a degree, it is common in urban environments for bedrooms to look out towards yard walls and as such the outlook in this instance would be acceptable given the nature of the context of the appeal property and its surroundings.
14. I therefore conclude that there would be no conflict with CSDP Policy BH1 which seeks to ensure that acceptable levels of privacy and ensure a good standard of amenity for future occupiers of buildings. I am also mindful that in reaching this conclusion that this room previously did not appear to benefit from an external window for light or outlook.

Conditions

15. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under Section 73 should also reinstate the conditions imposed on earlier permissions that continue to have effect. However, as the development has commenced it is not necessary to impose a time limit condition. I have updated the plans condition to incorporate the proposed alterations to the internal layout and elevations which are the subject of this appeal.

Conclusion

16. For the reasons given above, I shall vary the planning permission by deleting the disputed condition and substituting it for an amended plans condition as indicated in my decision. The effect of my decision leads me to conclude that the appeal should be allowed.

KL Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby granted permission shall be carried out in full accordance with the following approved plans: rbd-006hen-PLAN-001 Rev D Planning Drawing (location plan); S272A (existing and proposed layout); S272B (existing and proposed elevations).
- 2) Notwithstanding any indication of materials which may have been given in the application; the external materials to be used, including walls, roofs, doors and windows shall be of the same colour, type and texture as those used in the existing building.
- 3) The premises shall not be operated for the purposes hereby approved outside the following hours: Monday to Saturday 8:00 to 18:00 Bank Holidays and Sundays 8:00 to 17:00.
- 4) As per the recommendations of the Zetica Pre-Desk Study report, no groundworks shall be commenced until a detailed UXO desk study is provided and submitted for the approval of the LPA. The report should assess the hazard level in more detail and confirm the scope and extent of mitigation measures required (if any).

****End of Schedule****