



Appeal Decision

Site visit made on 14 May 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2020

Appeal Ref: APP/Y0435/W/20/3246384

76-83 Shearmans, Fullers Slade, Milton Keynes MK11 2BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by V Pilla against the decision of Milton Keynes Council.
 - The application Ref 19/01629/OUT, dated 21 June 2019, was refused by notice dated 20 September 2019.
 - The development proposed is construction of fourteen apartments over the existing retail premises.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application under appeal was submitted in outline form with all matters reserved and I have determined the appeal on this basis. Matters of access, the layout of development, its scale, appearance and landscaping ('the reserved matters') would be for later detailed consideration.
3. Within their evidence, the appellant has provided plan no. 1240-17 which provides an illustrative layout indicating removal of the existing car repair centre and provision of additional parking. I note that the layout is stated to be for illustrative purposes only, but I am mindful that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council as local planning authority, and on which interested parties' views were sought¹.
4. This plan is not included on the appellant's list of planning application documents. Instead, it is listed as one of a number of 'supporting document documents, previously seen or issued by the LPA, submitted for the information of the Planning Inspector'. While it may have been previously seen by the Council, I have no evidence that plan no. 1240-17 was before the Council in relation to the current proposals at the time of the decision, and I cannot be certain that interested parties would be aware of the illustrative layout or have had the opportunity to comment upon it. As such, I consider that the interests of interested parties would potentially be prejudiced were this information to be accepted. Consequently, I have not taken plan no. 1240-17 into account, and have based my decision solely on the information originally submitted to and considered by the Council.

¹ Annex M of the Procedural Guide Planning Appeals - England

Main Issues

5. The main issues are:

- i) whether or not parking provision would be adequate to serve future occupiers of the development, and if not, the effect of any shortfall in provision on highway safety and the flow of traffic; and
- ii) whether or not financial contributions to mitigate the effect of the proposal on local infrastructure, and towards sustainable construction and carbon offsetting, are necessary.

Reasons

Parking Provision

6. Shearmans is a fairly narrow cul-de-sac which serves a mix of residential and commercial units. The appeal site is located close to the junction of Shearmans with Slade Lane and includes a single-storey building which accommodates 5 commercial units. To the side of the building is an area of surface parking which also provides access to a gated service yard to the rear of the building. Further forecourt parking is available to the front of the building.
7. At the time of my visit, the parking to the side and front of the building was not heavily used and several spaces were available. However, 3 of the premises were not open for business at the time, and travel restrictions owing to the COVID-19 pandemic may have affected the number of visitors to the commercial units on the site. Moreover, even while there were spaces available, 3 vehicles were parked on-street opposite the appeal building, either partially on the pavement or within the access/turning head here. Additional on-street parking was present closer to the dwellings located further along Shearmans, including many vehicles parked partly on the footway which I saw resulted in varying degrees of obstruction to pedestrians and traffic.
8. The Parking Standards Supplementary Planning Document 2016 (Parking SPD) outlines the expected parking standards for different types of development. The standards vary according to area taking account of car ownership levels and accessibility to facilities, and in this regard the SPD identifies that the appeal site is within Zone 3. Table 1 of the SPD identifies that a one-bedroom flat in Zone 3 should be provided with 1 space and 0.33 unallocated spaces, with increasing space requirements for larger dwellings.
9. The Council has not disputed the appellant's assessment that 29 spaces are currently required to serve the existing development on the site. Given the outline nature of the proposal, the mix of dwellings is not currently clear. However, the minimum requirement would arise if all had one-bedroom, in which case there would be a requirement for 19 spaces to serve the dwellings, and a total requirement for around 48 spaces on the site.
10. Spaces are not marked out within the existing parking areas at the site, but plan no. 1240-16 shows a total of 33 spaces around the building. This includes 4 spaces within the gated service yard, although at the time of my visit, 2 of these were partly blocked by refuse bins, and all would be blocked by service vehicles so that they would not be readily available.
11. The proposal is in outline and details of layout would be considered as part of future reserved matters. However, given the existing building and areas of

parking on the appeal site, scope to provide any additional parking is very limited. The appellant suggests that the car repair centre closest to the junction with Slade Lane could be removed in order to accommodate parking, and I acknowledge that a previous appeal decision on the site appears to refer to such a scenario and the Inspector found according to the evidence that acceptable provision for parking could be made². Be that as it may, this decision pre-dated adoption of Milton Keynes Plan:MK 2016-2031 (Plan:MK) and publication of the revised National Planning Policy Framework (the Framework) in 2019 and was therefore under a different policy context. Additionally and given that the appeal was determined over 4 years ago, it is not clear from the information provided that this remains practical or feasible.

