
Appeal Decision

Site visit made on 28 May 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2024

Appeal Ref: APP/R3650/W/23/3333056

Land to rear of The Square, High Street, Godalming, Surrey GU7 1AZ

- 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 Mr G Davis against the decision of Waverley Borough Council.
 - The application Ref is WA/2022/01706.
 - The development proposed is erection of a building to provide flexible commercial use (Class E).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The planning application form, appeal form and the Council's decision notice all give slightly different variations of the site address. I have used the address entered on the appeal form which I consider to most accurately describe the location of the site

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupiers of Flat 1, The Mews, Wharf Street in respect of light and outlook.

Reasons

4. The appeal site is located between the rear of buildings fronting the High Street and the Queen Street car park and is currently used for parking. A two-storey building known as 'The Mews' adjoins the eastern boundary and includes two ground-floor windows to its side which face onto the site. The main parties indicate that The Mews was converted to flats under permitted development following a prior approval application¹ ('the PA'). The windows facing onto the appeal site were not indicated on plans forming part of the PA application. However, a Certificate of Lawfulness has been granted² confirming that the windows, which serve a bedroom and a kitchen/living area of the flat at 1 The Mews, had been in situ for more than 4 years and are therefore lawful. The appellant asserts that the windows have not been in place long enough to acquire any 'Right to Light' over the appeal site. Be that as it may, such easements are a private property right and their existence or otherwise would not presuppose the outcome of any assessment of the planning merits of the proposal in the context of this appeal.

¹ Application ref CR/2013/0035

² Application ref WA/2021/0056

5. The appeal proposes a two-storey building which would provide flexible commercial, business and service space. The rear elevation of the building would be positioned directly in front of the ground-floor windows of No 1 and while it would be set in from the boundary, the distance would be very slight.
6. At my visit, I observed that timber panels have been placed on the appeal site immediately in front of the windows to No 1. The appellant advises that these are 1.96m high and refers to permitted development rights which they argue would permit a 2m high fence or wall without the need for planning permission as a fallback position. However, there is no certificate before me confirming definitively that the panels, or any alternative means of enclosure, would be lawful.
7. In any event, I saw that the timber panels do not reach as high as the top of the windows of No 1. While the gap at the bedroom window is a little larger, I appreciate that the height of both gaps is small. Nevertheless, the panels would not therefore entirely block natural light reaching the windows. Some outward views from the rooms served by the windows would also be possible providing a degree of outlook and outside connection, albeit modest, for occupiers.
8. The proposed development would be substantially taller than the panels, and while it would be positioned further from the boundary, the separation would be so modest that I consider the building would form the main, if not only component, of views from the windows of No 1. It would essentially obscure any remaining open aspect from the windows, increasing the impression of enclosure and depriving occupiers of any meaningful sense of connection with their surroundings. In my view, the height and mass of the development in such close proximity to the windows of No 1 would be extremely dominant and overbearing and would result in a harmful loss of outlook in comparison even to the existing situation with panels in place. I therefore consider that the proposal would have a more harmful effect on living conditions for occupiers of No 1 in respect of outlook than the appellant's claimed fallback.
9. Moreover, the development would sit to the west of the windows and given its height, bulk and close proximity, it seems to me that it would be likely to restrict access to sunlight. Daylight could also be affected. In the absence of any detailed assessment considering existing levels of daylight or sunlight and how these might change with the proposal, I am unable to ascertain that there would not be a meaningful reduction in natural light, exacerbating harm to living conditions for occupiers of No 1 overall.
10. I note generous glazing to the front of The Mews which would provide an alternative source of outlook and light for the kitchen/living area of No 1, but the orientation of this glazing facing north may restrict access to sunlight. While I therefore consider that there would remain acceptable outlook for the kitchen/living area, the position in respect of natural light is less clear and I do not know from the submitted evidence that any loss of light to this room would not be harmful. Furthermore, occupiers may spend less time in the bedroom than the kitchen/living area, but it is still a habitable room and the window facing the appeal site provides the sole source of outlook and natural light for that room.
11. I appreciate that the PA was approved without windows to the side of No 1. However, the relevant provisions at that time included no requirement to consider the provision of adequate natural light in all habitable rooms which is

now a condition, and the PA approval is not therefore compelling evidence that the windows do not contribute to occupiers' quality of life. The windows are now present and lawful and while they may not benefit from any 'Right to Light' easement, I nevertheless consider them to contribute to the living conditions of occupiers of No 1, even with the existing timber panels on the appeal site in place.

