
Appeal Decision

Site visit made on 28 February 2017

by Beverley Doward BSc BTP MRTPI

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

Decision date: 18 April 2017

Appeal Ref: APP/Y0435/W/16/3165055

Inside Out, Glyn Square, Wolverton, MK12 5JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Anne Mallory (Select Property and Investment Funding Ltd) against Milton Keynes Council.
 - The application Ref 16/02419/FUL, is dated 23 August 2016.
 - The development proposed is change of use from storage (use class B8) and retail (use class A1) to residential (use class C3) and retail (use classes A1, A2 and A3) comprising demolition of a two-storey extension to Victorian Heritage Asset, and demolition of a single-storey storage depot for the erection of four-storey development of 14 two-bedroom dwelling flats and 2 ground floor retail units. Conversion of the Heritage Asset for the purpose of providing parking associated with the residential development.
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Decision

1. The appeal is dismissed and planning permission for the change of use from storage (use class B8) and retail (use class A1) to residential (use class C3) and retail (use classes A1, A2 and A3) comprising demolition of a two-storey extension to Victorian Heritage Asset, and demolition of a single-storey storage depot for the erection of four-storey development of 14 two-bedroom dwelling flats and 2 ground floor retail units. Conversion of the Heritage Asset for the purpose of providing parking associated with the residential development is refused.

Procedural Matters

2. The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission. The Council has submitted a statement of case indicating that it considers the appeal should be dismissed and setting out its reasons for this. I have had regard to this in my consideration of the appeal.
 3. The Council indicates that it is unable to demonstrate a five year housing land supply. It also states that in the light of this and having regard to the advice of the National Planning Policy Framework (the Framework) relevant policies for the supply of housing should not be considered up-to-date and that the current proposal should be considered with regard to paragraph 14 of the Framework which provides a presumption in favour of sustainable development and
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provides that permission should be granted unless adverse impacts significantly and demonstrably outweigh the benefits.

4. The appeal site lies within the area covered by the adopted Wolverton Town Centre Neighbourhood Development Plan 2015-2025 (WTCNP) which forms part of the adopted development plan for the area. Since the submission of the appeal the Written Ministerial Statement (WMS) dated 12 December 2016 relating to the way in which housing policies in neighbourhood plans are dealt with in decision making was issued. Accordingly, the parties were afforded the opportunity to comment upon the implications, if any, of the WMS for this case. I return to this matter below.

Main Issues

5. Having regard to the cases put forward by the main parties the main issues in this case are:
 - the effect of the proposed development on the vitality and vibrancy of the town centre;
 - whether satisfactory living conditions would be provided for future residents of the proposed residential development having particular regard to outlook and noise;
 - the effect of the proposed development on local infrastructure and in particular whether having regard to the viability of the proposed development the requirement to contribute towards educational facilities would be reasonable and realistic.

Whilst it is not an issue between the parties, as the decision maker I am required to have regard to the statutory duties in relation to designated heritage assets namely to have special regard to the desirability of preserving the setting of the listed building and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Accordingly, I have also taken this into account

Reasons

Description of site and appeal proposal

6. The appeal site comprises two buildings which the Council indicates were originally part of Wolverton Railway Works. The northern building is currently in use as a furniture store, albeit that the appellant contends that its lawful use is as a Class D1 use with only personal permission for retail use granted to its current occupier. The Council indicates that the southern building is split into 4 retail units. At my site visit I noted that the front elevation of this building had three roller shutter entrances and that a retailer of motorcycles was currently in a section of the building which provided showroom/workshop space, the remainder of the building appeared vacant.
7. The appeal site fronts onto Glyn Square and faces the rear service area of the retail/commercial development opposite. To the rear (east) of the site and at a lower level is McConnell Drive beyond which is a railway line. To the north the site adjoins a listed Victorian building which is currently used as a gymnasium whilst to the south the site adjoins a 1960s telephone exchange building. There are also residential properties further to the south of the site.

