



Appeal Decision

Site visit made on 6 March 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

Appeal Ref: APP/B3410/W/23/3327812

188 Waterloo Street, Burton upon Trent, Staffordshire DE14 2NQ

- 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 Raheel Fayyaz against the decision of East Staffordshire Borough Council.
 - The application Ref is P/2022/01325.
 - The development proposed is described as the “change of use of first floor to create additional 2 apartments.”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party’s interests would be prejudiced by my taking this approach.
3. The description of development in the banner heading above has been taken from the original planning application form. However, while the description states that two apartments are proposed, the submitted plans show four apartments. The Council’s amended description reflects the number of apartments as shown on the submitted plans. I have considered the appeal on this basis.
4. At the time of my site visit works were being carried out. The fenestration within the building as it exists does not accord with the existing plans. For clarity, I have considered the appeal based on the development applied for and the plans submitted with it, which for the avoidance of doubt were amended during the application process and received on 5 May 2023.
5. Although the Council state that they understand that no external alterations are proposed, the fenestration differs between the existing and proposed plans. I am required to deal with the application based on the plans submitted.
6. The appellant submitted a Flood Risk Assessment (FRA) with the original planning application. As this related to a previous scheme an addendum to the FRA was submitted to the Council. While I cannot be certain the FRA and the addendum have not been subject to wider publicity, these are technical documents which do not alter the location or nature of the scheme which was subject to wider publicity. In any event, the Council have had opportunity to

comment on the FRA and the addendum. As such, interested parties have not been unduly prejudiced by my acceptance of this technical evidence.

Main Issues

7. The main issues are:

- the effect of the proposed development on the living conditions of future occupiers, with regard to outlook and the provision of outdoor space,
- the effect of the proposed development on flood risk, and
- whether the proposed development comprises an appropriate housing mix.

Reasons

Living conditions

8. The appeal scheme seeks to provide four residential units, comprising of two 2-bedroom units and two 3-bedroom units. A total of seven bedrooms across the appeal scheme would be served by rooflights only, including bedrooms 1 and 2 in Flats 1, 2 and 4 and bedroom 2 in Flat 3.
9. While the rooflights would be of a good size and would provide adequate natural light and views upwards of the sky, due to their location and height within each respective room, they would provide very little direct outlook for future occupiers of the appeal scheme. Moreover, bedroom 1 within flat 3 would not be served by any windows and, as such, this layout would provide no outlook for future occupiers. Consequently, the proposed layout would result in unacceptable living conditions for future occupiers.
10. The proposed kitchen and lounge area within flat 3 is served by two windows. The rear window, due to its recessed location, would provide restricted outlook for future occupiers. However, a second window serving this room would be located on the side elevation of the building in an unobstructed location. As such, this second window would ensure that future occupiers are provided with an acceptable outlook.
11. The appellant contends that the land to the rear of neighbouring buildings is not used for residential purposes, nor would there be any direct overlooking due to window positions. They contend that no domestic properties would have their amenity compromised and clear glazing would be sufficient. However, I am required to deal with the appeal based on the plans submitted and the layout proposed.
12. There is an extant planning permission¹ for retail storage and staff facilities, including canteen, at the appeal site, which the appellant contends approves the use of the building for a habitable room. The information submitted indicates that the extant permission relates to development ancillary to the main retail use of the site, whereas the appeal scheme comprises four independent residential units. Moreover, as the Council contend the extant permission does not include a habitable room, they secured obscure glazing to side windows. Therefore, the extant permission is not directly comparable, and I have considered the appeal on its own merits.

¹ Planning permission reference P/2021/00938

13. An appeal decision² has been drawn to my attention. The Inspector in this case concluded that a rooflight serving a bedroom would provide sufficient outlook for future occupiers, as it was of a height that most people would be able to look directly out of when standing. In this current appeal, the rooflights proposed are of a height in which most people would not be able to look directly out of when standing. As such, this case is not directly comparable, and I have therefore considered the appeal on its own merits.
14. The Separation Distances and Amenity Supplementary Planning Document October 2019 (SDASPD) requires that new apartments and flats should achieve communal amenity areas with 10 square metres per unit. However, the SDASPD excludes apartment developments resulting from conversions from this requirement as generally they do not have sufficient space to facilitate this.
15. While the appeal site has limited outdoor space, there is sufficient space to accommodate bin and bicycle storage. Having regard to the SDASPD and noting that the appeal scheme comprises the conversion of an existing building, the lack of an outdoor amenity area would not materially harm the living conditions of future occupiers in this instance.
16. Notwithstanding my conclusions in respect of the provision of outdoor space, the proposed development would provide unacceptable living conditions for future occupiers, with regard to outlook. This is contrary to Policies SP1, SP24, DP1 and DP3 of the East Staffordshire Borough Council Local Plan 2012-2031 Adopted 2015 (LP), Policy HD2 of the Made Shobnall Neighbourhood Plan 2017-2031 June 2018 (NP) and the guidance within the SDASPD. Collectively, these seek, among other things, to ensure that development proposals are designed to protect the amenity of future occupiers and achieve sufficient garden spaces. The proposal is also contrary to the Framework which seeks to ensure a high standard of amenity for future occupiers.

