



Appeal Decision

Site visit made on 15 November 2022

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/C1055/W/22/3303619

103 Ashbourne Road, Derby DE22 3FW

- 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 Christopher Monk of The Input Group, against the decision of Derby City Council.
 - The application Ref 22/00045/FUL, dated 10 January 2022, was refused by notice dated 21 April 2022.
 - The development proposed is described as – “to repurpose the existing 3 storey building into a more contextually befitting use to that of its surrounding area, by providing sought after private accommodation. The proposal is for a change of use of the associated existing building from office space (class B1a) & light industrial (class B1c) to private student studio flats (class group Sui generis)”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is described on the decision notice as change of use from offices/light industry (Use Class E (g)) to four student cluster flats (Sui Generis Use) including alterations to elevations and installation of dormers. However, I am unclear as to the reference to 4 cluster flats. There would be 24 flats, each comprising a bedroom/study with a bathroom and cooking facilities and there would be 8 flats on the ground floor with a shared living room; 10 on the first floor with a shared living room; and 6 on the second floor with a shared living room. Other facilities would include a gym, a laundry, a bicycle store and a manager’s office. My assessment therefore is based on the provision of 24 studio flats with some shared facilities as shown on the submitted plans.

Main Issues

3. The main issues are the effect of the proposal on: -
 - the provision of employment land in the area; and
 - whether the proposal would provide acceptable living conditions for the occupiers of the proposed development by reason of outlook, privacy and outdoor amenity space.

Reasons

Employment Land

4. The appeal building comprises a relatively modern purpose built building currently in use as offices and for storage. It has a small parking area to the

front off Ashbourne Road which also provides access to roller shuttered storage areas. At the time of my visit, the offices where on the upper floors and were occupied.

5. Policy CP10 of the Local Plan¹ indicates that the Council is committed to secure sustainable economic growth and key to this is ensuring that sufficient employment land is identified to meet the needs of the economy during the development plan period. In order to achieve this, the policy sets out criteria when assessing the loss of employment land. In particular, criterion (h) allows the loss of employment land where it can be demonstrated that the existing land or buildings no longer meet modern requirements and that they have been adequately marketed for employment use for a reasonable period of time.
6. Whilst the site's location close to residential properties and its restricted access, servicing and parking provision could limit its suitability for some commercial uses, there is no dispute between the parties that the site meets modern requirements for an employment use and that the site has not been marketed as required by criterion (h). The proposal would therefore conflict with this aspect of the policy.
7. However, there are other benefits that would meet other criteria in the policy for example, new student accommodation would assist the University in its role of contributing towards the City's economy and the development would make a short term contribution to the construction industry (criterion g). The site is within walking distance of the University and would result in a better relationship with surrounding residential properties than the existing commercial use (criterion j). It would also contribute to the supply of housing / residential provision within the City. This matter is addressed further below.
8. Since the submission of this appeal, the Council has considered the case put forward by the appellant and now confirm that although the proposal would conflict with Policy CP10 in part, its benefits, as outlined above, outweigh the harm identified i.e. the loss of an employment site. Although the proposal would conflict with criterion (h) of policy CP10, it would not undermine the aims of the policy and indeed would provide the benefits referred to.
9. I conclude therefore, that the proposal would not have a harmful effect on the provision of employment land in the area and no conflict with the aims of Policy CP10 would occur.

Living Conditions

10. Whilst there are shared facilities to the proposed flats, each would be relatively self-contained with sleeping and study space, cooking facilities and a bathroom. I therefore consider that outlook, privacy and natural light would be important to their occupiers.
11. Each of the flats would benefit from natural light in that they would have a window. The outlook from the flats would be either across the road; over the neighbouring car park above ground floor level; or towards a single storey building set some distance away from the nearest proposed flats. With regard to privacy, a boundary wall would prevent overlooking between the proposed flats on the ground floor and the apartments to the south of the appeal site.