8. The appeal proposal would result in the demolition of a two storey front extension to the northern building on the site and the use of the remainder of that building to provide covered car parking, bin storage and cycle parking to serve the residential development which, along with two ground floor retail units, would be provided in a four storey building that would be developed on the site of the southern building following its demolition.

Vitality and vibrancy of town centre

9. Policy W4 of the WTCNP seeks to protect, enhance and promote a diverse range of uses within Wolverton town centre in order to secure its success. It indicates that shops and shop floor space (A1 use) at ground floor level will be retained within the primary and secondary frontages in accordance with specific requirements for specified frontages in order to avoid the over dominance of any particular use. It also indicates that retail services in the town centre will be promoted by providing protection for secondary frontages in accordance with the specific requirements for specified frontages.
10. The appeal site lies within a secondary frontage in the town centre as identified in the WTCNP. The WTCNP indicates that 50% of the specified frontage is currently in retail (class A1) use and that the requirement for the frontage in the context of policy W4 is that there should be a minimum of 60% in retail (class A1 use).
11. The appellant disputes the extent of the specified frontage which is currently in retail (class A1) use as indicated in the WTCNP. Nevertheless, irrespective of whether this is 50% as indicated in the WTCNP or 10% as contended by the appellant, the WTCNP indicates that there should be a minimum of 60% of the frontage in retail (class A1) use in order to protect and improve the vitality and vibrancy of the town centre. The evidence indicates that the appeal proposal would result in the proportion of the overall secondary frontage in retail (class A1) use being significantly less than that indicated as a minimum in the WTCNP. Accordingly, the proposed development would fail to comply with policy W4 of the WTCNP thereby undermining its purpose which seeks to protect and improve the vitality and vibrancy of the town centre. It would also be contrary to the principle of ensuring the vitality of town centres as indicated in the Framework.

Living conditions

12. The proposed flats fronting onto Glyn Square would be at first floor level and above. Accordingly, whilst they would be afforded distant views above the Glyn Square development over Wolverton Town Centre and, notwithstanding the existing and proposed landscaping along Glyn Square, their immediate outlook would be onto the back of the retail/commercial development opposite including its busy rear service yard and the car repair/servicing workshop which fronts onto the service yard. Furthermore, whilst the two flats on the ground floor at the rear of the building would look out onto the proposed amenity space, the remainder of the flats on the rear of the building would look immediately over McConnell Drive, the railway line and freight terminal, albeit they would also be afforded distant views beyond. Accordingly, it seems to me therefore that having regard to the location of the proposed development within a predominantly commercial area and the lack of any significant visual buffers between it and the surrounding commercial uses the majority of the proposed flats would have an unsatisfactory outlook such that the proposed

residential development would result in unsatisfactory living conditions for its future residents.

13. The building that would accommodate the proposed retail units and flats would be sited around 15 metres from the rear service area which provides the loading, delivery and waste disposal/recycling area for the Glyn Square retail/commercial development. It would also be around 30/40 metres from the car repair/servicing workshop within the Glyn Square development, the vehicular entrance to which is provided from the service area. Therefore, there would be the potential for the residential development to suffer noise and disturbance from these commercial activities as well as from McConnell Drive and the railway at the rear. Indeed the noise impact assessment (NIA) submitted by the appellant indicates that the development would experience intrusive noise levels above the acoustic design goals recommended for residential development as set out in BS8233: 2014 Guidance on sound insulation and noise reduction for buildings. Whilst a suitably worded condition could be imposed requiring the submission and approval of appropriate measures so as to achieve acceptable noise levels in line with BS8233: 2014 this would not overcome my other substantial concerns in relation to this issue as indicated above.
14. To conclude on this issue therefore, I consider that satisfactory living conditions would not be provided for the future residents of the proposed residential development having particular regard to outlook. In this respect therefore the proposal would fail to comply with policy CS13 of the Milton Keynes Core Strategy adopted July 2013 (Core Strategy) and saved policies H7 and D2 of the Milton Keynes Local Plan 2001-2011 adopted 2005 (Local Plan) which taken together seek to ensure that development is sensitive to its context, that proposals for housing development on unidentified sites within the defined limits of development of settlements are compatible with existing land uses in the surrounding area and that development proposals relate well to the surrounding environment. The proposed development would also be contrary to the core planning principle indicated in the Framework that planning should always seek to secure a good standard of amenity for all future occupants of land and buildings.

