



Appeal Decision

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 25.07.2023

Appeal reference: CAS-02358-Q1P5M7

Site address: 12 Corporation Road, Newport, NP19 0AR

- 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 Joe Lane of Lane Property Holding Ltd. against the decision of Newport City Council.
 - The application Ref: 22/0316, dated 29 March 2022, was refused by notice dated 23 May 2022.
 - The development proposed is the change of use of upper floors to 3No. self-contained flats (Resubmission following refusal of 21/1287).
 - A site visit was made on 20 June 2023.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The appeal relates to an application [LPA Ref: 22/0316] for the change of use of the upper floors of No.12 Corporation Road in Newport to 3No. self-contained flats. The description of development indicates that the application subject of the appeal is a resubmission of application Ref: 21/1287. The Council has also confirmed that there have been various other similar development proposals at the site, with the Local Planning Authority's (LPA) Officer's Report stating that the application is a '*resubmission*' of application Ref: 21/0472, Ref: 21/0975 and Ref: 21/1287.
3. Whilst I shall consider the current appeal on its own particular merits, it is also relevant to note that Ref: 21/0975 was also subject of an appeal under Section 78 of the above Act. That appeal was ultimately dismissed on the grounds of flood risk, living conditions and the lack of a contribution towards affordable housing (Ref: CAS-01537-Q4Z8G9 – otherwise referred as the 2022 Appeal). There remains no dispute over the principle of development. As such, I shall confine my reasoning to the principal matters of dispute raised through the Council's Notice of Decision.

Application for Costs

4. An application for an award of costs has been made by the Council against the appellant. That application is the subject of a separate Decision.

Main Issues

5. These are whether the development would: be acceptable in terms of flood risk; provide acceptable living conditions for its occupiers, having particular regard to noise and refuse arrangements; and make an appropriate contribution towards affordable housing.

Reasons

Flood Risk

6. The appeal proposes '*highly vulnerable development*' within Zone C1 of the Development Advice Maps (DAM) and the 'Defended Zone' of the Flood Maps for Planning (FMfP) which inform national planning policy. Whilst the Welsh Government (WG) is in the process of updating its policy on flood risk, Planning Policy Wales (Edition 11, 2021) (PPW) and Technical Advice Note 15: *Development and Flood Risk* (2004) (TAN15) remain extant and the principal national planning policy documents in respect of flood risk. TAN15 advises that for proposals located within Zone C, developers will need to demonstrate that the development can be justified in that location and that the consequences of a flooding event are acceptable.
7. NRW does not object to the proposal, although it notes that the Flood Consequence Assessment (FCA) uses flood data from another site and states that this is not recommended as it does not provide site specific flood data for the proposed development. The Council shares such concerns and I have no reason to come to an alternative conclusion. The appellant implies in his evidence that the LPA has the local knowledge of the risk of flooding within the area. However, national policy is clear that the burden lies with developers to demonstrate that the development can be justified in that location and that the consequences of a flooding event are acceptable. As such, despite a number of mitigation measures being proposed, I consider the appellant's submissions in respect of flood risk to be fundamentally flawed.
8. I appreciate the appellant's frustrations given that the development proposed would represent the conversion of an existing building. I also note the presence of other residential developments within the area, including those cited within the appeal submission documents. However, such evidence does not obviate the need to comply with the requirements of national policy and a comprehensive and site specific FCA, prepared by a suitably qualified professional and covering all of the matters required by TAN15, has not been submitted in this instance. With regards the appellant's reference to other development proposals, it remains a well-established principle of planning that each case should be treated on its own particular merits and it is on this basis that I have determined the appeal.
9. Based on the foregoing analysis, I conclude that the appellant has failed to demonstrate that the consequences of a flooding event are acceptable. It therefore conflicts with the aims of Policy SP3 of the adopted Newport Local Development Plan 2011- 26 (Adopted 2015) (LDP) and the thrust of the advice within PPW and TAN15.

