
Appeal Decision

Site visit made on 16 July 2019

by P J Staddon BSc, Dip, MBA (Distinction), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2019

Appeal Ref: APP/Y3940/W/19/3227555

Land at St John's Street, Malmesbury, SN16 9BW

- 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 Warden & Freeman against the decision of Wiltshire Council.
 - The application Ref 18/10650/FUL, dated 9 November 2018, was refused by notice dated 31 January 2019.
 - The development proposed is the 'conversion of existing allotments into parking'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal is acceptable in terms of flood risk.
 - The effect of the proposal on the character and appearance of the Malmesbury Conservation Area.
 - The effect of the proposal on green infrastructure.
 - The effect of the proposal on the living conditions of neighbouring residential properties.

Reasons

Flood risk

3. The appeal proposal seeks to convert a small allotments site behind existing properties on St John's Street to a car park. The majority of the site falls within flood zone 3b as defined on the Environment Agency's (EA) flood map for planning. Flood zone 3b is functional floodplain.
4. The Planning Practice Guidance (PPG) classifies proposed types of development according to their flood risk vulnerability. The appellant contends that the car park's non-residential nature means that it should be treated as falling within the 'low vulnerable' category. However, the Council asserts that, as the car park is intended for local residents who would rent spaces, it should be treated in line with that associated residential use, and accordingly be classed as a 'more vulnerable' development under the PPG classification, a view seemingly supported by the EA's consultation response.

5. The PPG classification is not exhaustive and it does not specifically address the vulnerability of car parking areas associated with particular land uses. As a result, categorising such development proposals requires some judgement. In my view, the associated use is a reasonable starting point and it is clear from the submissions that the development will primarily serve existing residential uses, which would fall into the 'more vulnerable' category. In this regard, I have noted the Council's concerns that vehicles could be left unattended for long periods, for example, if residents were on holiday, and could not be readily moved in the event of a flood incident. However, nobody would be living on the site or would be expected to spend any extended time periods within the proposed car park. On balance, this leads me to the view that the development fits more readily into the 'less vulnerable' classification.
6. However, the PPG is clear that even 'less vulnerable' development should not be permitted in flood zone 3b. Indeed, in these functional floodplain areas, where water has to flow or be stored in times of flood, most development is deemed to be inappropriate. Only essential infrastructure, that meets the 'exception test', or water-compatible uses, are considered to be acceptable in these flood prone locations. The development does not fall under these permitted types and is therefore unacceptable in terms of flood risk.
7. Indeed, the appeal proposal would place a use with significantly greater human activity and presence (than the allotment use), along with up to 19 motor vehicles, within the functional floodplain. The EA has confirmed in its consultation response that the site would have a floodwater depth of about 300mm under a modelled 1 in 20 year event and a floodwater depth of around 800mm under a 1 in a 100 year event. This evidence, along with the indication that bollards would need to be introduced around the parking area to prevent vehicles being washed away, confirms the incompatibility of the development in terms of the site's flood zone designation and function.
8. On this main issue, whilst I assess that the development could be considered to be 'less vulnerable' under the PPG classification, it would still constitute inappropriate development in a flood zone 3b area. As such, the development would conflict with Core Policy 67 of the Wiltshire Core Strategy (2015) (the WCS), the National Planning Policy Framework (2019) (the Framework) policies concerning flood risk and the guidance contained in the PPG. These policies and guidance all seek to manage flood risk and avoid inappropriate development in areas at high risk of flooding.

Character and appearance of the Malmesbury Conservation Area

9. The Malmesbury Conservation Area (CA) covers most of the historic town. The appeal site is situated within the south-eastern part of the CA, where there is a transition from the built development fronting St Johns Street to more dispersed development and a semi-rural area, with the river Avon beyond. Due to its location behind the row of buildings on St Johns Street, the appeal site is not publicly prominent in the CA and is rather tucked away. However, its open nature, and generally green appearance arising from the existing allotment use, contributes to the less developed, tranquil and attractive character and appearance of this part of the CA.
10. The appeal proposal would maintain the open nature of this part of the CA but the type of the development proposed, being a surface car park with lighting, would have a more urban and harsher character and appearance. Whilst this

effect would be quite limited and localised and could, to a certain extent, be mitigated by sensitive surfacing and landscaping, it would involve some small degree of harm to the CA, and it would not preserve or enhance its character and appearance.

