



Appeal Decision

Site visit made on 26 March 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2024

Appeal Ref: APP/M0655/W/23/3327886

279A Thelwall Lane, Warrington WA4 1NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by P Eyes against the decision of Warrington Borough Council.
 - The application Ref is 2022/42585.
 - The development proposed is part single and part two storey upwards extension to commercial building to create 8 apartments in the form of a single storey and three storey building with other uses on the ground floor.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council amended the description of the proposed development from the application form, to reflect the various elements of the proposal. I have used their description in the banner heading above, as it gives a fuller description of the proposed development.
3. Policies from the previous development plan have been superseded by policies from the Warrington Local Plan 2021/22-2038/39 (2023) (the LP) which has been adopted since the appeal was submitted. I must base my decision on the development plan prevailing at the time of my determination. The Council provided me with a list of updated policies relevant to the appeal, and the parties were given the opportunity to make any further comments in regard to these.
4. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) later updated on 20 December 2023, together with a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS. Having considered the parties' respective cases and the nature of the revisions, in light of the principles of natural justice, in this instance I have not considered it necessary to invite any submissions from the parties on the revised Framework.

Main Issues

5. The main issues are the effect of the proposed development on:
 - 1) the living conditions of the occupiers of Number 281 and Number 283 Thelwall Lane (Nos 281 and 283), with regard to outlook and privacy;

- 2) highway safety with particular regard to the adequacy of parking provision;
- 3) the character and appearance of the area;
- 4) the living conditions of future occupiers with particular regard to noise;
- 5) protected species; and
- 6) the living conditions of future occupiers with particular regard to internal living space.

Reasons

Living conditions- Nos 281 and 283

6. The appeal site is a part single/part two-storey commercial building within a predominantly residential area of Warrington. There are a small number of retail stores close by. The building is currently occupied by a barber, a beauticians and a gym. I noted from my site visit that a dog grooming business had recently relocated from the building.
7. The proposal would extend vertically by the addition of a part single/part two-storey upwards extension to create 8 apartments. The proposed development would be three-storeys in height and would retain commercial uses on the ground floor.
8. Adjacent to the appeal site lies a row of two-storey terraced properties. These dwellings form one ground-floor dwelling and one first-floor dwelling, with Nos 281 and 283 situated closest to the appeal site. The Council has measured part of the facing side elevation of the proposed development as being approximately 6.4m away from the side elevation of Nos 281 and 283.
9. The submitted plans indicate that the facing side elevation of the proposed development with Nos 281 and 283 would contain 8 windows on the first floor and 9 windows on the second floor. A number of these windows would serve habitable rooms. The elevation would be staggered, and part of the side elevation of the proposal would be situated adjacent to the boundary with Nos 281 and 283 and would overlook their amenity space. Given the proximity to Nos 281 and 283, the windows of the proposed development's eastern elevation would result in a level of overlooking that would lead to an unacceptable loss of privacy for the occupiers of those dwellings, and undermine the enjoyment of their outdoor space.
10. Although there would not be an unacceptable level of overshadowing of Nos 281 and 283, nonetheless the proposed three-storey development at close quarters to the two-storey dwellings of Nos 281 and 283 would be somewhat oppressive, with the height and massing of the proposed development adjacent to the boundary having a dominating and overbearing impact on the outlook from the gardens of the dwellings.
11. I conclude that the proposed development would harm the living conditions of the occupiers of Nos 281 and 283 with regard to privacy and outlook. As such, the proposal would conflict with Policy ENV8 of the LP which seeks to ensure that development respects the living conditions of existing neighbouring residential occupiers in relation to privacy and outlook. It would also conflict with guidance contained within the Council's Household Extensions Supplementary Planning Document (2021) which stresses that developments

should be designed to have no significant adverse effect on the amenities of neighbours and should not appear over-bearing to neighbours.