12. Some compromises in living conditions may be reasonably expected by residents in town centre locations such as this. However, the development would be exceptionally close to the windows of No 1. The proposal would be highly imposing and would essentially eliminate any potential for meaningful outlook from the windows. I have further been unable to determine that it would not also cause a harmful loss of light. In my assessment, there would be significant harm to the quality of the living conditions offered by the bedroom and I cannot rule out further, albeit limited, harm to the kitchen/living area through loss of light. The combination of these factors leads me to find that there would be notable detriment to living conditions for occupiers of No 1. This would occur even in comparison to the claimed fallback position.
13. For these reasons, I conclude that the development would cause unacceptable harm to the living conditions of the occupiers of 1 The Mews. I acknowledge that neighbours have not objected to the proposal, but the harm that I have identified would be permanent and would result in conflict with Policy TD1 of the Local Plan Part 1 2018 and Policies DM1 and DM5 of the Local Plan Part 2 2023. Amongst other things, these policies seek to ensure safe and attractive environments that meet the needs of users and development that avoids harm to the amenity of occupants of nearby buildings and residences.

Other Matters

14. The appeal site is located within the Godalming Conservation Area ('the CA') and there are listed buildings nearby, in particular at 1 High Street, 7-11 High Street and Caswell House 6 Wharf Street ('the LBs'). I have therefore considered the proposal in accordance with sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Broadly, these sections require special regard to the desirability of preserving listed buildings and their setting and special attention to the desirability of preserving or enhancing the character or appearance of the CA.
15. Godalming developed as a rural industrial market town, and the CA is focused around the compact historic core. Buildings here vary in age, scale and architectural style but many are historic and often well-preserved. Street frontages are typically tight-knit which provides for a strong sense of enclosure, although there are open yards to the rear of some buildings. In my view, this pattern of development together with the quality of the buildings contributes positively to the character and appearance of the CA and thus its significance.
16. From the information before me, the special interest and significance of the LBs derives in large part from the intrinsic architectural and historic interest of the buildings themselves. This interest can be appreciated principally from the High Street and The Wharf, although there are some views of the rear of these buildings from the appeal site and surrounds, including of a rear gable to Caswell House, which make some contribution to their significance.

17. The proposal would be appreciable in views from the pedestrian route between the High Street and the Queen Street car park which runs past the site as well as in some views that currently take in the rears of nearby LBs. Nevertheless, following amendments made during the course of the application, the Council considers that the proposed building would be of appropriate design and quality and would not harm the significance of any heritage assets. Based on my observations and the evidence before me, I agree and I am satisfied that the character and appearance of the CA as a whole and the significance of nearby listed buildings would be preserved. However, while I accept that the informal parking taking place on the appeal site currently adds little to the appearance of the area, the site is part of one of the yards that are characteristic within the CA. Although a building to the rear of frontage development might not be uncharacteristic, I consider that any overall enhancement to the CA offered by the design or materials of the development would be negligible.

Planning Balance

18. In accordance with objectives in the National Planning Policy Framework and development plan seeking the effective use of land and support for town centres and economic growth, the proposal would make use of a town centre site, providing new flexible business space. The appellant suggests that the building might be utilised by smaller companies, and I note specific support in the Local Plan and the Godalming and Farncombe Neighbourhood Plan 2019 for small and medium enterprises and the provision of small units. Construction jobs and expenditure, as well as expenditure by future occupiers, would also offer an economic benefit and could offer support for local services. Although I give significant weight to these benefits, the very small scale of the proposal means that I consider them to be limited. Benefits during construction would further be short-term.
19. While I attach considerable importance and weight to the desirability of preserving or enhancing the character or appearance of the CA, I have found above that any enhancement resulting from the proposal would be negligible.
20. I recognise that neighbours have not objected to the proposal, but I have already noted that the identified harm would be permanent. The lack of objections does not offset the harm and is a neutral consideration in the balance.
21. On the other hand, I have found on the basis of the evidence before me that there would be unacceptable harm to living conditions for the occupiers of 1 The Mews. I give this harm significant weight, and I find that even taken together, the benefits of the proposal would be insufficient to outweigh the harm and the resulting conflict with the development plan.

Conclusion

22. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR