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## Appeal Decision

Site visit made on 3 October 2019

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 21 November 2019

### **Appeal Ref: APP/H2835/W/19/3233354 24 Gold Street, Wellingborough NN8 4QY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Barker of Barker Homes against the decision of Wellingborough Borough Council.
- The application reference WP/18/00066/FUL dated 22 October 2018 was approved and planning permission was granted subject to conditions.
- The development permitted is the demolition of an existing dwelling and the construction of a new apartment building containing 7 no. one bedroom apartments and 2 no. two bedroom apartments was approved subject to conditions on the 17 January 2019.
- The conditions in dispute are Nos 6, 7 and 18 which state that:
- Condition 6: *'The premises shall be used for C3 (a) use only and for no other purposes including any other purpose in Class C3 of Part C of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).'*
- Condition 7 *'The trees shown on the approved Site Plan - Drawing 0553-100-P8 (registered 18 December 2018) shall be protected in accordance with BS5837:2012 'Trees in relation to design, demolition and construction-Recommendations') by the time construction begins. All protective measures must be in place prior to the commencement of any building operations (including any structural alterations, construction, rebuilding, demolition and site clearance, removal of any trees or hedgerows, engineering operations, groundworks, vehicle movements or any other operations normally undertaken by a person carrying on a business as a builder). The Root Protection Area (RPA) within the protective fencing must be kept free of all construction, construction plant, machinery, personnel, digging and scraping, service runs, water-logging, changes in level, building materials and all other operations. All protective measures shall be maintained in place and in good order until all work is complete and all equipment, machinery and surplus materials have been removed from the site'.*
- Condition 18: *'The bin store shown on approved Site Plan- Drawing 0553-100-P8 (registered 18 December 2018) shall be made available for use prior to the first occupation of the approved development and shall be permanently made available and accessible for the occupiers of the approved units'.*
- The reason given for the condition are:
- Condition 6: *'Other uses within this Use Class may not be appropriate in these premises by reason of restricted parking provision'.*
- Condition 7: *'To protect significant trees safeguarding the character of the area and preserving habitat and to minimise the effect of development on the area in accordance with policy 3(b) and (e) of the North Northamptonshire Joint Core Strategy'.*
- Condition 18: *'To ensure there is a designated area for the storage of domestic waste and to protect the appearance and character of the area and to minimise the effect of development of the area in accordance with policy 3 and 8 of the North*

## **Decision**

1. The appeal is allowed in part and planning permission Ref WP/18/00066/FUL for the demolition of an existing dwelling and the construction of a new apartment building containing 7 no. one bedroom apartments and 2 no. two bedroom apartments at 24 Gold Street, Wellingborough NN8 4QY granted on 17 January 2019 by Wellingborough Borough Council is varied by deleting Condition No 18.

## **Background and Main Issues**

2. The Council granted planning permission for the demolition of an existing dwelling and the construction of a new apartment building with 7 one bedroom apartments and 2 two bedroom apartments (the permission). Eighteen conditions were imposed in total including Condition Nos 6, 7 and 18. These conditions relate to restricting the use of the development to Class C3(a), tree protection measures and the availability of a bin store.
3. The main issue is whether the conditions are necessary and reasonable having regard to parking provision, tree protection and the character and appearance of the area.

## **Reasons**

4. The appeal site is located to the north of Wellingborough Town Centre and currently consists of a detached dwelling. The surrounding development is predominantly residential and the appeal site is in a central location. A previous planning permission Ref WP/18/00062/FUL (the previous scheme) had been granted on the 19 April 2018 for a similar proposal on the appeal site. Although the Council did not impose the conditions in dispute on the previous scheme, the Council was entitled to include different conditions on the permission provided that it was reasonable to do so and the conditions met the relevant tests set out in the advice contained in the Planning Practice Guidance and Paragraph 55 of the National Planning Policy Framework (the Framework).

