
Appeal Decision

Site visit made on 25 October 2016

by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 November 2016

Appeal Ref: APP/N0410/W/16/3153038

42-44 Oak End Way, Gerrards Cross, Buckinghamshire SL9 8BR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Neil Jarvis of Hughes Jarvis Ltd against the decision of South Bucks District Council.
 - The application Ref 15/01734/RC, dated 24 August 2015, was refused by notice dated 24 December 2015.
 - The application sought planning permission for the redevelopment of the site to provide six self contained apartments without complying with a condition attached to planning permission Ref 14/02345/FUL, dated 18 February 2015.
 - The condition in dispute is No 10 which states that: *"The permission hereby granted shall lapse if planning permission 14/00770/FUL is lawfully implemented in whole or in part."*
 - The reason given for the condition is: *"To avoid an overdevelopment of the site and to ensure the satisfactory provision of sufficient on-site car parking for the development hereby approved (Policy TR7 of the South Bucks District Local Plan (adopted March 1999) refers.)"*
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Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of the site to provide six self contained apartments at 42-44 Oak End Way, Gerrards Cross, Buckinghamshire SL9 8BR in accordance with the application Ref 15/01734/RC dated 24 August 2015 subject to the conditions in the attached Schedule.

Preliminary matter

2. At the time of my site visit, the building at No 44 had already been demolished. It is not clear if this represents the implementation of 14/02345/FUL, however it is not necessary for me to come to a view on this point as part of my determination of this appeal.

Main Issue

3. The main issue is whether the condition is reasonable or necessary having regard to the provision of vehicle parking for future residents.

Reasons

4. Planning permission ref 14/02345/FUL is for six apartments and six parking spaces. Planning permission ref 14/00770/FUL, which predates 14/02345/FUL,
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grants consent for a detached dwelling to be built on land which was subsequently identified on the plans approved under 14/02345/FUL as providing two of the six car parking spaces. Were both permissions implemented, only four of the six parking spaces would be able to be provided, which the Council consider would be insufficient to serve the six flats. Accordingly Condition 10 of 14/02345/FUL, as set out in the header above, sought to allow only one of the permissions to be implemented.

5. However, in circumstances where multiple permissions relate to the same land, a planning condition cannot be used to revoke any other permission on the land, or the permission it is attached to by the implementation of another planning permission. The revocation of a planning permission can only be carried out by the local planning authority or the Secretary of State by a process under sections 97 and 100 of the Town and Country Planning Act 1990. Indeed, in this case, if planning permission 14/02345/FUL were implemented first, it could not be rescinded by the subsequent implementation of permission 14/00770/FUL. In addition, it would not be possible to redraft the condition so that it would be able to prevent the implementation of permission 14/00770/FUL or rescind itself.
6. As such Condition 10 is unenforceable and therefore unnecessary and so does not meet the tests in the National Planning Policy Framework (the 'Framework'). Therefore I am unable to come to any conclusion other than the appeal should succeed. Consequently, the planning merits of the case have not formed part of my deliberations. Similarly I need not consider the issue of precedent which was included as a reason for refusal. I do however need to consider the matter of conditions and it is to that which I now turn.

Conditions

7. In allowing the appeal and granting planning permission, I have considered those conditions imposed on the extant planning permission against the requirements of the Planning Practice Guidance and the Framework.
8. As I am uncertain if the demolition of No 44 has implemented planning permission 14/02345/FUL, I have phrased some conditions to require compliance prior to the commencement of development. Those conditions that do require compliance prior to the commencement of development do so, so that the effects of the proposal are properly mitigated for in order to make the development acceptable.
9. I have imposed the standard condition relating to the commencement of development and a condition specifying the plans so as to provide certainty. The conditions on the extant planning permission relating to materials, landscaping and bin storage are necessary in the interests of preserving the character and appearance of the area and so I repeat them in the Schedule. It is also necessary to repeat the condition preventing the insertion of additional windows in the interests of protecting the privacy of neighbouring occupiers.
10. Condition 6 of planning permission 14/02345/FUL requires six parking spaces to be laid out and thereafter not used for any other purpose. However the implementation of planning permission 14/00770/FUL, would prevent all six spaces from being provided and instead only four spaces would be achievable if 14/02345/FUL were also implemented. As such, this condition is not enforceable and I have imposed an amended version which relates solely to the

four spaces that are achievable so that the condition is enforceable and meets all the tests in the Framework. This condition is necessary in the interests of highway safety.

Conclusion

11. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed.

Andrew Owen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development to which this consent relates shall be undertaken solely in accordance with the following approved plans: 1490 001, 1490 002, 1490 003 and 1490 004.
- 3) No development shall commence until samples or a schedule of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved details.
- 4) No development shall commence until samples or a specification of all finishing materials to be used in any hard surfacing of the application site have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out using the approved materials.
- 5) No further windows shall be inserted in any of the elevations of the building hereby permitted.
- 6) With the exception of the two parking spaces at the rear of the site, the scheme for parking and manoeuvring indicated on the approved plans shall be laid out prior to the initial occupation of the development hereby permitted and shall not thereafter be used for any other purpose.
- 7) Notwithstanding any indications illustrated on the approved drawings, no development shall commence until there has been submitted to and approved by the local planning authority in writing a scheme of landscaping which shall include the laying of grass for the 'Residents Amenity Garden' and the planting of 2 standard sized indigenous trees.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the development or the substantial completion of the development, whichever is the sooner. Any trees or plants forming part of the approved landscaping scheme which within a period of 5 years from the occupation or substantial completion of the development, whichever is the later, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Notwithstanding any indications illustrated on the approved drawings, no development shall commence until there has been submitted to and approved by the local planning authority in writing a scheme for the siting of either 4 x 360L bins or 1 x 1100L bin for refuse, 4 x 360L bins for mixed recycling, 1 x 240L bin for paper recycling and 1 x 140L bin for food waste within the site in accordance with the requirements of the Council's Refuse and Recycling section. Thereafter the development shall be completed and maintained entirely in accordance with the approved details.