11. The magnitude of the harm would be 'less than substantial' and the Framework advises that such harm should be weighed against the public benefits of the proposal. Whilst I note the Council's view that, as the parking is intended for private resident use, there will not be public benefits, I do not share that assessment. Based on the submissions before me, including significant waiting lists for resident parking and the appellant's indication that some businesses require spaces, along with the findings of my site inspection, it is clear that parking pressures are a notable local issue. This is confirmed in the Malmesbury Neighbourhood Plan (2015) which highlights that car parking for both residents and visitors is a 'long term problem' for the town. Relieving some of the parking pressures through the proposal could bring some tangible wider public benefits.
12. The Council has also referred to impacts on Listed buildings, but there are no Listed building immediately adjacent to the site and I am satisfied that the wider settings of the nearest Listed buildings, on St John's Street, would be preserved and not harmed by the proposal.
13. On this main issue, I conclude that, whilst the proposal would not preserve or enhance the character and appearance of the CA, the harm it would cause would be very limited and less than substantial. It could bring some public benefits by reducing on-street parking pressures in the CA and, on balance, I conclude that these benefits would offset the limited harm that would result in the vicinity of the appeal site. I therefore find no conflict with CS Policies 58 or section 16 of the Framework in this regard. More generally, I am also satisfied that the proposal would not create any undue tensions with CS Policy 57(i),(ii),(iii) and (vi) relating to good design, including matters concerning local distinctiveness and site context.

Green infrastructure

14. I understand that the existing allotment use is a fairly recent one and, before that, the site formed garden areas associated with properties on St John's Street. However, the allotments are now cultivated and well established and form part of the local green infrastructure network. The appeal proposal would result in the loss of most of the site's green infrastructure space and value, with only two small corner areas retained for soft landscaping.
15. The appellant's submissions on this matter focus on evidence of greater demand for parking than for allotments, which is confirmed by the submitted waiting lists, which are long for parking spaces and short for allotments. Whilst this may well be the case, CS Policy 52 says that if loss of green infrastructure is unavoidable, the creation of compensatory provision will be required. As no equivalent compensation is offered, there is a conflict with the policy.
16. On this main issue, I conclude that the proposal would result in the loss of an area of green infrastructure which would not be compensated for. As such this conflicts with CS Policy 52 and this weighs against the proposal.

Living conditions

17. Vehicular access to the car park spaces would be gained via the appellant's existing 28 space car park to the north, which is served by an established entrance on St John's Street. The proposed car park would be located immediately behind the rear gardens of two dwellings within the appellant's control, which I believe are Nos 33 and 35 St John's Street (they are not numbered on the plans). Whilst each garden is of a reasonable depth, the proposed car park use would be likely to be a more active and potentially intrusive use, compared to the existing allotments.
18. Occupants of these properties are likely to experience the effects of noise of vehicle movements across the proposed gravel surface and associated noise from people using the car park and entering or leaving their vehicles. Given the nature of the use for a range of residents in the wider area, these effects could be at any time of the day and night, including times when there is a reasonable expectation of peacefulness. Moreover, four lighting columns are shown on the drawings and the night-time illumination could add to an overall intrusive effect on residents' living conditions.
19. Whilst I note the scope for an acoustic fence, which could be secured by a planning condition, and the appellant's submissions concerning 'courtyard' developments, there is insufficient evidence to demonstrate that the proposed development would not be harmful to the living conditions of occupiers of these immediately adjacent dwellings, in terms of the combined effects of noise, general activities and illumination.
20. On this main issue, I conclude that the proposal fails to demonstrate that it would be compatible with the living conditions enjoyed by occupants of the immediately adjacent residential properties. This means that it conflicts with CS Policy 57(vii) and with paragraph 127(f) of the Framework which seek to ensure a high standard of amenity for existing and future users.

Conclusion

21. I have concluded that the proposal's harm to the character and appearance of the CA would be very limited and offset by the public benefits of relieving recognised local parking pressure. However, this is a neutral finding. Weighing heavily against the proposal is the fact that it would constitute inappropriate development in the floodplain. Weighing further against the proposal would be the uncompensated loss of green infrastructure and the failure to demonstrate that the development would be compatible with maintaining the living conditions enjoyed by residential neighbours.
22. For these reasons, and taking all matters into account, the appeal is dismissed.

P. Staddon

INSPECTOR