### *Condition No 6*

5. This condition restricts the use to Class C3 (a) only so that any change to any other purpose in Class C3 would require a planning application. The restriction would prevent a change to C4 use and also C3(b) or C3(c) which would allow occupation for up to 6 people living together as a single household and receiving care. The reason given for the condition by the Council was that other Uses within the Use Class may not be appropriate by reason of restricted parking provision.
6. The Council considers that the number of units and the limited level of parking means that the Council needs to be able to reassess the potential impact on the parking provision prior to any changes within the Use class taking place. The permission provides for 5 on-site parking spaces for 9 units and the current standard is 11 making a shortfall of 6. Whilst it is the case that the appellant could choose to implement the previous scheme that would be likely to result in less parking need as it provides less units so that it is not directly

comparable. Similarly, although reference is made to a previous appeal decision that was for 6 apartments which had a shortfall of 9 spaces and I have limited details about the appeal decision for a different proposal. With regard to identified harm, there is a shortfall of parking spaces and changes within the Use Class may impact upon parking needs. I note that a parking survey was submitted and the Council considered that it was appropriate to grant permission subject to relevant conditions but it does not follow that other uses within the Use class would generate a similar level of parking need.

7. Whilst the appellant has referred to other schemes which have received approval without a similar condition, I have limited details and each scheme has to be assessed upon its own merits. Whilst the relevant policy was not quoted in the reason for the decision, the reasoning for the decision namely the restricted parking provision was clear. I therefore do find the condition to be necessary and reasonable in view of the parking shortfall and also relevant to planning and to the development permitted, enforceable and precise. The condition is also consistent with Paragraph 127 of the Framework which seeks to protect the amenities of future occupiers.

#### *Condition No 7*

8. This condition relates to tree protection measures. It requires that protective measures must be in place prior to the commencement of any building operations (including any structural alterations, construction rebuilding demolition and site clearance, removal of any trees or hedgerows, engineering operations, groundworks, vehicle movements or any other operations normally undertaken by a person carrying on a business as a builder).
9. The appellant considers that the condition is a repetition of condition No 2 which provides that the development shall be carried in accordance with the listed plans. However, there are no timing requirements contained within condition No 2. The condition ensures that protective measures are in place at an early stage. Whilst the appellant states that there is no threat to trees, this in itself is not a reason not to impose a condition and it is not unusual to have a tree protection clause. The omission of a similar clause from the previous scheme does not automatically preclude a condition being imposed upon this permission.
10. The wording of Condition 2 states "the development hereby permitted shall be carried out in accordance with the following details". If the Council considered that building operations were being undertaken and tree protection measures had not been carried out, Condition No 7 provides sufficient certainty with regard to timing to enforce which is not necessarily the case with Condition No 2 which refers to the development being carried out. It is also the case that plan No 0553—100-P8 refers to "trees to boundary, tree survey to be carried out to confirm RPAs" so that Condition 2 is not all encompassing with regard to tree protection.
11. I do therefore find that the condition is necessary and reasonable for tree protection and also relevant to planning and to the development permitted, enforceable and precise. The condition is also consistent with Policy 3 of the Core Strategy which amongst other things refers to where possible retaining landscape features.

*Condition No 18*

12. This condition relates to the timing of the provision of the bin store and states that it should be made available for use prior to the occupation of the approved development and be made permanently available and accessible. The appellant also considers this to be a repetition of Condition No 2 which refers to development being carried out in accordance the listed plans. The reason given for the condition is twofold. Firstly, to ensure that there is a designated area for the storage of waste. However, the bin storage is clearly shown on the approved plans which is covered by Condition No 2.
13. The second part relates to ensuring that the bin store is retained and not blocked or obstructed by cars parked within the site. The approved layout shows a modest space between the building, the parking spaces and the appeal building which does not suggest that parking of cars outside allocated spaces on the appeal site is likely to be any more of a problem than anywhere else on the appeal site. The Council considers that this condition is required on this permission due to the additional amount of refuse for three extra units as compared to the previous scheme. However, the amount of refuse would have been reflected in the size of the bin storage area. Once the bin storage area is provided as shown on Condition 2, it is available for use. Any refuse issues arising from the site could also be resolved through other legislation.
14. I consider that without the condition, the development would not adversely affect the character and appearance of the area. I therefore find no conflict with Policy 3 of the Core Strategy which refers to landscape character. Although Policy 8 of the Core Strategy is referred to generally by the Council, it is wide ranging and I consider it to be less relevant and do not find that the condition is required to minimise the effect of development on the area.
15. Overall, I find that conditions 6 and 7 were well founded and I therefore consider that those conditions should remain in their present form. They are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects, meeting the requirements of Paragraph 55 of the Framework. However, I find in favour of the appellant in relation to Condition 18 which I consider to be unnecessary and unreasonable. I will vary the planning permission by deleting Condition No 18.

*E. Griffin*

INSPECTOR