



Appeal Decision

Site visit made on 5 June 2024

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/T4210/W/24/3338058

Flat A, 212 Bell Lane, Bury, BL9 6HS

- 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 Scott Jones against the decision of Bury Metropolitan Borough Council.
 - The application Ref 70259, dated 30 November 2023, was refused by notice dated 17 January 2024.
 - The development proposed is a single storey extension to create a ground floor flat.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the living conditions of the existing and future residents with regard to privacy, outlook and amenity.

Reasons

3. The property currently has a commercial use at ground floor level which has direct rear access to its own enclosed yard. There is also a residential flat which is accessed separately. Its main door leads to an entrance corridor and on to the stairs. On the first floor there are two bedrooms and a combined kitchen/living room which has an outlook to the front. Although currently in the process of being separated from the first floor accommodation, there is a downstairs room, accessed from the entrance corridor, which also has a door directly into the enclosed rear yard.
 4. The proposal would formalise the separation of the ground floor room from the first floor accommodation. This room would then serve as a living room/kitchen with an outlook onto the side street. An extension would accommodate a bathroom and a bedroom. The bedroom would have a window facing into the rear yard. Access to the flat would be from the much reduced yard area which would also accommodate the bins of both properties. There is a high wall to both the side and rear, enclosing the yard area and screening it from the adjoining roads.
 5. The two bedroom first floor flat would be retained. Its ground floor room would be lost as would its direct access to the yard. The proposal includes the
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provision of bin storage within the retained yard. These changes would result in the loss of the relatively large yard area which offers a good standard of private amenity space suitable for sitting out and drying clothes. The loss of the ground floor room and direct access to the yard would be to the detriment of the residents with regard to amenity but also in relation to the size and flexibility of the accommodation overall. The proposal would therefore significantly reduce the quality of the accommodation for the first floor residents.

6. Although there would be a reduction in the quality of the first floor flat, as it lies immediately opposite the park and bin storage provision would be made, I am satisfied that the residents would have an adequate standard of amenity that would not be dissimilar to other first floor flats above commercial properties. It appears likely that this would occur in any event but as it forms part of the proposal, the reduction in quality, compared to the current arrangement, whilst not unacceptably harmful to the living conditions of the residents, weighs against the proposal with regard to amenity.
7. The new ground floor unit would have a living room that would have an outlook directly over the pavement of the side street. The road has no parking restrictions immediately outside the window. The outlook is likely to be restricted at times and privacy would be limited. The bedroom would have an outlook directly towards the high rear wall of the yard which would be about three metres away. The door to the flat would open into this more constrained yard area which would also accommodate two sets of bins. Having the first floor flat residents access their bins from the relatively narrow retained yard area would be extremely intrusive for the residents of this property, particularly as the access gate would be close to the bedroom window. The retained yard area would have very little quality with regard to residential amenity given its limited depth and being so enclosed.
8. As with the first floor flat, I am mindful that the property lies immediately opposite a park. Furthermore, the physical works would not result in any harm to the character of the area. However, the outlook from the bedroom into the very limited area of shared yard; and the storage of two sets of bins in this area with shared access, would represent overdevelopment. Privacy within the bedroom would be harmed because of the shared access and it would be unacceptably intrusive when the upstairs residents accessed their bins, particularly when moving them on bin day as the gate would be so close to the bedroom window. This would add to the outlook concerns and limited privacy of the living room. This particular arrangement would result in very poor living standards for the ground floor residents and would represent poor design.
9. The overdevelopment of the property, resulting in the unsatisfactory rear yard arrangements in particular, would result in conflict with the Bury Unitary Development Plan 1997 design and amenity policies, particularly policy H1/2 as this requires that regard be had to the suitability of the site with regard to amenity; policy H2/1 which includes the need to consider the impact of developments on residential amenity; and policy H2/2 which seeks acceptable standards of layout in relation to density; space about and between dwellings; and open space.

10. The council accept that they cannot demonstrate a five-year supply of deliverable housing land. In these circumstances, paragraph 11dii of the *National Planning Policy Framework 2023* states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework*, taken as a whole.
11. Policy H1/2 includes matters that seek to control the location of development and therefore can, in part at least, be considered out-of-date. The other two policies referred to are design and amenity policies rather than policies seeking to control or restrict the provision of new housing. They generally accord with the design and amenity requirements of the *Framework* and can therefore be afforded considerable weight. It is these policies that are most important in determining this particular proposal.
12. There are benefits to achieving an additional unit of accommodation, particularly given the council's housing land supply position. The additional unit would offer both social benefits from the provision of further housing and economic benefits from its construction and occupation. However, this needs to be set against the loss of a much more satisfactory unit. Furthermore, the poor standard of outlook, privacy and outside amenity space, for the new ground floor flat residents, particularly resulting from the size and shared nature of the yard, would result in unacceptable living conditions.
13. I am mindful of the character of this area and the other developments referred to by the appellant. I accept that there can be instances whereby the provision of outdoor amenity space is not practical and the benefits of a new flat can outweigh this shortcoming. Although measurements have not been provided, I have accepted the appellant's view that the space standards within the units would meet the government's Technical housing standards – nationally described space standard 2015 (as amended). I am mindful also that no objections have been received from local residents and I consider that the concerns of the Highway Authority could be adequately addressed.
14. The proposal conflicts with the design and amenity requirements of the development plan. I am not persuaded that it is appropriate to set aside all of the development plan policies referred to, because of the housing supply position. However, even if they were set aside, I would conclude that the proposal would result in unacceptable conflict with the design and amenity requirements of the *Framework* which seeks a high standard of amenity for existing and future users and is clear that development that is not well designed should be refused. The harm to the amenity of the future occupants, resulting from the unacceptable quality of the accommodation provided by the ground floor flat and yard, would significantly and demonstrably outweigh the benefits of the additional unit. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR