



Appeal Decision

Site visit made on 4 February 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th February 2025

Appeal Ref: APP/X2410/W/24/3350289

17 Cheapside, Shepshed LE12 9RE

- 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 Sam Spare against the decision of Charnwood Borough Council.
 - The application Ref is P/23/1287/2.
 - The development proposed is change of use of ground floor Class E to C3 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has referred to the Charnwood Local Plan 2021-2037 Pre-Submission Draft (July 2021) (the Emerging Local Plan) in its Decision Notice. The Emerging Plan has reached an advanced stage of preparation, but it has yet to be adopted. Therefore, whilst not formally part of the development plan, the relevant policies in the Emerging Plan attract moderate weight in my determination of the appeal.

Background and Main Issues

3. While I note the submitted plans show internal and external physical alterations to the appeal building, the description of development on the Application Form relates to change of use only. During the application process the Council invited the appellant to amend the description of development to encompass all of the works proposed but the appellant declined to do so in view of the late stage of the request in the application process. It must be noted that the description of development governs the extent of the permission sought. Moreover, it is used for the purposes of publicity and thus alerting parties to their opportunity to inspect plans and make representations. Accordingly, even though elevational changes were negotiated during the Council's determination of the planning application, my determination of this appeal is based on the description of development given on the Application Form.
4. As a consequence, in the interests of fairness to all parties with a potential interest in the outcome of this appeal, I am unable to consider the planning merits of the external physical alterations that are depicted upon the proposed floorplans and elevations¹. Nevertheless, on the basis that alterations internally would not require planning permission, I have considered the proposed ground floor plan for information purposes as a guide to how internal floorspace would be configured.

¹ Ref: ND.23.198.01 Rev b.

5. The main issues in this appeal are:

- whether or not the proposal would provide acceptable living conditions for the future occupiers of the proposed flat having particular regard to internal space, privacy, light and outlook; and
- whether or not the proposal would provide acceptable living conditions for occupiers of the existing on-site upper floor flat, having particular regard to the availability of outdoor amenity space.

Reasons

Living Conditions – Future Occupiers of the Proposed Flat

6. The appeal site relates to a two storey mid-terraced property within a row of properties of varying height and design fronting Brook Street. The northern end of the terrace, where the appeal site is located, comprises residential dwellings while the southern end contains commercial uses. The upper floors of the property comprise a vacant 3-bedroom flat which is accessed by an alleyway from Cheapside and via a door on the rear elevation of the property into a stairwell. The ground floor is a vacant shop unit. The front elevation includes large shopfront windows with painted lower panes and a recessed door.
7. Policy H3 of the Emerging Local Plan requires all new homes including those resulting from the change of use to comply with the National Described Space Standards (NDSS). The Application Form indicates that the existing gross internal floor space is 52 sq. m. The Council calculates that the ground floor flat would have a total floor area of approximately 45 sq.m. Both figures fall significantly below the NDSS minimum standard for a 2-bedroom 3 person flat which is 61 sq. m. As such, the proposal would not meet the minimum size requirement for a 2-bedroom flat.
8. The appellant has suggested that the number of bedrooms could be reduced if required. However, the procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage. Whilst I note that a 2-bedroom flat is not explicitly referred to in the description of development that has been given, the proposed ground floor plan provides a clear indication that two separate bedrooms are intended.
9. The Council contends that the window of proposed bedroom 2 would have poor outlook and receive little light in part due to its proximity to an outside toilet. Further, it has been contended that privacy would be lost by virtue of existing access arrangements for the upper-floor flat. However, as the proposal only relates to a change of use, the rear elevation as depicted on the proposed plan is not before me for formal assessment. Nevertheless, based on the evidence before me and my own observations, I find that it would be possible to formulate an appropriate window design for bedroom 2 to offer a meaningful degree of outlook and access to light without unduly prejudicing the privacy of future occupiers. For the avoidance of doubt, there is also no clear reason for me to consider excessive noise to this window to be an undue concern. Owing to the discreet nature and anticipated minor scale of physical change(s) necessitated to the building's rear elevation in order to form this new window opening, I am satisfied that the

associated details could be suitably secured via planning condition in the event the appeal be successful. This is even though elevational changes are not formally before me for determination.

