



Appeal Decision

Site visit made on 27 February 2024

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/L3245/W/23/3327311

Former TSB Bank, High Street, Albrighton, Shropshire WV7 3JE

- 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 Mann, Hamstead Investment Group Ltd. against the decision of Shropshire Council.
 - The application Ref 22/04127/FUL, dated 26 August 2022, was refused by notice dated 17 March 2023.
 - The development proposed is redevelopment of former bank to create a ground floor bakery and extension to first floor to create 3.No flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council amended the description of the proposed development from the description given on the application form. This amended description was used on the decision notice and appeal form, and as it more succinctly and accurately describes the proposal, I have used it in the banner heading above.
3. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) later updated on 20 December 2023, accompanied by a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. Having considered the main issues, the parties' respective cases and the nature of the revisions, having regard to the principles of natural justice, I have not considered it necessary to invite any submissions from the parties on the revised Framework.

Main Issues

4. The main issues are the effect of the proposed development on:
 - 1) the living conditions of occupiers of neighbouring properties with particular regard to privacy, noise and odours; and
 - 2) the living conditions of future occupiers with particular regard to indoor living space and outside amenity space.

Reasons

Living conditions of neighbouring occupiers

5. The proposed development would be sited centrally within the Market Town of Albrighton, within a designated Town Centre and Primary Shopping Area. I observed on my site visit that the High Street where the appeal site is located was busy, bustling and vibrant with a good mix of retail, food and drink and commercial premises, as well as a number of residential properties.
6. Immediately adjacent to the east of the appeal site is a detached dwelling, 27 High Street, also known as The Grey House (No 27). A hot food takeaway and a residential property (No 24, Greensleeves) lie to the west of the appeal property.
7. The proposal would see the development of three residential flats at first floor level, along with a proposed bakery on the ground floor. The front flat would be accessed via a new external staircase on the western elevation and the rear flats from an external staircase via the flat roof.
8. The rear staircase would necessitate traversing a limited part of the roof, however, it would also serve to allow access on to the wider flat roof of the ground floor. From this roof space it is possible to directly overlook neighbouring gardens, particularly the gardens of No 24 and No 27. The garden of No 27 would be particularly affected due to the very close proximity with the roof. The impact of any overlooking would be exacerbated due to the roof height being higher than the side boundary wall of No 27, and because it projects further to the rear.
9. The roof is also close to the ground floor bay window, first floor window and conservatory of No 27. Its position would enable future occupiers to look into these rooms which could be highly intrusive. Access on to the roof was and is already possible. However, the layout of the former bank use permits convenient internal access to the first floor, suggesting that the rear access might only have been for occasional or emergency use. However, the rear staircase and part of the roof would be the only means of access to the rear flats. The proposal could reasonably result in its use of part of the roof space by future occupiers as a close and convenient outside amenity space.
10. The appellants have suggested that a condition could be attached to limit the use of the first floor roof for access rather than amenity space. However, the Planning Practice Guidance (the PPG) states that conditions must be reasonable and enforceable. Even were I to consider this to meet the reasonableness test, it is not demonstrated how, within the scope of this appeal scheme, such a condition could and would be enforceable. Therefore, I am not persuaded that the conditions would meet all the requisite tests in the PPG.
11. Whilst some impact on overlooking is inevitable in residential areas, the residential use of the first floor of the proposed development would result in a level of direct and intrusive overlooking that would lead to an unacceptable loss of privacy.
12. The proposed bakery would be located within the primary shopping area of Albrighton High Street, in an area where there are existing premises with extraction equipment, which are regarded as acceptable uses in this location.

13. A noise assessment and details of odour abatement in relation to the extraction system were not submitted as part of the proposal. This has led to concerns regarding the possible consequences for neighbouring occupiers with regard to noise and odour.
14. Whilst the proposed use might have the potential to cause noise and odour issues given its proximity to residential properties, paragraph 55 of the Framework indicates that decision-takers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Although limited details have been provided, there is no substantive evidence to demonstrate or lead me to a view that such a system could not mitigate odours effectively and ensure that noise would be mitigated to an acceptable level. As such, were I to allow the appeal, on balance I am satisfied that pre-commencement planning conditions could ensure that a system could be satisfactorily installed, operated and maintained thereafter. This would overcome the concerns raised insofar as odour and noise.
15. Whilst on balance, I consider that appropriate conditions could ensure that noise and odour issues are efficiently dealt with for the reasons set out above, the proposal would have an unacceptable effect on the living conditions of neighbouring occupiers with regard to privacy. As such, the proposal would not be in accordance with Policy CS6 of the Shropshire Core Strategy (2011) (CS) which seeks to ensure that development safeguards residential and local amenity. It would also conflict with Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev) which highlights that development is required to respect existing amenity value. It would also not accord with guidance contained within the Type and Affordability of Housing Supplementary Planning Document (2012) (SPD) which states that developments must not have unacceptable consequences for neighbours, such as loss of privacy.