12. In any event, I am required to determine the scheme before me on its own merits, taking into account the evidence presented and on the basis of the information and plans submitted. The application form for the current appeal proposal described the development as construction over the existing retail premises, and indicates that the development does not involve the loss, gain or change of use of non-residential floorspace. There is therefore nothing to suggest the removal of existing buildings from the site as part of the proposed development. Moreover, it is not clear from the evidence before me the effect of removal of the car repair centre from the site on provision for parking.
13. As a consequence, even if I were to accept that there are 33 existing spaces on the site as suggested by the appellant, I am not satisfied from the information before me that provision for additional parking in accordance with the standards within the Parking SPD could be made, and there would be likely to be a significant shortfall in provision of around 15 spaces.
14. In support of the appeal, the appellant has referred to parking levels as part of a proposal for extension and conversion of a former HMRC office building to provide flats³. Irrespective of the fact that this is said to be undetermined currently, the site is noted as in central Milton Keynes, and given the very limited details presented, I can draw little comparison with the circumstances of the appeal before me.
15. I acknowledge the availability of bus services, and some shops, services and employment areas within walking distance of the appeal site and that smaller households or individuals would be likely to have a lower demand for parking. However, the site is not within a central location, and in the absence of any robust consideration of likely trip generation or parking accumulations, I consider it probable that there would be demand from future occupiers of the development for private vehicles, and associated requirements for parking.
16. I note the appellant's suggestion that retail parking spaces may be available outside of opening hours. However, I have no detailed information on the number of any such spaces that may typically be available, or how any arrangement would be managed and operated. From the evidence before me, I cannot therefore be certain that sufficient parking would be available throughout the day to meet demand for parking associated with the proposal so that it would not result in additional on-street parking. While the appellant also refers to consultation undertaken on options for regeneration of the Fullers Slade area in November 2019 as suggesting average levels of occupied parking

² Appeal reference APP/Y0435/W/16/3142792

³ Application reference 20/00185/FUL

spaces as around just 30-33%, I do not know the area covered by this survey, the methodology or how the findings apply to the area in the immediate vicinity of the appeal site. Consequently, I can have limited confidence that this is a robust assessment of levels of parking around the appeal site or that additional parking would not result in adverse impacts.

17. There are no on-street parking restrictions to manage any additional parking in the vicinity of the site. While I accept that there is likely to be some capacity for parking nearby, the extent of the shortfall in provision indicated on the appeal site would nevertheless increase the likelihood of parking on nearby streets in addition to that which already takes place. This would cause further obstruction to pedestrians and vehicles, and increased potential for conflict between highway users which would be detrimental to safety.
18. For these reasons, I am not persuaded that there is sufficient justification for significant departure from the specified parking standards. I conclude on this main issue that it has not been demonstrated that there would be adequate parking provision to serve future occupiers of the development, and the resulting shortfall would increase on-street parking in the local area causing harm to highway safety and the flow of traffic. Accordingly, there would be conflict with Policy CT10 of Plan:MK which sets out that parking standards should be met unless mitigating circumstances dictate otherwise, and that parking should not be reduced from expected levels if this would result in additional pressure for off-site parking that could not be resolved by parking controls.

Financial Contributions

19. Policy INF1 of Plan:MK advises that new development that generates a demand for infrastructure, facilities and resources will only be permitted if necessary infrastructure is already in place or there is a mechanism to ensure that it is delivered appropriately.
20. The Council's second reason for refusal refers to the absence of an agreement under Section 106 of the Town and Country Planning Act 1990 to secure planning obligations in relation to the effect of the proposal on existing local social and sustainable infrastructure, education and leisure facilities. However, the Council's appeal evidence includes a table outlining the requested financial contributions. This refers differently to contributions towards travel planning, inward investment, museums and archives, waste management and receptacles, sustainable construction and monitoring fees.
21. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework set out tests that any obligation must meet (the relevant tests) and require that it is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
22. The Council's report on the application refers to initial comments from service providers that financial contributions would be required. However, I have not been provided with any specific information defining the extent of any local deficiencies in either social and sustainable infrastructure, education or leisure facilities as referred to within the reason for refusal; or for travel planning, inward investment, museums and archives or waste management and receptacles as listed within the Council's evidence. Neither do I have any

detailed assessment of the effect that the appeal proposal might have on these areas, or information on how and where the requested financial contributions would be spent. It has not therefore been shown that the proposal would generate a demand for infrastructure, facilities or resources which would not be met, or that the requested contributions would be necessary to make the development acceptable in planning terms.