Highway safety

12. There is a driveway adjacent to the western side of the appeal site which provides a limited amount of parking for the existing businesses. Four designated parking spaces with EV charging points are proposed, along with a flat roofed cycle store for 8 cycles.
13. Guidance contained within The Standards of Parking in New Development Supplementary Planning Document (2015) indicates that for developments of over 5 dwellings outside of the town centre, each one-bedroom flat should provide 1 allocated parking space and 0.3 unallocated parking spaces. In certain circumstances, the unallocated spaces could be provided on-street, but the allocated parking spaces should be off-street. The proposed development falls short of this requirement. There would also be parking provision required, albeit small, for the existing commercial units.
14. The shortfall in off-street parking provision risks overspill parking on the surrounding road network. There are no parking restrictions in the surrounding area and a certain amount of off-street parking could be accommodated. However, overspill parking along the road would increase the potential for dangerous manoeuvring and conflicts between driver, cyclist and pedestrian movements along the carriageway as drivers seek parking opportunities. This appreciably elevates the risk of accident or collision.
15. I note that the proposed development would be sustainably located, and that Thelwall Lane is on a bus route with buses into Warrington Town Centre. There are also several food shops, convenience stores, pubs and parks within walking distance to the proposed development. Whilst the future occupiers of the proposed apartments may not require or own vehicles, there is no guarantee of this and no mechanism before me to ensure that this would be the case.
16. I conclude that the proposed development would have a detrimental effect on highway safety. It would conflict with Policy ENV8 of the LP which seeks to ensure that developments provide adequate parking and do not impact on highway safety. Furthermore, it would not accord with guidance contained within the Standards for Parking in New Development Supplementary Planning Document.

Character and appearance

17. The proposed development would be located in an established residential area, largely characterised by a mix of older two-storey semi-detached and terraced properties and more modern two-storey dwellings and apartments. A contemporary three-storey apartment block is situated opposite the appeal site.
18. The proposal would see the roof height of the two-storey element of the existing building increase by approximately 3m. The principal elevation of the existing building, which is currently single storey, would increase from approximately 4.85m to 9.66m. This elevation would have an awkward relationship with neighbouring properties, as it would be situated further forward than the established building line, in a prominent position within the street scene. Due to the neighbouring properties being of a lower height and

being set further back, the proposal would appear as conspicuous and over dominant in comparison and would be visually intrusive when viewed along Thelwall Lane.

19. There are no concerns with the proposed development's roof design or facing materials. Furthermore, the proposal would refurbish an unsympathetically extended building. However, the proposed development would be of a scale and height that would be disproportionate to the original building and would not relate well to surrounding properties or the street scene.
20. Although the appeal site's existing single storey frontage exceeds the established building line, it does not currently appear as over dominant due to its relatively low height in comparison to neighbouring buildings. However, the proposed increase in scale, with another two storeys being added along the frontage adjacent to the footpath, would lead to a three-storey elevation which would appear as a looming and overbearing presence in the street scene.
21. Whilst there is a modern three storey apartment block opposite the proposed development, this follows the established building line and prevailing pattern of development along that frontage, and as such has a more harmonious relationship with surrounding buildings, providing visual continuity and appearing as less conspicuous in the street scene.
22. Consequently, I conclude that the proposed development would harm the character and appearance of the area. It would conflict with Policy DC6 of the LP which seeks to ensure that development respects, sustains and makes a positive contribution to local character and distinctiveness within the surrounding area. It would also conflict with guidance contained within the Household Extensions Supplementary Planning Document which seeks to ensure that development does not adversely affect the character of the street and surrounding area.

Noise

23. The proposed apartments would be located above existing commercial uses. Of particular note is the fact that the existing gym would be retained. The Council have stated that insufficient evidence has been provided regarding predicted noise levels and hours of opening, and that there are therefore concerns regarding the potential noise and the effect that this may have on the living conditions of future occupiers of the flats, particularly those at first floor level.
24. I acknowledge that this information was not sought from the appellant as the Council did not consider that it would make the planning application acceptable. I therefore have limited evidence before me regarding whether the gym may have music, exercise classes or extended opening hours. I also have no substantive evidence regarding the robustness of the floor/ceiling interface and whether or not it could suitably attenuate noise from the ground floor.
25. Whilst suitable construction and design techniques could potentially be implemented from the outset, as there is no acoustic report before me, and limited information regarding the operation of the potential business uses at ground-floor level, I have no objective means of assessing the noise impacts on the living conditions of future occupiers.
26. Paragraph 55 of the Framework indicates that decision-takers should consider whether otherwise unacceptable development could be made acceptable

through the use of conditions. I have therefore considered the use of conditions to request further acoustic assessments. However, given the degree of uncertainty as to whether the details submitted pursuant to such a condition could lead to the proposed development being unimplementable or mitigation measures unfeasible, the use of such conditions would not be reasonable in this case.