Living conditions of future occupiers

16. The submitted plans show that the proposed flats would be 42m², 46m² and 48.6m². The proposed flats would therefore all be above the Nationally Described Space Standard for gross internal floor space of 39m² for one bedroom/ one bathroom/ one storey properties. Whilst the Council have stated that the proposed flats would have low ceilings and limited windows, I have not been referred to specific standards in respect of internal heights. In the absence of any substantive evidence to the contrary, and from my observations when visiting the appeal site, it would appear to me that the ceiling heights would be sufficient to ensure satisfactory living conditions for future occupiers. Each flat would have at least two windows serving different parts of the main living space on two aspects. Overall, based on the evidence before me, I see no reason to consider that the internal living space would result in cramped accommodation or provide unacceptable living conditions for future occupiers in this regard.
17. Limited evidence has been put before me to indicate that the outside amenity space is inadequate for the proposed flats. Whilst I consider that it would be inappropriate to use the roof space for outdoor amenity use, due to the resultant issues with overlooking neighbouring properties as detailed above, I noted from my site visit that there was a fair amount of outdoor space at ground level to the rear of the proposed development. I have not been

provided with any information to suggest that this space could not be used by the residents of the proposed flats. On this basis, I consider that adequate outdoor amenity space could be provided for the proposed first floor flats.

18. Consequently, I consider that the proposed development would provide adequate living conditions for future occupiers in relation to internal living space and outdoor amenity space. As such, the proposal accords with Policy CS6 of the CS which seeks to ensure that development safeguards residential amenity and is consistent with national good practice standards, and Policy MD2 of the SAMDev which stresses the need to provide usable outdoor space. It would also comply with guidance contained within the SPD which highlights the importance of providing acceptable living standards for the occupants of dwellings, in terms of the internal size of living accommodation and the provision of external private amenity space.

Other Matters

19. Both the Council and the appellant have made substantive views in respect of the appeal site's location within the Albrighton Conservation Area (CA). Therefore, in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.
20. The significance of the CA derives partly from the mix of commercial and residential uses which are intermingled rather than segregated, with commercial properties scattered along the High Street amongst residential properties. The predominance of traditional materials, forms and detailing and small domestic scale of buildings provides visual interest and character to the CA.
21. The proposed development would bring a disused building back into use, contribute to the mix of commercial and residential properties within the High Street, and there would be limited alterations to the outward appearance of the building. Accordingly, I conclude that the proposal would preserve the CA in accordance with the aims of Section 72(1) of the Act. As such, it would not harm the significance of this designated heritage asset. This is a neutral balance and does not alter my conclusion in respect of the main issue regarding the harm to living conditions of neighbouring occupants.
22. The appeal property itself is a non-designated heritage asset (NDHA). Paragraph 209 of the Framework requires that the effect of a proposal on the significance of a NDHA should be taken into account in determining the application and states that a balanced judgement will be required. The appeal property is an attractive building which dates from the early twentieth century which makes a positive contribution to the character and appearance of the CA. Despite the limited alterations to the rear of the building the proposed development would largely retain its appearance as an attractive commercial building which reflects the evolution of the town centre. I consider that the proposed development would not harm the significance of the asset. The proposal would therefore have a neutral effect.
23. Additionally, the proposed development would be sited next door to a Grade II Listed Building (No 27). Under s.66(1) of the Act there is a duty to have special regard to the desirability of preserving its setting.

24. The Council have not raised any concerns in relation to the impact of the proposed development on the listed building. As I am dismissing this appeal for other substantive reasons, and the development would not take place as a result of my decision, I have not considered this matter further. Were I to have resolved that the proposed development would not adversely affect the setting and significance of the listed building, this would be a neutral matter.
25. Interested parties have raised a number of other concerns regarding the proposal, including potential opening hours and overdevelopment. I also noted the intervisibility between the windows of the proposed flats and the side windows of No 27. However, as I am dismissing the appeal on a main issue and they could not alter my conclusions, I have not considered them further.

Planning Balance

26. I acknowledge that there are no concerns regarding highway issues, drainage, affordable housing, archaeology, parking, or the impact on the character and appearance of the area. There would be no impact on ecology and no extensions to the built footprint. However, were I to agree that the proposal would be compliant with policies in this regard, these would be neutral matters within the planning balance.
27. I note that the Council raised no objections in principle to the proposed development, either the bakery or the residential element, which are considered to be an appropriate use in the location. Furthermore, the appeal site would be in a sustainable location and services and facilities would be accessible by bicycle or on foot.
28. The development would be an efficient use of land and would bring a disused historic building into use. The proposal would support economic growth, align with the Market Town revitalisation programme and provide employment and would add to the prosperity and vitality of the High Street.
29. The proposal would boost and widen the supply of homes to help address the housing shortage in line with the Framework. It would also accord with the Albrighton Neighbourhood Plan Light which supports smaller and more affordable market homes.
30. Having regard to the substantive evidence advanced, I attribute these benefits moderate weight in the overall planning balance. However, they do not outweigh the harm to living conditions of neighbouring occupiers with regard to privacy, which given the nature of the potential for harm, is a matter which should be attributed significant weight.

Conclusion

31. I have found that the proposal would result in harmful living conditions for neighbouring occupiers with regard to privacy. Therefore, the proposal would conflict with the development plan when taken as a whole. There are no material considerations advanced, including the Framework, which would indicate a decision other than in accordance with the development plan. For the reasons given above the appeal is dismissed.

L C Hughes

INSPECTOR