
Appeal Decision

Site visit made on 19 December 2017

by Nigel Harrison BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 December 2017

Appeal Ref: APP/G4240/W/17/3180988

Onward Chambers, Onward Street, Hyde, Cheshire, SK14 1HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Luben Miah against the decision of Tameside Metropolitan Borough Council.
 - The application Ref: 17/00174/FUL dated 12 February 2017, was refused by notice dated 28 April 2017.
 - The development proposed is conversion of existing building (D1) into one residential property (C3).
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Decision

1. The appeal is dismissed.

Main Issue

2. I consider the one main issue in this case is whether the proposal would provide satisfactory living conditions for the occupiers of the proposed dwelling in terms of the adequacy of the outdoor amenity space.

Reasons

3. The appeal building, which is located in the town centre, was formerly used as offices (Use Class B1), and presently, as an Islamic Resource Centre (D1). Fronting onto Onward Street the building is situated next to the former Theatre Royal. There is a passageway running to the side of the building (included within the appeal site) which is used to provide access to, and egress from, doors in the rear of the Festival Theatre, which is situated behind the appeal building fronting onto Corporation Street. There is a small enclosed yard area within the site between the rear of the appeal building and the rear elevation of the Festival Theatre.
4. It is proposed to convert the building to a five-bedroom family dwelling, and according to Policy RD11 of the *Tameside Residential Design Supplementary Planning Document* (SPD), appropriate outdoor amenity space should be provided commensurate with a family home. Although no minimum sizes are given, I agree with the Council that it needs to be of sufficient size to accommodate a sitting out area and area for children's play, together with space for bin storage and clothes drying. Saved Policy H10 of the *Tameside Unitary Development Plan* (UDP) requires the detailed design of housing and layout to meet the needs of the potential occupiers.

5. The footprint of the dwelling (about 107sqm) would occupy a substantial proportion of the site, leaving about 98sqm of outdoor space. However, this includes the passage way which is used for loading equipment into the Festival Theatre and as an emergency escape route. Even though this may at times be available for use by future occupiers, it would appear that it has to remain free of permanent structures and other obstructions. Taking this into account would leave a residual area of about 58sqm, which would be the only practically useable outdoor amenity space for all purposes.
6. The appellant says the space could accommodate a table and chairs, space for a shed and storage, an area for drying washing, and an area for children to play in. This is an ambitious 'list', and based on my own observations I doubt that it would be achievable in practice. Even if it were possible, the space is enclosed on three sides by tall buildings and would be extremely dark, oppressive and not conducive to outdoor activities such as a sitting out and play. The appellant disagrees, saying the yard would receive sunlight during the morning and natural daylight throughout the day.
7. However, the Council and has undertaken a detailed sunlight path tracking analysis¹. From this the sunlight path trace indicates that at mid-day on a mid-summer's day there would only be direct sunlight at the mid-point along the foot of the wall of the Festival Theatre (the measuring point) between 11.00 and 15.00, with the area being cast in shadow for the rest of the day. Similar calculations at different times of the year indicate that the sun would not rise to an elevation of more than 50 degrees in relation to the measuring point, and so the yard would receive little or no direct sunlight on midwinter day or on the vernal and autumnal equinoxes. For the majority of the year the area proposed to be used as outdoor amenity space would be in shadow.
8. The appellant has referred to the BRE document: '*Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*', and this provides criteria to assess the availability of sunlight to gardens and amenity areas. For an amenity area to be adequately lit throughout the year it says no more than 40% and preferably no more than 25% of any garden/amenity area should be prevented from receiving any sun at all on 21 March (vernal equinox). Drawings have been submitted showing the sunlight path through a gap towards Oldham Street and when the sun is over the low wall next to the appeal building. However, although the appellant says he believes the amount of sunlight reaching the amenity area complies with the minimum requirements in the BRE document, I am not convinced that this is the case. Indeed, the submitted drawings show that well over half of the site (closest to the Theatre Royal) would receive no sun at all on that date.
9. Overall, given the relatively small size of what would be the only outdoor amenity space, the fact that it would benefit from very little direct sunlight, and would be hemmed in and overshadowed by buildings considerably taller than the appeal building, all serve to point to a wholly inadequate and not practically useable facility for a five bedroom house. Although no detailed guidance is given in the SPD about minimum sizes, in my view the amount and the nature of the outdoor amenity space would be wholly inadequate, and would not adequately serve the health or well-being of future occupiers.

¹ Source: sunearthtools.com

10. I therefore conclude on this issue that the proposed dwelling would not provide acceptable living conditions for the future occupiers in terms of outdoor amenity space. I find it would conflict with saved UDP Policies 1.5, H10, and advice in the SPD.

Other Matters

11. The appellant suggests that Policy RD11 of the SPD should not apply as it refers to as it relates to new-build dwellings and not the conversion of existing buildings to residential use. However, the policy itself is clear in stating that all (my emphasis) houses should have amenity space of a size and function suitable for its intended occupants, and houses of 3 or more bedrooms will be considered family homes.

Other Considerations - Housing Land Supply Position

12. The Council cannot demonstrate a five-year supply of deliverable housing sites and this is not disputed. In these circumstances paragraph 49 of *the National Planning Policy Framework* (the Framework) established that relevant policies for the supply of housing should not be considered up-to-date. In turn, the test in the 4th bullet point of Framework Paragraph 14 applies, so that permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
13. There would be a conflict with relevant development plan policies. The UDP dates from 2004, but the weight to be attached to its policies does not hinge on age. Rather, Framework Paragraph 215 makes it clear that weight should be given to existing policies according to their degree of consistency with the Framework. Saved UDP Policy 1.5 says the promotion of sustainable development and quality of life are guiding principles of the Plan, and this will be achieved, in particular, by giving priority to the use of previously developed land in the most efficient way including the re-use of empty or disused buildings. I find no inconsistency with paragraph 51 of the Framework, which says local planning authorities should identify and bring empty housing and buildings back into residential use.
14. Indeed, the principle of residential use is not disputed by the Council. It is the type of residential use and the acceptability of living conditions for future occupiers which are considered unacceptable. Saved UDP Policy H10, on which it mainly relies, concerns the detailed design of housing developments and requires the design and layout to meet the needs of the potential occupiers, provides an attractive, convenient and safe environment for the local community, and complements or enhances the character and appearance of the surrounding area. This policy accords with one of the core planning principles of the Framework to secure high quality design and a good standard of amenity for all existing and future occupiers of buildings.
15. Even taking account of the objective of boosting significantly the supply of housing and the Council's position, the conflict between the proposal and UDP Policies H10 and 1.5 should therefore be given significant weight in this appeal.
16. Set against the harm identified there would be limited social and economic benefits associated with the proposal. However, one additional unit would make little difference to the overall supply of housing, and the support one extra

household would provide to the local economy would be insignificant. Consequently the adverse impacts of providing a family dwelling with unsatisfactory living conditions would significantly and demonstrably outweigh the benefits. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

17. The proposal would conflict with the development plan as a whole and would not amount to sustainable development. There are no other considerations, including the provisions of the Framework, which outweigh this conflict. Therefore, for the reasons given above and taking into account all other matters raised, the appeal should not succeed.

Nigel Harrison

INSPECTOR