



Appeal Decision

Site visit made on 17 and 25 September 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2024

Appeal Ref: APP/V4630/W/24/3344913

55 Midland Road, Walsall WS1 3QQ

- 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 M Miah against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 23/0921.
 - The development proposed is Proposed Development of First Floor to Provide 4 N° 1 Bedroom and 4 N° 2 Bedroom Apartments.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted amended plans as part of the appeal, which seek to reconfigure the floor plans for units 3 - 8. The appeals procedural guide¹ makes it clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Having regard to the principles established in Holborn Studios Ltd², in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
3. The amendments would substantially alter the floor plans for units 3 - 8, when compared to those upon which the Council made its decision. This is a material matter affecting the determination of this appeal. Additionally, the changes have not been consulted upon. Therefore, I find that neither part of the necessary test set out in the relevant case law has been satisfied and so I will not accept the amendments. Accordingly, I have determined the appeal having regard to the same proposal and plans on which the Council made its decision.

Main Issues

4. The main issues are:
 - whether appropriate living conditions would be provided for the future occupiers of the proposed development, with particular reference to daylight, noise and disturbance; and

¹ Procedural Guide: Planning Appeals – England (2023)

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823

- whether the proposal would provide acceptable parking arrangements.

Reasons

Living conditions

5. The appeal site is occupied by a two storey building located on the edge but within Walsall Town Centre. The road has a commercial character comprising a range of buildings in various uses. In particular, the appeal building is located in between a vehicle repair garage on one side and a manufacturing warehouse on the other side. There is also a large office building located opposite.
6. The ground floor of the appeal building is occupied by a snooker hall and commercial kitchen / restaurant, with the first floor used as storage space. The proposals seek the conversion of the first floor of the building to eight residential apartments.
7. Policy AAPLV1 of The Walsall Town Centre Area Action Plan (AAP), amongst other things, seeks to encourage residential development within the town centre, so that high quality design and living environments are created, with sufficient protection from noise pollution. Policy GP2 of the Walsall Unitary Development Plan (UDP) amongst other things, also seeks to ensure that development makes a positive contribution to the quality of the environment, that would not be susceptible to pollution.
8. The appeal site, due to the adjoining car repair garage and other neighbouring commercial buildings and land, is susceptible to noise nuisance. Indeed, although during my initial site visit the noise environment on this part of Midland Road was relatively quiet, noise from the car garage was audible from the appeal site. Furthermore, noise from various commercial uses, including the repair garage, as well as comings and goings from vehicles to the offices opposite, was more readily apparent, during my second visit.
9. The windows of habitable rooms of each apartment would be within close proximity to the neighbouring commercial properties. Therefore, while it is suggested that the neighbouring premises operate from 9am to 5pm Monday to Friday and are closed during the weekends, there is no certainty that this would remain the case in perpetuity or that future occupiers of the apartments would not be at home during these times.
10. During summer months, when the weather is warmer and at a time when future occupants may wish to have their windows open, the commercial units are likely to cause noise and disturbance to the future occupiers. This is likely to lead to conflict between future occupants and the existing businesses.
11. There is no acoustic report before me, and I have no objective means of quantifying the noise impacts of the use of the commercial buildings across the day and at night. The appellant has also not proposed any means of noise attenuation measures, if any, to be incorporated into the design of the building.
12. While I acknowledge that there are other residential properties along the road, including 19 Midland Road, it is not known what measures, if any, were incorporated into those developments to minimise the effect of noise and disturbance on the occupiers of those dwellings.

13. My attention has also been drawn to existing developments on Bradford Street nearby, which appear to comprise residential accommodation on the upper floors of buildings, within commercial area's. However, the full details of these cases have not been provided. In particular, it is not known whether any restrictions are in place to mitigate the impact of those commercial developments on the living conditions of neighbouring occupants. In any event, the issue of noise is highly fact sensitive and site specific, turning on the individual circumstances of each case. Therefore, whilst there may appear to be some similarities, these other schemes, including those on Midland Road, have not eased my concern that harm would arise in this case.
14. The bedroom windows of flats 3 - 8 have an outlook over the neighbouring vehicle repair garage building. However, the main part of the roof of the garage building is set away from the windows. It also has a shallow roof pitch which slopes away from the windows. As such, due to the juxtaposition of the windows with the neighbouring building, as well as their orientation, there would unlikely be a significant loss of daylight to the habitable rooms of flats 3 - 8.
15. For the above reasons, I conclude on this main issue that, whilst no significant harm would be caused to the living conditions of future occupants with particular reference to daylight, on the evidence before me, adequate living conditions would not be created for future occupants of the proposed development, with particular reference to noise and disturbance. Overall, the proposed development would thereby conflict with Policy AAPLV1 of the AAP and Policy GP2 of the UDP.

Parking

16. Parking provision for seven vehicles is proposed at the rear of the building for future occupants of the apartments. In addition, a large proportion of Midland Road allows on-street parking, which is commonplace on both sides of the road.
17. The rear yard area of the appeal site is relatively narrow and while parking spaces could be provided there would be limited opportunity to manoeuvre within the site. As such, the Local Highways Authority raise concerns about the proposed parking arrangements. Nevertheless, they suggest that the proposal could function better without the impractical rear parking area, on the basis of the site's proximity to the town centre, public transport links, and available on-street parking.
18. The appeal site has access to a wide range of services and amenities on foot and by bicycle, as well as public transport opportunities nearby. Therefore, future occupiers of the proposed development would be encouraged to use alternative modes of transport, as opposed to a reliance on a private motor vehicle. Therefore, I am satisfied, on the evidence before me, that dedicated on-site parking provision, would not be necessary.
19. The Council has suggested a condition which secures the submission and approval of a plan to show revised access, parking, and servicing layout arrangements, as well as the provision of the approved layout thereafter. The suggested condition would secure a suitable layout for the rear yard area so as to meet the needs of the future occupants. As such, I am satisfied that such a condition would meet paragraph 56 of the National Planning Policy Framework

(the Framework). Provision for cycle storage could be secured by a suitably worded planning condition also. This would further encourage sustainable modes of travel.

20. For these reasons, and subject to suitably worded conditions, I conclude on this main issue that the proposal would provide acceptable parking arrangements. As such, the proposal would not conflict with Policy AAPLV1 of the AAP and Policies T7 and T13 of the UDP. Amongst other matters, these seek to ensure that development is high quality and desirable and that an adequate level of car parking is provided.

Other Matters

21. The development would provide benefits through the delivery of additional residential accommodation in an accessible town centre location, which would contribute towards the government's objective to significantly boost the supply of housing, as set out in the Framework. Social and economic benefits to local services during the construction and occupancy phases would also be a result of the proposed development. However, the benefits would be limited by virtue of the modest scale of the proposal. Therefore, the benefits would not outweigh the identified harm that would be caused to the living conditions of the future occupiers of the apartments from noise and disturbance.

Conclusion

22. For the reasons given above, I have found that the proposed development would conflict with policies contained within the development plan. Whilst it may not conflict with other policies, I consider that it would conflict with the development plan as a whole. I have found no other material circumstances that would outweigh that conflict. As such, I conclude that the appeal should be dismissed.

N Bromley

INSPECTOR