¹ Derby City Council – Derby City Local Plan – Part 1 Core Strategy January 2017.

12. Whilst I accept that some of the flats would be orientated so that there would be acceptable living conditions for future occupiers, others would not. On the ground floor, flats 5, 6, 7 and 8 would look out onto a shared courtyard at the rear of the building whilst flats 1, 2, 3 and 4 would be close to the area of amenity space at the front of the building. Given that these areas could be used by any of the occupiers of the whole building, the occupiers of these flats would have little privacy from users of these amenity areas being able to look directly into them.
13. Furthermore, on the first floor, flats 15 and 16 would be close to the boundary to the site and the adjacent car park to an existing commercial use (currently Majestic Wine Warehouse). The outlook from these windows would therefore be a poor one comprising a car park at close quarters. Also on the second floor, flat 11 would have one small window towards the corner of the room and given that the building runs at right angles to the window at this point, the outlook from this window would be restricted. On the second floor, flat 24 would have the same outlook as flats 15 and 16 below it.
14. There would be a gym within the building which would provide some space for exercise. However, given that there would be 24 flats in this building, the amount of amenity space would be very restricted. The courtyard to the rear of the building would be small and enclosed by high walls, in particular by the two storey walls of the building itself on two sides and the adjacent tall apartment building to the south. The amenity space at the front of the building would provide a small sitting out area but would be close to the parking area, therefore, the outdoor space would not be sufficient for the scheme.
15. There is an area of open space on Ashbourne Road but the evidence before me indicates that this is private playing fields and not publicly accessible. Other areas of open space are further away which the appellant considers would provide walkable opportunities for outdoor space. I appreciate that the proposal includes a gym together with the areas of on-site amenity space but these would be very limited and whilst there are some areas of open space that could be utilised, given their distances from the flats they would not compensate for the lack of on-site provision, especially for short periods when students may wish to sit outdoors.
16. Therefore, the proposal would not provide appropriate living conditions for future occupiers with regard to the poor outlook and lack of privacy and the limited amount of outdoor amenity space. The proposal would conflict with Local Plan Review² policies H13 and GD5 which require high quality living environments taking into account matters including privacy, outlook and open space. The National Planning Policy Framework³ also reflects these requirements in terms of its design objectives.

Other Matters

17. The Council state that it does not have a five year supply of housing land as required by the Framework and so paragraph 11(d) of the Framework applies. Paragraph 60 of the Framework indicates that in order to boost the supply of homes it is important that a sufficient amount and variety of land can come

² Derby City Council – City of Derby Local Plan Review, Adopted January 2006.

³ Ministry of Housing, Communities and Local Government National Planning Policy Framework, 2021 (the Framework).

forward where it is needed and that the needs of groups with specific housing requirements are addressed. The proposal is for a specific type of living accommodation and whilst the Council acknowledge a shortfall in housing numbers, no substantive evidence has been submitted that indicates that there is a shortfall of student accommodation. I appreciate that the site is close to the University but this does not support an assumption that the proposal would meet an identified need.

18. Nevertheless, the proposal would contribute to the housing land supply in the City. It would also be consistent with the Framework in terms of its economic benefits especially with regard to the contribution that the University and its students make to the local economy. These benefits carry moderate weight and must be balanced against the harm I have identified regarding the acceptability of the living conditions for the occupiers of the proposed development. This harm would conflict with the development plan and also with the Framework as a whole as referred to above and carries significant weight.
19. Other matters have been raised including the provision of off-street parking provision, highway safety and flooding. Whilst I do not consider that there would be significant adverse effects with regard to these matters, they carry little weight in this case and do not therefore alter my conclusion.
20. Due to the harm identified above, the proposal would conflict with the development plan and the Framework. Whilst the proposal would benefit the supply of housing land supply and the local economy, these benefits would not outweigh the conflict with the development plan identified above. Consequently, the adverse impacts of failing to provide acceptable living conditions for the occupiers of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

21. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

J D Clark

INSPECTOR