



Appeal Decision

Site visit made on 21 July 2024

by A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI
an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal Ref: APP/Q0505/W/24/3337163
104A Mill Road Cambridge CB1 2BD

- 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 Lekraj Gharu against the decision of Cambridge City Council.
 - The application Ref is 22/03677/FUL.
 - The development proposed is Alteration to existing maisonette, addition of dormers to second floor, first-floor rear extension and ground floor rear extension to form 3no 1 bedroom self-contained flats.
-

Decision

1. The appeal is dismissed

Main Issues

2. The main issue is whether the development would afford acceptable living conditions to occupiers having regard to the impact of adjoining uses and means of access.

Reasons

3. The appeal site includes an existing 3-bedroom duplex apartment which sits above a ground floor shop unit on Mill Road, together with the rear yard of that property through which the development of three additional one-bedroom flats, including an altered version of the existing dwelling, would be accessed, that being approached from a driveway at the rear of the frontage buildings¹. The development would be configured at ground level to provide one single bedroom flat with small outdoor amenity space together with parking and access to the retained ground floor commercial unit². A communal stair to first floor level would lead to the entry point to the retained three-bedroom maisonette which sits at the front of the building and two further one bedroom units. One of these units³ sits between the other apartments at this level and, as a result is provided with daylight and access to open air solely from a small enclosed patio area⁴ which adjoins the boundary with the adjacent restaurant. It is the living conditions for occupiers of this central first floor unit⁵ to which I will turn in due course.

¹ The access drive appears to be in shared use by 90-104 Mill Road (even Nos.) but in some cases it is not clear whether this provides rear access to both ground floor commercial and upper floor uses (which are residential)

² Including parking and service area, bin storage

³ Referred here as the 'central' flat

⁴ The bathroom has a rooflight

⁵ Although the appellant allocates numbers to the flats, these are not made clear on the drawings.

4. The appellant indicates the frontage buildings along Mill Road west of the site contain around some 17 apartments including the existing unit on the appeal site. This character of development, with ground floor frontages in commercial use and apartments above, continues east of the appeal site along Mill Road to the junction with Devonshire Road. A public house on that road then abuts the eastern boundary of the appeal site including apparently habitable accommodation. The proposal would therefore be in an area with residential accommodation well established on upper floors around it.
5. Mill Road is defined as a local centre with a mix of neighbourhood service uses, these include 'Curry Queen', a restaurant that occupies the ground floor of No.106 Mill Road such that its kitchens within a flat roofed extension and the associated extraction equipment abut the eastern boundary of the appeal site. The extraction ducts are fixed to the end wall of its two-storey outrigger which also contains related ventilation equipment at upper roof level at a point which is on the boundary with the appeal site close to the proposed amenity space for the 'central' first floor flat.
6. The kitchens were occupied by staff of the restaurant at the time of my visit and whilst I was not aware of noise or fumes emanating from this equipment at that time, this was a Sunday afternoon and cannot be indicative of what might be experienced at other, busier times.
7. In response to concerns of the Council as to the impact of noise or fumes emanating in proximity to the proposed development, the appellant has conducted an assessment⁶. That assessment does not attempt to address concerns as to odour emanating from the kitchen extract but, notwithstanding the general ambient noise level in the area, did identify the extract plant associated with Curry Queen was the main source of noise at the site, running intermittently and, due to proximity, likely to adversely affect the upper floors of the proposed development. Although the appellant puts this forward as a worst-case scenario, it is admitted that the most effective response to the potential for unacceptable noise, vibration or odour impacts would require the Curry Queen ventilation plant to be improved.
8. The appellant indicates it would not be possible to mitigate noise at source because the originating equipment is outside the application site boundary and not under the control of the appellant. Therefore, measures within the site boundary by use of enhanced elevational treatments and glazing specification supplemented by mechanical ventilation for use at times when windows are closed due to external noise, are proposed. It is to the likely effectiveness of these measures with regard to likely living conditions I now turn.
9. The appellant suggests that windows could be opened and closed by occupiers such that there would not be a total reliance on mechanical ventilation because the equipment is used intermittently between 7pm and midnight, which are the opening hours of the Curry Queen indicated by the appellant. However, I have not been provided with any evidence⁷ providing reasonable certainty as to the duration of operation over a typical day or to the effect that the ventilation plant might not, at the whim of operator, run continuously or to a later hour.