27. Thus, I consider that there is insufficient evidence to conclude that the development would not cause harm to the living conditions of future occupiers with regard to noise. As such, it would conflict with Policy ENV8 of the LP which seeks to ensure that development respects the living conditions of future occupiers of new housing schemes in relation to noise. It would also not accord with guidance contained within the Environmental Protection Supplementary Planning Document (2013) which seeks to ensure that noise issues are addressed and potential noise impacts identified to ascertain whether any protection or mitigation measures are required to counteract the impacts of noise.

Protected species

28. A preliminary bat survey was undertaken in January 2023, this found that two of the buildings on site had moderate and low potential for roosting bats. Further survey work was recommended to be undertaken prior to the determination of the planning application.
29. I recognise that the appellant was not requested to provide a further bat survey in order to save him unnecessary expense as the application was being refused for other reasons. Nonetheless, under the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) I am required to consider whether any European Protected Species, such as bats, would be affected by the proposed development. Also, I am required to consider whether any measures would be effective in mitigating any harm.
30. Although it has been suggested that additional information could be supplied or dealt with by way of planning conditions, the additional survey work cannot be secured by conditions as this approach would not comply with guidance set out within the Government Circular 06/2005¹. Paragraph 99 of this circular explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. No such circumstances have been demonstrated in this case and it is therefore a reasonable expectation that the survey be carried out prior to any grant of planning permission.
31. Without the survey being carried out, I am unable to make an informed decision about the effect of the proposal on protected species, including assessing whether any mitigation measures would adequately safeguard or compensate for any harm caused to bats by the proposal.

¹ Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system

32. Consequently, I must conclude that insufficient evidence has been provided to demonstrate that the proposal would not have an adverse impact on protected species. The proposal would therefore be in conflict with Policy DC4 of the LP which seeks to ensure that development proposals do not adversely affect European Protected Species.

Internal living space

33. Policy DEV2 of the LP states that the Council will seek to provide dwellings that are appropriately sized and arranged to create well designed homes in accordance with the Government's Nationally Described Space Standards (NDSS).
34. The NDSS states that the minimum floor area for any new home designed for single occupancy, with a shower room rather than a bath, should not be less than 37m², and not less than 50m² for a double bed roomed apartment. Whilst the proposed apartments would fall short of the recommended floorspace required for two occupiers, all the apartments would meet the recommended 37m² for single occupancy, with 6 of the apartments exceeding this figure.
35. However, the appeal does not specify that the apartments would be for one-person occupation. Whilst the scheme's intended occupancy levels are not identified, the plans determined by the Council indicate that all the bedrooms contain double beds, thus allowing for 2-person occupancy per apartment. On this basis, every apartment would be lower than the NDSS standards of a minimum gross internal floor area of 50m² for a 1-bedroom 2-person apartment. The scheme would provide poor living conditions as a result.
36. The NDSS also requires a single bedroom to have a floor area of at least 7.5m², and a double bedroom to have a floor area of at least 11.5m². Only apartment 3 and apartment 7 would include a bedroom greater than 11.5m², with the other six apartments exceeding the 7.5m² figure but falling below the 11.5m² required for a double bedroom.
37. Whilst concerns have been raised that the studio living/kitchen rooms in apartments 2 and 6 would only have one window which would be west facing which may therefore lead to the rooms being somewhat dark, in my view there is adequate distance between the windows and neighbouring development to ensure that the habitable rooms would not be overshadowed and would receive sufficient light.
38. However, I consider that the proposed apartments would not meet the required space standards for two occupiers, and the appeal does not provide sufficient certainty that the scheme specifically relates to single occupancy units. I therefore conclude that the proposed development would harm the living conditions of future occupiers with regard to living space and it would conflict with the NDSS and Policy DEV2 of the LP which seeks to ensure appropriately sized dwellings.

Other Matters

39. I acknowledge that the principle of residential development is acceptable, and that the development would be in a sustainable location. However, local plan policies require specific aspects of the scheme to be acceptable in these other respects.

40. There have been no objections from neighbours and the Council had no concerns regarding flooding, trees, drainage and heritage. Nevertheless, the lack of harm is a neutral factor that does not outweigh the harm that I have identified arising from the main issues.

Conclusion

41. The proposal would conflict with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, the appeal is dismissed.

L C Hughes

INSPECTOR