



Appeal Decision

Site visit made on 22 May 2024

by N Kempton BAHons, PGDip, MA, IHBC, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2024

Appeal Ref: APP/W0734/W/24/3339802

J H Proudlock Limited, Emerson Street, Middlesbrough TS5 6JF

- 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 Messrs Sadiq & Finnegan against the decision of Middlesbrough Council.
 - The application Ref is 23/0291/FUL.
 - The development proposed is change of use of existing former Crombie's site (Use Class Sui Generis) to Use Class B2 & B8 including demolition of existing buildings and the construction of a larger building to form 6 units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my site visit, the existing buildings had been partially demolished with the roof and some of the walls removed. Construction of the new internal walls of the new units appeared to have commenced but were not complete. I have therefore determined the appeal on the basis that the scheme is partially retrospective. For the avoidance of doubt, my determination of the appeal is based on the plans submitted and not on the works as constructed.
3. I was able to assess the proposal from within the rear gardens of neighbouring properties at 40 Cumberland Road and Nos 24, 26 and 28 Canterbury Grove, at the prior written request of the Council.

Main Issues

4. The main issues relevant to this appeal are the effects of the development on:
 - the safe operation of the highway in the vicinity of the site; and
 - the living conditions of the occupiers of neighbouring properties on Canterbury Grove, with particular reference to outlook.

Reasons

Highway safety

5. The appeal site is located on the east side of Emerson Street, south of the junction with Stonehouse Street. It is within an industrial area, which is characterised by a varied mix of ageing and poor-quality commercial premises. The site previously operated as a builders' yard. Single-storey buildings are

sited to the north side of the site. A storage/distribution unit is attached to the south side and K2 Cash and Carry retail unit to the front of the site, which has an apartment located above. The rear wall of the appeal site forms the rear boundary wall of residential properties on Canterbury Grove.

6. The sections of Stonehouse Street and Emmerson Street that bound the appeal site are not adopted as highway and as such, are outside the control of the Local Highway Authority. The adopted sections of Stonehouse Street and Emmerson Street are not subject to waiting restrictions. Footways flank both sides of the street, but these are narrow and in most places the kerb is almost flush with the carriageway. I observed on site that it is common practice in the area for vehicles to park partly on the footway. As a result, in places pedestrians must walk on the carriageway.
7. The development does not make provision for a servicing or turning area within the site boundary. Rather, the 6 additional units occupy the entire site. Vehicles delivering/collecting goods would need to do so from within the street. Whilst this arrangement is consistent with many of the other units in the locality, including the adjacent units, the former use of the appeal site as a builder's yard did accommodate on-site servicing. This change represents a loss of on-site servicing capability.
8. Given the lack of any servicing area at the proposed units, parked vehicles associated with the development, loading and unloading from vehicles in the road, and refuse collection vehicles, would restrict access and depending on positioning and size of vehicle (which is likely to include heavy goods vehicles) could cause an obstruction and add to the existing congestion in the vicinity.
9. Parking provision would be provided in the former Crombie's site, a compound adjacent to the site. Servicing could be conducted in the compound too. However, this compound is separate, and a distance away, from the new units. For these reasons, the provision within this compound may be less apparent to, and less convenient for, visitors. Therefore, by implication, parking and servicing in the highway may become the default position in practice, to the detriment of the safety and capacity of the highway.
10. My attention has been drawn to an allowed appeal¹ relating to an extension to the K2 Cash and Carry retail unit. The Inspector in that decision was satisfied that the proposal would be unlikely to result in a significant increase in vehicle movements. The retail unit also retained a service yard. Those circumstances are not applicable here, whereby each of the additional units would need its own servicing provision, despite not having any space on site for such. Even if traffic generation for each unit is modest, cumulatively the adverse effect on the safe and efficient operation of the roads in the vicinity of the site would be significant. As such, I am unable to draw any direct parallels between these appeal sites.
11. It is acknowledged that the appeal site is accessible by public transport and that the road width, and the presence of parked cars, serve to slow vehicle speeds. These factors help to encourage sustainable transport modes and reduce the risk of collision, but they do not overcome my concern that the development would result in conditions that are prejudicial to highway safety-making an already unsatisfactory situation worse.

