The Planning Inspectorate

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Your Ref: PL/2023/04958
Our Ref: APP/Y3940/W/23/3331437

20 March 2024

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Niko Elezi
Site Address: The Flat, 81 Wilton Road, Salisbury, SP2 7ER

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

If you do not have internet access please write to the Customer Quality Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

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Pana Kwabe

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Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - https://www.gov.uk/appeal-planning-inspectorate

The Planning Inspectorate

Appeal Decision

Site visit made on 5 March 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2024

Appeal Ref: APP/Y3940/W/23/3331437
The Flat, 81 Wilton Road, Salisbury, Wiltshire SP2 7ER

- 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 Niko Elezi against the decision of Wiltshire Council.
- The application Ref is PL/2023/04958.
- The development proposed is described as: Conversion of existing basement to A 1 Bedroom Flat. This is a retrospetive application: 1) Building regulations have been approved. 2) The existing car park space was associated with the original shop and is part of the owners land. 3) The associated works has no impact on the original flats or their car park arrangements. 4) The original basement was part of the shop facilites and used as storage. 5) The conversion has had no impact on its surroundings. 6) There is a shop nearby and the flat is on a bus route. 7) Recycling bags (not bins) are kept by the stairs.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. With the basement having already been converted, I was able to observe the proposed flat on my site visit. I have dealt with the appeal on this basis.

Main Issues

3. The main issues are:

   - whether the living conditions of occupiers of the proposed development are sufficient, with particular regard to natural light; and
   - the effect of the proposed development on highway safety, with particular regard to the parking space.

Reasons

Living conditions

4. Located in the basement, the proposed flat is accessed down a flight of steps. There is a relatively large window serving the bedroom and the front door includes a reasonable amount of clear glazing. Despite its set down position, outlook from the flat is relatively good due to the size of the area containing the steps and the position and extent of glazing. With the only footway on Longland Road being on the opposite side and the steps to the flat above having limited gaps between them, privacy in the proposed flat is also reasonable and does not obviously rely on net curtains for example.

5. Despite the basement location, the window and glazed front door provide a good level of natural light to the bedroom and hallway. With its open-plan nature, some natural light also reaches the parts of the kitchen and lounge closest to the front door. However, given the depth and width of the room, and the hallway separating it from the front door, much of the room receives very little natural light. Indeed, I observed on my site visit that it is highly reliant on electric light, with the far end of the lounge and far corner of the kitchen being particularly dark when the electric lights are off. Without a window, the room – which is likely to be the most used part of the flat – therefore receives insufficient natural light, to the significant detriment of the living conditions of occupiers of the flat.

6. I recognise that the proposed flat has been constructed in accordance with building regulations, as confirmed by the submitted building control certificate. However, planning and building control are different regimes and a building control certificate does not mean that the flat is acceptable with regards to relevant planning policy requirements and associated guidance.

7. For the above reasons, I conclude that the living conditions of occupiers of the proposed development are insufficient, with particular regard to natural light. I therefore find that it conflicts with Policy CP57 of the Wiltshire Core Strategy Adopted January 2015. Amongst other aspects, this seeks to ensure that appropriate levels of amenity are achieved within the development itself. The proposal would also be inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to providing a high standard of amenity for existing and future users.

8. The Council also alleges a conflict with the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). Whilst that does refer to the provision of adequate natural light in all habitable rooms of the dwellinghouses, the GPDO is not relevant to the acceptability of the proposed development because the appeal relates to an application for planning permission rather than development covered by the GPDO.

Highway safety

9. Although it has been put to me that the land identified on the submitted plans as the car parking space for the proposed flat is not owned by the appellant and is instead part of the public highway, the appellant asserts that they own it. They also completed Certificate A when submitting the planning application now the subject of the appeal, which the Council has not identified as being erroneous, whilst no substantive proof has been provided of alternative ownership of the land in question.

10. As such, the available evidence indicates that the appellant owns the land identified as a parking space. I also observed on my site visit that there is an obvious difference in surfacing between it and the footway. This visual delineation further supports the appellant's claim that the land in question does not form part of the public highway. That none of the appellant's previous planning applications at 81 Wilton Road have included this area does not lead me to a different conclusion.

11. I have little substantive evidence that the parking space shown on the submitted plans has not been used for parking in the past, associated with the previous shop use for example. The presence of the lowered kerb to Longland

Road, even if it is not a formally dropped kerb, also supports the claims of such a historical use. On this basis, the use of the land for parking for occupiers of the proposed flat would not result in a significant change to highway safety compared to the previous situation. The clearly limited visibility between the parking space and highway, especially to Longland Road but also with Wilton Road, and the likely need for a vehicle to carry out several manoeuvres to enter/exit the space do not lead me to a different conclusion. In coming to this view, I have also taken into account the proximity of the parking space to the junction, footway, lighting column and pedestrian tactile paved dropped kerb.

12. If it transpires that the land in question is part of the public highway, then clearly it could not be used for car parking without the consent of the Highway Authority; and given its concerns about use of the space for parking, it seems to me that such consent would not be provided. On this basis, the highway safety concerns put to me would not arise. However, on the basis that the land is owned by the appellant and has historically been used for parking for the original shop, I conclude for the reasons above that the proposed development would not harm highway safety. The Council has not alleged a conflict with any development plan policies in relation to this matter. On the basis of my findings above, I have no reason to conclude otherwise and find that the appeal proposal is also consistent with the provisions in the Framework in relation to only preventing development on highways grounds if there would be an unacceptable impact on highway safety.

Planning Balance

13. I have found that the living conditions of occupiers of the proposed development are insufficient, with particular regard to natural light. On the basis of the submitted evidence and the proposal not according with the development plan policy referenced above, this leads me to conclude that it conflicts with the development plan as a whole.

14. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010 (the Act), including in relation to the three principles set out in Section 149 of the Act. In dismissing the appeal and thus not granting planning permission, enforcement action could be taken by the Council against the use of the basement for residential use. Such action would be likely to result in occupiers of the flat having to leave and find alternative accommodation. However, having due regard to this and the need to eliminate prohibited conduct (including discrimination), advance equality of opportunity and foster good relations, the adverse impacts of dismissing the scheme would still be justified and the decision would be necessary and appropriate having regard to the requirements of the adopted development plan and national policy.

15. Dismissing the appeal would thus not have a detrimental impact that would amount to discrimination. In addition, the Council has indicated that there are other premises available in the area and that any enforcement action taken could include a reasonable compliance period. On this basis, I am also satisfied that dismissing the appeal would not inevitably result in a person/persons, including those who may have protected characteristics as defined by the Act, becoming homeless.

16. Making use of the basement, which was previously part of the shop and used as storage, the proposed development would provide an additional residential

unit in an accessible location, close to a shop and on a bus route. The appeal proposal would therefore make effective use of land and contribute towards the mix and supply of housing in the district. It is said that the works have also had no impact on the surroundings, including the original flats and parking spaces. However, given the scale of the development, the benefits of the appeal proposal would be relatively limited. Consequently, I find that the above matters outweigh neither the harm I have identified nor the conflict with the development plan.

Conclusion

17. The proposal conflicts with the development plan as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

T Gethin

INSPECTOR