



Appeal Decision

Site visit made on 9 December 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/H2835/W/19/3238117

Land to the rear of 21A Silver Street, Wellingborough NN8 1AY

- 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 Andrew Woods, on behalf of EARA Property, against the decision of Borough Council of Wellingborough.
 - The application Ref WP/19/00269/FUL, dated 30 April 2019, was refused by notice dated 19 September 2019.
 - The development proposed is to construct new block of 4 residential units.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of future occupiers, with particular regard to noise and odour.

Reasons

3. The proposal would be located on a rear courtyard to a three-storey terraced mixed use building. Angel Lane, adjacent to the side of the site, rises to the rear. As such the courtyard is around 2 metres lower than the road at its furthest point from the building. To the side of the site is a large refuse area to serve the nearby market. This area is enclosed by timber fencing and accessed from the adjacent highway. The Council has identified that the market operates on a Tuesday, Wednesday, Friday and Saturday. It has also informed that the refuse area is in use from 5am on those days. The refuse area therefore has the potential to be a substantial source of odour and noise at anti-social times. The refuse area seems to serve an important function for the market as a whole. Furthermore, the Council has not offered the availability of an alternative site for such a facility.
4. The proposal would present a principal outlook towards Angel Lane. The access pathway to the front of the building would run alongside the refuse area. Also, the living space of flats 2 and 3 would have balconies directly above the area. Moreover, other windows serving habitable rooms, could be affected by the proximity of the market refuse area.
5. Policy 8(e) of the North Northamptonshire Joint Core Strategy (JCS) seeks development to achieve the required quality of life for future occupiers. This policy also seeks to create safe and healthy communities partly by protecting the living conditions of future occupiers including from noise and smell.

Furthermore, the National Planning Policy Framework (The Framework) requires that where an existing business could have significant adverse effect on new development and that the applicant should provide suitable mitigation before the development has been completed.

6. The appellant refers to a lack of objection from existing dwellings in the area. On site I observed that 50 Angel Lane includes first-floor flats. However, this block is some distance from the refuse area and has a primary outlook towards Orient House. Other nearby buildings, such as 18-19 Silver Street, are further from the refuse area than the proposed front elevation. Also, these occupiers appear to have access to a dual aspect outlook. Therefore, occupiers of existing dwellings are not as affected by the refuse area as occupiers of the proposed development would be. In any event, a lack of complaint from the occupiers of local existing dwellings is not in itself reason to find the development acceptable in this context.
7. The Council's stall holder regulations, and its Market Rights Policy, require stall holders to not cause disturbance to nearby residential premises. However, these requirements would not preclude the proper use of the Council's refuse area, including early morning use. It is therefore essential to fully understand the noise levels and odour associated with the activity. This would allow the decision maker to consider the extent of noise attenuation, type of ventilation and window orientation which might be required within the proposal. As this could result in significant design changes, I am not satisfied that a condition would be appropriate. The proposal is therefore not supported with sufficient detail or assessment to meet this requirement.
8. As a consequence, the need for a noise and odour assessment is both necessary and reasonable. This is required to determine the extent of any mitigation and to understand the impact of adjacent noise and odour on the proposed development. This requirement is not set aside by paragraph 183 of the Framework as it does not revisit pollution controls in other regimes. Instead it relates to whether the development would be an acceptable use of the site in its proposed form. Furthermore, if the proposal were allowed without adequate mitigation, noise complaints could prevent the use of the refuse area. This would be to the disbenefit of the market as a whole. Also, it is not for the Council's Environmental Health Officer to undertake a survey and assessment of local noise and odour sources or offer appropriate mitigation. This duty lies with the proposer.
9. Accordingly, the proposal would be contrary to Policy 8(e) of the JCS which amongst other things, requires development to not result in an unacceptable impact on the amenities of future occupiers. Furthermore, the proposed development would fail the Framework which seeks to mitigate and reduce to a minimum, the potential adverse impacts resulting from noise.

Other matters

10. The site is within the setting of the Grade I listed 'All Hallows Church' and the Grade II listed 'Orient House'. I have a statutory duty¹ to have special regard to the desirability to preserve the setting of a listed building. The significance of 'All Hallows Church' derives from its age, dating from C12, and its extensive architectural detailing. The significance of 'Orient House' derives from its

¹ Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990

historical interest and simple form. Both of these buildings are some distance from the appeal site. Due to the distance, change in topography and design benefits of the proposal, I am satisfied that the significance of both heritage assets would not be adversely affected. The proposal would therefore have a neutral impact on these heritage assets.

11. Furthermore, the statutory requirements² entail that special attention is also paid to the desirability of preserving or enhancing the character and appearance of a conservation area. The site is within the Wellingborough Town Centre Conservation Area (CA). The Council's Character Appraisal³ identifies that its significance derives partly from the importance of its historic core. It identifies that the church acts as a key focal point of the town centre. However, some buildings to the western edge of Market Square are poorly defined with some modern low-quality buildings. The proposal is of good design and would make a positive contribution to the CA. Consequently, due to its successful design the proposal would enhance this part of the CA and partially screen low-quality built form.
12. The site is within the zone of influence of the Upper Nene Valley Gravel Pits Special Protection Area. Consequently, as competent authority I am required to undertake an Appropriate Assessment (AA). Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective and could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Conclusion

13. The Framework seeks to significantly boost the supply of housing. The proposal would provide new dwellings and would enhance the character and appearance of the CA. However, I conclude that the appeal proposal would conflict with the development plan when taken as a whole. There are no other material considerations, including the Framework, that outweigh this conflict.
14. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR

² Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

³ Wellingborough Town Centre – Conservation Area Appraisal 2009