¹ Appeal decision reference APP/W0734/W/22/3300442

12. For these reasons, I conclude that the development is detrimental to the safe operation of the highway in the vicinity of the site. It is therefore contrary to Policy DC1(d) of the Middlesbrough Core Strategy (2008)(MCS), which sets out a number of criteria including, amongst others, limiting the impact on existing and proposed transport infrastructure both during and after completion and not having an impact on highway safety throughout the development process.
13. Furthermore, the development would be contrary to paragraph 115 of the National Planning Policy Framework (the Framework), which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Living conditions

14. The utilitarian design of the proposed building is commensurate with other buildings in the industrial area within which it is situated. The rear wall of the proposed building would exceed the height of the rear wall of the former builders' yard by approximately one metre. This wall is on the shared boundary and forms the rear boundary of residential properties in Canterbury Grove.
15. The rear wall of the building would be constructed of red coursed brickwork, but the upper courses of which would be rendered in a cream render. The appellants contend that this material finish is intended to reduce the visual impact on the occupiers of neighbouring dwellings in Canterbury Grove. Brick is the predominant building material in the immediate vicinity. The use of render would be a departure from the locally distinctive material palette and as such would be a contrast which would assume visual prominence, to the detriment of the outlook of the occupiers of the neighbouring properties.
16. I observed outbuildings and some trees in the rear gardens of the neighbouring properties, which serve to reduce the visual impact of the wall. However, the vegetation and garden structures are insufficient to mitigate the harmful effect of the significant increase in the height of the wall. Given the modest size of the rear gardens and the proximity of the dwellings in Canterbury Grove to the rear boundary wall, the development would be unduly high along the shared boundary, to the detriment of the outlook of neighbours.
17. The proposed building would have a pitched roof. Whilst it is noted that the ridge height would be lower than the attached building to the south, the eaves height of the proposed building, albeit single-storey, would be comparable to the eaves height of the two-storey houses in Canterbury Grove and the roof form of the building, rising above the boundary wall, would increase the overall perceived height as viewed from the adjoining properties, adversely affecting the occupiers' outlook.
18. For these reasons, the additional height and materials of the wall would change the outlook to the detriment of the living conditions of the occupiers of these neighbouring properties. I conclude, therefore, that the development is contrary to Policy DC1(c) of the MCS, which is a general development policy, which aims to ensure that all development is of high quality. It requires all development proposals to take account of, or satisfy, as a minimum a number of principles, including: (c) the effect upon the surrounding environment and

amenities of occupiers of nearby properties will be minimal both during and after completion.

19. The development is also contrary to paragraph 135(f) of the Framework, which states that development should create a high standard of amenity for existing and future users.

Other Matters

20. I have taken account of the fact that the application was recommended for approval by officers but have considered the proposal on its planning merits and found it to be unacceptable.
21. The increased height of the rear wall would affect sunlight and daylight penetration to the rear gardens of the neighbouring properties in Canterbury Grove. The high wall would restrict light to the bottom of the gardens in late afternoons and evenings, the effect of which would be more apparent during winter months. It is acknowledged that the orientation of the proposed building in relation to the neighbouring properties would help mitigate this harm, in part and it would not, therefore, justify dismissing the appeal.
22. The rear wall of the proposed building would be a solid wall without any openings. Therefore, it is accepted that there would be no impact on the privacy of the neighbouring occupiers. Furthermore, guidance in the Middlesbrough Urban Design Guide SPD (2013) regarding separation distances is noted. Notwithstanding this guidance, I have found that by reasons of the proximity of the dwellings, the increased height of the rear wall and the contrasting materials, in combination, would adversely affect the outlook of the occupiers of the neighbouring properties.
23. It is acknowledged that the design and construction of the proposed building would improve noise attenuation for adjoining residents in Canterbury Grove, relative to the previous use as an open yard. It would also be possible to impose conditions on any approval restricting operating hours and delivery times, further limiting the potential for noise and disturbance. However, whilst these represent benefits, they do not justify the harm to outlook resulting from the increased sense of enclosure.
24. The representations in favour of the development are noted, specifically the benefits of developing the appeal site and returning it to beneficial use, thereby addressing the fly-tipping and anti-social behaviour that the derelict site presently attracts, as well as enhancing the appearance of the site. I attribute moderate weight to these concerns.

Planning Balance and Conclusion

25. I recognise that the development would provide economic benefits including job creation and retention, business opportunities and that it would generate business rates. The employment opportunities would also bring social benefits in an area of higher than average unemployment, contributing to community stability. There would be environmental benefits including bringing a previously developed site back into beneficial use in a sustainable location. However, these benefits would not outweigh the adverse effect of the development on the safety and capacity of the highway and the identified harm to the living conditions of neighbouring occupiers.

26. I conclude that the proposed development is contrary to the development plan when read as a whole, and there are no material considerations to indicate that a decision should be taken other than in accordance with that plan.
27. The appeal is dismissed.

N Kempton

INSPECTOR