⁶ 104 Mill Road Cambridge Acoustic Assessment by Create Consulting Engineers Limited Nov 2022.

⁷ Whether the stated hours are controlled by planning condition for instance

10. The appellant suggests that the operation of the ventilation equipment would be intermittent such that windows could be left open, however these measures proposed would place occupiers of the central first-floor flat⁸ in the invidious position of closing doors and windows according to an unknown or unpredictable regime of operation of the neighbouring kitchen. Further, I have nothing before me that suggests that occupiers might not, thereby, be reliant upon mechanical ventilation for very long periods of time. Whilst such arrangements are commonly applied to individual non-habitable rooms such as bathrooms, what is before me does not indicate that adequate access to open air for occupiers at times when this might be a reasonable expectation, such as when going to sleep or on hot afternoons, would be met.
11. It is also material that the mitigation proposed does not address the suggested problem of odour emanation from the adjacent kitchen. Noting also that the proposal would appear to require the glazed enclosure of the central flat's 'outdoor' space, all habitable rooms would open off this amenity area raising health concerns having regard to the risks of overheating of living accommodation in times of climate change.
12. I have considered whether the proposal could be made acceptable in planning terms by the application of conditions, however, the drawn information provided is insufficient to provide reasonable certainty that mitigation is possible within the scope of the design proposed. Overall I find the proposal conflicts with Policy 35 of the Cambridge Local Plan 2018 (CLP) which seeks to ensure adverse impacts from noise and vibration are minimised by appropriate reduction and/or mitigation measures and with Policy 36(b) of the CLP which seeks to protect users from sources of odour and poor air quality.
13. The Council's second refusal reason states that the proposal would conflict with Policy 51 of the CLP and in the officer report suggests that the new units would not have lift access 'due to the cramped nature of the development'. Policy 51(a) of the CLP states that Building Regulations requirement M4(2) 'accessible and adaptable dwellings' should be achieved for all new dwellings. M4(2) does not *require* lifts to be provided. The Council appear to have conflated Regulation M4(3) referred to in Policy 51(b) in which wheelchair accessibility to a proportion of larger schemes is a requirement. The proposal includes a communal stair and the Council has not demonstrated that the relevant Building Regulation standards in relation to access could not be met.

Other Matters

14. The building is a building of local interest and falls within the Cambridge Central Conservation Area (CCA) but is contextualised by a series of rear yards to the main frontage buildings which make little positive contribution to the conservation area as a whole lacking any greening or softening and displaying a variety of ancillary structures, surfacing and boundary treatments. Views into this area from Barnabas Road, and Devonshire Road which are more limited, are of an urban roofscape consistent with nineteenth century development patterns associated with 2-3 storey buildings, revealing paired rear outriggers, traditional chimney stacks and dormer windows arranged irregularly upon pitched slate roof surfaces.

⁸ And possibly others

15. The design proposal demonstrates command of the problems that an insertion of residential units into an established urban area pose in ensuring access to daylight and avoiding overlooking, making good use of under-used land in a sustainable location. The complexity of form and use of materials would not be inconsistent with what is currently found and, from most available viewpoints, would make a positive contribution to the character and appearance of a neglected part of the CCA. What is proposed could be, subject to detailing and materials, a high-quality design response to the site and its constraints albeit a response which has been unable to successfully ensure acceptable living conditions for occupiers with respect to risks of noise and odour because of the particular nature of adjoining uses. Having regard to the general duty set out in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I find that the proposal would preserve or enhance the character and appearance of the CCA.

Conclusions

16. I have found significant conflict with the relevant policies of the CLP having regard to sources of noise and vibration and to likely sources of odour in close proximity to the site. Although I have concluded that the second refusal reason is ill-founded also that the proposal would not harmfully detract from the character and appearance of the area or the CCA, these aspects of the proposal cannot outweigh the harm I have identified in that the proposal would not afford acceptable living conditions to occupiers of the accommodation proposed and on that basis, would conflict with the development plan as a whole. Consequently, for the reasons given and taking all matters raised into account, the appeal cannot succeed.

Andrew Boughton

INSPECTOR