Local infrastructure

15. Policy CS21 of the Core Strategy indicates that new development that generates a demand for infrastructure will only be permitted if the necessary on and off-site infrastructure to support and mitigate the impact of that development is either already in place or there is a reliable mechanism in place to ensure that it will be delivered in the right place at the right time and to the minimum high standards demanded by the Council and its partners.
16. The Council indicates that having regard to policy CS21 of the Core Strategy and saved policies D4 and PO4 of the Local Plan along with its Education Facilities Supplementary Planning Guidance (EFSPG), Leisure Recreation and Sports Supplementary Planning Guidance, Social Infrastructure Supplementary Planning Document and Sustainable Construction Supplementary Planning Documents the proposed development would normally require planning obligations calculated at around £257,000 to mitigate the impact of the development on local infrastructure/facilities. The appellant does not dispute this and there is nothing in the evidence to lead me to take an alternative view.

17. The Viability Appraisal (VA) submitted with the application indicates that without any contributions to offset the impact of the development on local infrastructure/facilities, the profit on undertaking the development on the site at 6.97% of Gross Development Value, would be limited and is considerably less than the average of 15% to 20% which would normally be sought for a development proposition of the scale proposed here. I note that the appellant indicates that the project only works in this particular instance as the owners of the site are seeking to undertake the development themselves. The VA and its findings are not a matter of dispute between the parties. Therefore, on the basis of the evidence before me I see no reason to take an alternative view.
18. The Framework indicates at paragraph 173 that pursuing sustainable development requires careful attention to viability and costs in decision-taking. It also indicates that to ensure viability, the costs of any requirements likely to be applied to the development, such as infrastructure contributions or other requirements should, when taking into account the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. Similarly the Planning Practice Guidance (PPG) advises that where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.
19. The Council does not dispute the fact that the resultant profit indicated in the VA demonstrates that the proposed development scheme cannot afford the contributions required and remain viable. It also acknowledges the advice contained in the Framework and the PPG regarding the need for flexibility where appropriate where the viability of a development is in question. Nevertheless it contends that the proposed development would add to an existing deficit of school places such that in the absence of financial contributions of £9,918.36 for additional early years places and £49,008.39 for additional primary school places which are calculated in accordance with its EFSPG the proposal would be unacceptable on planning grounds.
20. From the evidence before me I accept that the contributions sought by the Council in relation to education facilities accord with the development plan and would be required to make the development acceptable in planning terms. However, I am also mindful that the undisputed evidence indicates that the profitability of the scheme is so marginal that even taking into account the removal of all other contributions the requirement for the proposal to make the identified financial contributions for the provision of additional educational facilities would render the scheme unviable. Accordingly, in this particular case in relation to this issue, given the context of the advice of the Framework to boost significantly the supply of housing and the need for flexibility where the viability of a development is in question, if there were to be an absence of any other harm then the harm caused by the lack of a contribution towards education facilities and the conflict with policy CS21 of the Core Strategy and the EFSPG would be outweighed by other material considerations such that the requirement for the contribution towards educational facilities would not be reasonable or realistic.

