The Planning Inspectorate

Appeal Decision

Site visit made on 27 August 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/R4408/W/20/3247481
Fitzwilliam Inn, 24 Sackville Street, Barnsley S70 2DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Ismail Ghandour of Hind Property Ltd against Barnsley Metropolitan Borough Council.
- The application Ref: 2019/1072, is dated 28 August 2019.
- The development proposed is demolition of existing public house and the erection of a new apartment building comprising 14 no. residential units together with the erection of 2 no. town houses.

Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matter

2. The Council have commented that had they determined the application they would have refused planning permission for the proposed development as they consider that it is not fully policy compliant and falls short in areas such as residential amenity and financial contributions.

Main Issues

3. The main issues are 1) the effect of the proposed development on the living conditions of occupants of residential properties 2 to 12 Coalby Walk with regard to outlook and possible overlooking and loss of privacy 2) the effect of the proposed development on the living conditions of future occupants with regard to outlook and outdoor amenity space, and 3) whether it would provide an appropriate level of affordable housing having particular regard to viability.

Reasons

Living conditions – Coalby Walk

4. The appeal site comprises a large, detached vacant public house building. It is located in an area with a mix of commercial and residential uses, on the edge of Barnsley Town Centre, with the immediate area being dominated by the Gateway Plaza development.

5. Coalby Walk sits to the rear of the appeal site. It is a terrace of six two storey residential properties which appear to be single aspect. Owing to the steep incline of Fitzwilliam Street that runs to the side of the appeal site, these

properties to the rear sit at a significantly lower level and have short gardens with habitable room windows that face directly onto the appeal site.

6. Notwithstanding the Gateway Plaza development, the proposed development would be a relatively substantial building in the area, particularly in the context of the residential properties nearby. Unlike the existing vacant public house building, it would span the width of the site. When viewed from its proposed front elevation overlooking Sackville Street, the building would be four storeys, reducing to two storeys where the two town houses are proposed. At the rear, the lower ground level would be visible, resulting in the development forming five storeys reducing to three storeys where the two town houses are proposed.

7. Due to the siting of the proposed development, in a north-easterly direction relative to the Coalby Walk properties, combined with the findings of the submitted Daylight and Sunlight Report, I do not consider that the proposed development would have an unacceptable impact on levels of daylight and sunlight to the Coalby Walk properties.

8. I do however consider that due to its siting and overall size and scale relative to the properties on Coalby Walk it would be significantly harmful to the outlook from these properties. The significance of the impact would be particularly exacerbated owing to these properties appearing to have their sole outlook in the direction of the appeal site. I appreciate that the existing public house building is a relatively large building in its own right and this no doubt has some impact on the outlook for some occupants of Coalby Walk. The proposal would, however, be significantly larger, spanning the entire width of the site. The proposal would significantly harm the outlook to a greater number of properties than the existing building. I also recognise that the Gateway Plaza development is close to these properties, it is however across the road from them and faces the end of the terrace, as opposed to the full rear elevation. Its presence does not justify the harm I have identified.

9. In relation to possible overlooking and the effect on privacy, the proposed apartments that are located on the ground, first and second floors, where they overlook the Coalby Walk properties incorporate screens and fins to angle views away from these properties. Such an approach is not proposed in the rear of the town houses or on the apartments in the lower ground or third floor. I accept the appellants attempts to mitigate the effect on privacy through the use of the screens and fins referred to above, however these only appear to prevent overlooking to properties which sit directly opposite the property to which they relate, instead guiding views most often to properties either side. Additionally, any restriction which they do afford is likely to be only effective from within the rooms of the apartments and would not be effective when future occupants stand on the balcony, where direct views into the Coalby Walk properties would be permissible. This would lead to a significant level of intrusion. Therefore, whilst their use would be no doubt preferable to having no such measure in place, I find that they do not remove the harmful impacts in relation to overlooking and privacy.

10. No such approach is proposed on the rear elevation of the town houses. This would allow for overlooking from proposed habitable rooms into the Coalby Walk properties at such a distance where I find this would be significantly harmful to the privacy of these properties. The appellant outlines that such

impacts could be addressed through the use of higher-level windows, however these are not before me and would be likely to have implications on the outlook from the habitable rooms to which they would relate. I similarly find that due to the elevated position of windows in the third-floor apartments, and the distance from properties on Coalby Walk, these would have a harmful impact on privacy.

11. I therefore conclude that the proposed development would have a significantly adverse impact on the living conditions of occupants of residential properties 2 to 12 Coalby Walk with regard to outlook, overlooking and loss of privacy. It would be contrary to Policy GD1 of the Barnsley Local Plan (LP) (2019) which requires, amongst other things, that development does not have a significant adverse effect on the living conditions of residents.

12. The proposal would also be contrary to guidance contained in the Design of Housing Development Supplementary Planning Document (SPD) (2019) which outlines, amongst other things, that the minimum back-to-back dimension between facing habitable rooms, (i.e. any room used or intended to be used for sleeping, cooking, living or eating purposes), should be 21metres and where the proposed dwellings are more than two storeys in height (excluding rooms in the roofspace), the back-to-back separation distance should increase by 3 metres for every additional storey.