Living Conditions

10. The Council objects to the development on the basis that the living conditions for future occupiers would be unacceptable, having particular regard to levels of noise and the arrangements for the storage of refuse facilities. I shall consider each issue in turn.
11. The evidence suggests that levels of noise and disturbance, as a result of the nearby commercial uses and highway network, have been a reason for refusal in each of the previous planning applications referred in the '*Background and Preliminary Matters*' identified above. The need for a noise assessment has also been identified by the

Council's Public Protection Team through the planning application process that led to the current appeal. Moreover, the Inspector appointed to determine the 2022 Appeal acknowledged the potential for levels of noise and general disturbance and stated that, in the absence of any substantive evidence to the contrary, she was unable to conclude that the proposal would ensure satisfactory living conditions. The current proposal is not supported by a site-specific noise assessment, despite such matters being repeatedly raised through the various application and appeals processes. I am therefore unable to come to an alternative view to that established through the 2022 Appeal.

12. I note the appellant's suggestion that such matters could be addressed through the use of planning conditions requiring acoustic glazing and/ or heat recovery systems that would adequately mitigate street noise. However, these arguments have already been canvassed at the 2022 Appeal, with the appointed Inspector noting that, "...*although the appellant contends that mitigation could be secured through the use of a planning condition, given the lack of evidence before me, there is little to demonstrate the efficacy of such measures*". I have no reason to take an alternative stance on this matter. Similarly, whilst I note the appellant's reference to other developments within the wider area, I have not seen anything to indicate that the exact same circumstances apply in this case. As such, it is necessary to consider this case on its own particular merits.
13. With regards the issue of refuse facilities, it would appear that a storage facility would be provided internally, adjacent to the main communal corridor to the flats. The Council contends that this would not be appropriate and, given the likely implications for odour and hygiene, I agree with this assessment. Indeed, such concerns lead me to conclude that such an arrangement would have a significant adverse impact on the living conditions of the prospective occupiers of the flats. As above, I note the appellant's references to other developments which incorporate internal storage areas. However, the available evidence suggests that there are some key differences between those schemes and that proposed in this instance, including the use of secure doors. Nonetheless, I am not bound by other decisions made by the Council and, whilst it might be possible for an outside storage area to be addressed through a planning condition, it is clear from the evidence that the appellant seeks an internal storage area in this instance.
14. For these reasons, I find that it has not been satisfactorily demonstrated that the proposed development would provide adequate living conditions for its occupiers, having particular regard to levels of noise and the arrangements for the storage of refuse facilities. The development would therefore conflict with the aims of Policies GP2 and GP7 of the adopted LDP, as well as the thrust of the advice contained within the Council's Supplementary Planning Guidance (SPG) entitled '*Flat Conversions*' (2020).

Affordable Housing

15. In the 2022 Appeal, the Inspector made it clear that, whilst the appellant has confirmed agreement to the heads of terms put forward by the Council in respect of a financial contribution towards affordable housing, this does not constitute a comprehensive legally binding agreement. It was also clarified that, without such an agreement, there is no mechanism to secure the required contribution. The 2022 Appeal also established that a planning condition would not be the appropriate mechanism to secure financial contributions. This position is supported by the advice contained within Welsh Government Circular (WGC) 016/2014: *The Use of Planning Conditions for Development Management* (2014).
16. The proposal subject of the current appeal is not supported by a planning obligation to secure the necessary contribution towards affordable housing and the Council has confirmed that it has not adopted a Community Infrastructure Levy charging schedule. As such, the objections raised in the 2022 Appeal remain relevant, with no evidence of any

material change in circumstance. The appeal would therefore conflict with the aims of Policy H4 of the adopted LDP and, for the same reasons, would also conflict with a fundamental principle of national planning policy.

Planning Balance & Overall Conclusions

17. Based on the foregoing analysis, I have found that it has not been satisfactorily demonstrated that the consequences of a flooding event would be acceptable. The development would therefore conflict with the policy framework in respect of flood risk. I have also found that it has not been satisfactorily demonstrated that adequate living conditions could be provided, having particular regard to a lack of information in respect of levels of noise and inadequate arrangements for the storage of refuse. By failing to submit a planning obligation to deliver affordable housing contributions, the development also conflicts with the policy framework in this respect.
18. There is no doubt that the development would make a positive contribution towards the local housing land supply. However, whilst this weighs in favour of the proposal, it does not in my view obviate the need for other planning requirements to be fully assessed. As such, I do not consider that such factors outweigh the identified harm and associated policy conflict. Rather, I consider the adverse consequences of the scheme to amount to compelling reasons why planning permission should be withheld. For these reasons, and having considered all matters raised, I conclude that the appeal should be dismissed.
19. In coming to this decision, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

Richard E. Jenkins

INSPECTOR