Flood risk

17. The appeal site is located within Flood Zone 2. In such areas, paragraph 173 of the Framework requires applications to be supported by a site-specific-flood-risk assessment. It further advises that development should only be allowed in areas at risk of flooding if certain criteria can be satisfied. The FRA addendum confirms that the flood risk vulnerability classification for the site would be raised from less vulnerable to more vulnerable.
18. The Framework establishes that applications for some minor development should not be subject to the sequential or exception tests. According to footnote 60 of the Framework, this includes changes of use, such as the appeal scheme.
19. The FRA addendum outlines a number of flood proofing and mitigation measures including flood resistant design measures and signing up to a flood warning system. In principle, I see no reason why such measures could not be suitably agreed and controlled.
20. However, while the FRA addendum seeks to demonstrate a safe route of access and egress, the evidence indicates that the site and its immediate surroundings all lie within Flood Zone 2. Therefore, while no objections have been reported from the Lead Local Flood Authority or the Environment Agency, future

² Appeal decision reference APP/W4324/W/21/3288925

occupiers of the proposed residential units would not be able to escape the building during a flood event and risks remain in ensuring that people are not trapped inside the building during such an event.

21. Therefore, while the FRA addendum indicates that a visual check by a tenant would be carried out, it would, nevertheless, be unlikely that the exit routes would be viable during a flood event and there would be no safe access and escape route, contrary to paragraph 173 of the Framework.
22. For these reasons, I am not satisfied that the proposed development is within a suitable location having regard to flood risk. As such, it is contrary to LP Policies SP1 and SP27 and the Framework, in so far as they relate to flood risk.

Appropriate housing mix

23. LP Strategic Policy 16 requires residential development in the main towns to provide an appropriate mix of dwellings, having regard to the mix required in that part of the Borough according to the Council's evidence base or other evidence.
24. The supporting text to LP Strategic Policy 16 states that the mix of mainstream market housing required in different parts of the Borough is identified in the Housing Choice Supplementary Planning Document March 2023 (HCSPD).
25. NP Policy HD3 states that new housing development should deliver an appropriate mix of housing types and sizes to meet the needs of current and future Shobnall residents. This policy highlights Shobnall's particular housing needs, which include starter homes and homes suitable for young families.
26. The appeal scheme would be located via a long pedestrian access route from the highway and is served by a long corridor within the building. Furthermore, a staircase would provide access to the first floor. These access arrangements would be particularly difficult for families with young children and prams and the elderly to negotiate.
27. However, there is limited substantive evidence to demonstrate that the proposed access arrangements would restrict the use of the proposed residential units as starter homes. Moreover, I have already concluded that the lack of amenity space is not a concern in respect of living conditions. Therefore, the proposed development would, in principle, be suitable as starter homes, as required by NP Policy HD3. In view of this, there is no requirement for the appellant to provide evidence to support this type of housing.
28. As a guide, the HCSPD requires 15% of housing to be 2-bedroom houses and 29% to be 3-bedroom houses. The appeal scheme would result in 50% of the development comprising 2-bedroom units, with the remaining 50% comprising 3-bedroom units.
29. The HCSPD states that each scheme will be subject to differing circumstances and that the percentage splits will be used as a guide. It further highlights that while the percentages will not marry up exactly to a proposal, they should be within a few percentage points of it in each category wherever possible.
30. However, the Council's delegated report acknowledges that the circumstances of the appeal proposal is such that the site constraints may not be appropriate to accommodate older people or provide 4 and 5-bedroom dwellings.

31. Having regard to this and the guidance within the HCSPD, the appeal scheme would, nevertheless, still provide a mix of housing. In view of the particular circumstances of this case and the site constraints, this mix is considered acceptable in this instance.
32. In conclusion, the proposed development would comprise an appropriate housing mix, in accordance with LP Policy SP16 and NP Policy HD3, as set out above. It would also comply with the Framework, which seeks to ensure an appropriate mix of housing types for the local community.

Other Matters

33. The proposed four residential units would contribute towards the identified housing needs of the area and support the Government's objective of significantly boosting the supply of homes. The site is well located, with good access to services, facilities and transport within and throughout Burton upon Trent, thereby providing alternatives to private car travel. The development would also give rise to some economic benefits during the construction phase and provide support to local businesses and services through additional consumer spending. While these benefits weigh in favour of the proposal, given the scale of the appeal scheme, even cumulatively these benefits attract limited weight.
34. The appellant contends that they could apply for the change of use under Class MA, as a fallback position. However, no further details have been submitted. Additionally, there is little before me that the alternative suggested is a greater than theoretical possibility or, that if the appeal is dismissed, it would be pursued. Consequently, I find the suggested fallback position to have limited weight in the determination of the appeal.
35. The appellant has highlighted that the principle of the development is acceptable, there are no technical objections from consultees, or any ecological or landscape constraints, that the proposal would not result in loss of land designated for another use, nor would it affect a heritage asset. In addition, the appellant asserts that the proposal would make use of an area which is no longer viable to use in association with the retail use, that it would fit in with the character and density of development in the area, including the proposed materials, and would not impact on highway safety. These aspects are neutral matters in the planning balance.

Conclusion

36. For the above reason, I conclude that while the appeal scheme would not harm the living conditions of future occupiers, with regard to the provision of outdoor space, and would comprise an appropriate housing mix, the harm I have identified in respect of the living conditions of future occupiers, with regard to outlook, and flood risk is determinative.
37. Therefore, the appeal proposal would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. Consequently, I conclude the appeal should be dismissed.

S Pearce INSPECTOR