10. The existing windows on the front elevation of the building are large. While the lower panes are painted and therefore not transparent, the upper panes are transparent, and it has not been clearly demonstrated that they could be obscurely glazed so as to suitably protect the privacy of future occupiers without unduly prejudicing the availability of outlook. As such, on the basis of the building's elevations as currently comprised, unacceptable levels of privacy for future occupiers would prevail. For the avoidance of doubt, as an acceptable solution would likely necessitate material alterations to the street-facing front elevation of the building, this matter cannot be appropriately or reasonably dealt with via condition
11. For the reasons given, while the proposal would provide acceptable living conditions for future occupiers of the proposed flat having particular regard to access to light, it would nevertheless fail to provide a sufficient amount of internal living space or a suitable standard of privacy to the front of the building. The proposal would conflict with Policy CS2 of the Charnwood Local Plan 2011 to 2028 Core Strategy (November 2015) (the CS) and Policy EV/1 of the Borough of Charnwood Local Plan 1991-2006 (January 2004) (the LP) insofar as they require development to protect the amenity of people who will live in the development.
12. The proposal would also not be in accordance with Policies DS5 and H3 of the Emerging Plan which requires development to comply with NDSS as well as the protection of the amenity of people who live in new development.

Living Conditions – Occupiers of the Existing Flat

13. The appeal site includes a large rear private garden. The existing ground floor plan shows that it would be possible to provide access to the rear garden for occupiers of both the proposed ground floor flat and existing first floor flat on a shared basis as mooted by the appellant. Due to the large size of the garden, and the further possible potential to subdivide to provide separate private amenity spaces, there is no clear reason for me to find that the scheme would have a detrimental impact upon the amenity of occupiers of the on-site upper-floor flat.
14. For the reasons given, the proposal would provide acceptable living conditions for occupiers of the existing on-site upper floor flat, having particular regard to the availability of outdoor amenity space. Hence, the proposal would comply with Policy CS2 of the CS and Policy EV/1 of the LP insofar it they require development to protect the amenity of people who live nearby and provides attractive, well managed and safe private spaces.

Other Matters

15. The appeal site is located in the Shepshed Conservation Area (CA). While not forming a reason for refusal, I must consider this matter in light of my duties under section 72(1) of the Planning (Listed Buildings and Conservation areas) Act 1990 (as amended) (the LBCA). As the external alterations shown on the submitted plan do not form part of the appeal, the proposal would have little effect on the appearance of the CA. Given the presence of existing residential accommodation within the terrace of the appeal site, the proposal would not harm the character of

the CA either. Therefore, on the basis of a pure change of use, the proposal would preserve the character and appearance of the CA, in accordance with the LBCA. I note here that the appellant's comments relating to design, windows and materials are not determinative to the appeal as the proposal relates only to the change of use.

16. The Council's handling of the planning application including communications and the time taken to determine the application are not matters for me to consider any further as part of this appeal. In reaching my decision I have been concerned only with the planning merits of the case.

Planning Balance and Conclusion

17. The Council considers that the proposed change of use is acceptable in principle, and I have no reason to disagree given the site's position between two residential properties.
18. The proposal would deliver one additional dwelling unit, contributing to the area's housing supply and would make use of an under-utilised building. However, given the small scale of the development these benefits would be modest and carry moderate weight in favour of the proposal.
19. The proposal would not provide adequate acceptable living conditions for the future occupiers of the flat by virtue of its insufficient internal space and a failure to demonstrate an acceptable standard of privacy. In this respect, the proposal would not accord with the development plan, when considered as a whole.
20. I find that the adverse impacts of the proposal are matters of significant weight against the grant of planning permission and the material considerations, including the stated benefits, do not indicate that the appeal should be decided other than in accordance with the development plan. For the reasons given, the appeal should be dismissed.

U P Han

INSPECTOR