Heritage assets

21. The northern part of the appeal site lies within the Wolverton Conservation Area. I have not been provided with a conservation area appraisal. Therefore, I have only limited information on the conservation area as a whole and its significance. However, from my site visit I saw that the conservation area is characterised by late 19th and early 20th century terraced housing together with industrial and commercial areas. The northern part of the site also adjoins a large listed Victorian building which is used as a gymnasium but which the Council indicates once formed part of Wolverton Railway Works.
22. The existing buildings on the site have been added to and altered such that currently they make only a limited contribution to the character or appearance of the conservation area and to the setting of the listed building to the north. The demolition of the unsightly two storey front extension on the northern building on the site which is a non-designated heritage asset and the restoration of the building to provide covered parking, bin storage and a cycle store to service the residential development would preserve the character and appearance of both the conservation area and the non-designated heritage asset and preserve the setting of the adjacent listed building. Furthermore, the built form of the retail/residential element of the appeal proposal, albeit of a contemporary design, would preserve both the setting of the listed building and the character and appearance of the Wolverton Conservation Area.
23. The Council has not raised any objections to the effect of the proposed development on the designated heritage assets and from my observations on site I consider that overall the appeal proposal would preserve the character and appearance of the Wolverton Conservation Area and preserve the setting of the listed building. Accordingly, it would comply with the principle of the Framework of conserving and enhancing the historic environment.

Other matters

24. The Council indicates that the 16 car parking spaces to serve the residential development would be 3 less than that required by its adopted parking standards and that there is no information about the future use of the retail units to fully assess the parking requirement as a whole. However, it also indicates that it is not envisaged that the retail units would result in a parking demand above that provided for and that the slight shortfall in residential spaces would not be so significant as to warrant dismissal of the appeal. I agree. Accordingly, I am satisfied that on the basis of the evidence before me and from my observations on site the proposal would not cause any harm to highway safety having regard to parking.
25. As indicated above the Council indicates that it cannot demonstrate a five year supply of housing land and that in accordance with paragraph 49 of the Framework relevant policies for the supply of housing should not be considered up-to-date. I have had regard to the comments from the main parties on whether there are any implications for this appeal of the WMS relating to the way in which housing policies in neighbourhood plans are dealt with in decision making. The Council indicates that whilst the WTCNP is less than two years old, it does not consider that it allocates sites for housing and that therefore, the WMS is not a material consideration of relevance in this appeal. On the basis of the evidence before me I see no reason to take an alternative view.

26. Paragraph 49 of the Framework requires housing applications to be considered in the context of the presumption in favour of sustainable development. This is set out at paragraph 14 of the Framework which indicates that for decision-making purposes this means where the development plan is absent, silent or relevant policies are out-of-date, 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; or specific policies in the Framework indicates that development should be restricted.
27. There would be economic and social benefits arising from the development of a mixed used development which includes 14 market residential units in an accessible town centre location within an area where there is an acknowledged absence of a five year supply of housing land. There would also be spin-off economic benefits through employment in construction jobs and within the retail units, through the facilitation of flexible working practices by the integration of residential and retail uses within the same building and by increased local spending. I accord these economic and social benefits cumulatively considerable weight in favour of the proposal. There would also be an environmental benefit through the redevelopment of a previously developed site which adds moderate weight in favour of the proposal.

Planning Balance and Conclusion

28. I have found that the proposed development would result in unsatisfactory living conditions for its future residents. It would fail to comply with policies CS13 of the Core Strategy and H7 and D2 of the Local Plan and also be contrary to one of the core planning principles of the Framework that planning should always seek to secure a good standard of amenity for all future occupants of land and buildings. I attribute substantial weight to this harm.
29. The proposal would also be contrary to policy W4 of the WTCNP and the principle of ensuring the vitality of town centres as indicated in the Framework. It would therefore harm the vitality and vibrancy of the town centre. I attribute moderate weight to this harm.
30. In addition there would be conflict with policy CS21 of the Core Strategy. Therefore, some harm would be caused so far as there is a manifest requirement to contribute towards education facilities in order to make the development acceptable in planning terms. However, in the particular circumstances of this case and my findings that in the light of the advice of the Framework if there were to be an absence of any other harm then the harm caused in this respect would be outweighed by other material considerations, I attribute only limited weight to this harm in the overall balance. The lack of harm to the character or appearance of the conservation area, the setting of the listed building and highway safety are neutral factors.
31. Against the harm identified above has to be balanced the benefits of the proposal that I have identified. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework as a whole. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development.

32. Overall, therefore the proposal would not represent sustainable development and is contrary to the development plan.

33. For these reasons, therefore the appeal should be dismissed.

Beverley Doward

INSPECTOR