Living conditions – future occupants

13. Nine of the proposed apartments incorporate screens and fins to the balconies behind which are windows to habitable rooms, and in the case of three apartments, all habitable room windows for those units. As the height of the proposed building increases so does the number of fins that are proposed; so that one is proposed to each balcony screen on the ground floor level, two on the first floor and three on the second floor.

14. Due to the recess of the windows behind the protruding balconies, the impact of the screens and fins would be such that there would be an adverse impact on the outlook from these properties. I find that the impact would not be wholly unacceptable to the properties on the ground floor level where only one fin is proposed. However, the impact escalates to the point that, in relation to the outlook from the rooms of units on the second floor, there would be an unacceptable impact on the outlook from these properties due to the restriction the three fins would have in relation to outlook.

15. The SPD outlines that rear gardens of proposed dwellings of three or more bedrooms should be at least 50m2 and that shared private space for flats must be a minimum of 50m2 plus an additional 10m2 per unit as balcony space or added to shared private space. Where private space cannot be provided balconies must be provided. Balconies must be a minimum of 3m2. The amount of shared private space to be provided will also depend on the quality, quantity and accessibility of local public open space.

16. I find that in this case the amount of private amenity space that would be provided, whilst falling short of the SPD, would be suitably sized to provide an area for future occupants to utilise. It would also appear that there is a wide variation in sizes of outdoor amenity space to surrounding properties, and the proposal would not be inconsistent with the amount of space provided elsewhere. I am also mindful of the dense urban environment in which the

appeal site is located and the proximity of the site to the Churchfields area of public open space, around 150m from the appeal site. As such, considering the proposal on a case-by-case basis, I find the size of the outdoor amenity space would be acceptable.

17. In relation to outdoor amenity space, I therefore find that the proposal would provide acceptable living conditions for future occupants. Although it would fall short of the amount specified in the SPD it would comply with the requirement of Policy GD1 of the LP that, amongst other things, development does not have a significant adverse effect on the living conditions of future residents.

18. In relation to the effect of the proposed development on future occupants with regard to outlook, I conclude that there would be a significant adverse impact when taken as a whole. It would be contrary to Policy GD1 of the LP which requires, amongst other things, that development does not have a significant adverse effect on the living conditions of future residents.

Affordable housing and viability

19. Policy H7 of the LP requires that for housing developments of more than 15 units, such as the appeal proposal, they will be expected to provide affordable housing. In the area in which the appeal site is located, this will be 10% of the development. The policy states that these percentages will be sought unless it can be demonstrated through a viability assessment that the required figure would render the scheme unviable.

20. The appellant has submitted a Financial Viability Assessment that concludes the scheme cannot support affordable housing. The assessment has determined the potential Gross Development Value of the scheme using comparable evidence in the local market, and in addition to achieved prices, it has had regard to asking price data and explored both the new build and second-hand market.

21. The Council have commented that given the viability appraisal was not independently assessed, they were not in a position to make a decision on the application with regard to Policy H7.

22. I have not been provided with any substantive evidence that would refute the findings of the appellants Financial Viability Assessment. From my consideration of the assessment, it seems to be a fair reflection of the current housing market trends in the area whilst using accepted levels of assumed costs. Without any substantive evidence to the contrary, I accept that in this case, the appellant has demonstrated that the required figure would render the scheme unviable.

23. I therefore conclude that, in relation to the provision of affordable housing, the proposal would comply with Policy H7 of the LP as the appellant has demonstrated through a viability assessment that the required figure would render the scheme unviable.

Other Matters

24. The appellant has commented that a previously approved scheme is not economically viable, notwithstanding the fact that the habitable rooms are north facing. I do not have full details of the previous scheme, and in any event do not consider that this would justify causing the harm I have identified.

Although the northerly aspect may not have achieved high levels of sunlight, it is unclear as to why this would prevent the development proceeding, particularly as the Council would have considered this matter in any previous approval of planning permission.

25. I acknowledge that the proposal would result in the development of a vacant and somewhat unsightly site. It would also provide housing, that would contribute to meeting local housing need, in a sustainable location. These factors are benefits of the proposal to which I attach moderate weight. However, these benefits would not cumulatively outweigh the significant harm that I have identified would be caused to the living conditions of occupiers of properties on Coalby Walk or those of the future occupants of the development.

Conclusion

26. Although I have found there would be no harm to the living conditions of the future occupants of the development in relation to the provision of outdoor amenity space, and that from the evidence before me, the requirement for affordable housing would make the scheme unviable, I find that the development would have a significantly adverse impact on the living conditions of occupants of properties on Coalby Walk with regard to outlook, overlooking and loss of privacy; and on the living conditions of future occupants with regard to outlook. I therefore conclude that when the development is considered as a whole the appeal should be dismissed and planning permission refused.

A M Nilsson

INSPECTOR