23. Furthermore, I have not been provided with details of the methodology for calculating the requested financial contributions and so I cannot be sure that they are fairly and reasonably related in scale and kind to the development.
24. The Council also refers to Policy SC1 of Plan:MK which requires the achievement of targets around carbon reduction and on site renewable energy, and seeks financial contributions where necessary to enable residual carbon emissions to be offset. However, the Council has not quantified the sustainable construction contribution that would be requested, or otherwise provided a framework to calculate this according to the future detailed proposals for the site. Neither do I have information to demonstrate that the requested contribution towards monitoring of carbon offsetting fairly and reasonably relates to the proposal.
25. Accordingly, while a completed planning obligation has not been provided, I cannot be certain that the contributions sought by the Council would be necessary to make the development acceptable, or that they would be directly related to the development and fairly and reasonably related in scale and kind to the proposal. Annex N of the Procedural Guide Planning Appeals – England (the Procedural Guide) clarifies that the parties should ensure they provide necessary evidence to enable assessment of whether the relevant tests would be met, and outlines that Inspectors will not take into account any obligations, including standard charges or formulae which do not meet these.
26. On the basis of the evidence before me, I am unable to conclude that a planning obligation to provide the above contributions would comply with the relevant tests. I therefore conclude on this main issue that financial contributions to mitigate the effect of the proposal on local infrastructure or towards sustainable construction or carbon offsetting have not been shown to be necessary, and I find no conflict with Policies INF1 or SC1 of Plan:MK.

Other Matters

27. The Council's evidence refers to a failure to make provision for affordable housing in conjunction with Policy HN2 of Plan:MK, and at appeal stage also requests a contribution towards monitoring affordable housing. The number and detailed mix of dwellings would be subject to consideration as part of any future reserved matters applications. However, the requirement for affordable housing is triggered by the principle of additional dwellings on the site as part of the outline application. On the evidence before me, I am satisfied that provision of affordable housing as sought by Policy HN2 would be necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development.
28. There is no mechanism before me to secure or retain affordable housing as part of the proposal. I note the appellant's comment that the failure to secure a s106 agreement is a result of the Council issuing the decision refusing planning permission. Nevertheless, Annex N of the Procedural Guide is clear that for a

planning obligation to be taken into account, an executed and certified copy must be provided as part of the appeal. However, while recognising the apparent failure to make provision for affordable housing and conflict with Plan:MK Policy HN2 in the absence of convincing evidence according to the specific circumstances of the case that provision would not be justified, I am mindful that this is not a reason for refusal of the application. As a result, it has not been fully addressed by the appellant as part of this appeal. With this in mind, I confirm that the harm that would arise in relation to the first main issue in this case provides compelling grounds to dismiss the appeal.

29. The appellant comments that there was little communication from the Council during the application process, and that the Council has not worked in a positive and creative way as sought by the Framework. However, while I note the appellant's frustration, this is not a factor which alters my consideration of the planning merits of the proposal.

Planning Balance and Conclusion

30. The development would make effective use of this previously developed site and provide 14 additional dwellings on the site which is a benefit of the proposal. However, while the appellant suggests that delivery of one-bedroom flats would improve the social mix of the local community in an area of larger family housing and high demand for one-bedroom homes, I have no detailed evidence of any specific need for the development.
31. The appellant also asserts that the development would not result in loss of green spaces or trees and that it could be a well-designed and buildable scheme appropriate to its surroundings and providing a higher level of sustainability through the addition of accommodation in line with contemporary standards of efficient thermal envelopes. However, these aspects would depend on the layout, scale, appearance and landscaping of the development which are matters reserved for future consideration. No public comments objecting to the proposal were submitted to the Council, but this is a neutral factor which weighs neither for nor against the proposal.
32. Drawing these matters together, even taken together, I find that the benefits of the proposal are insufficient to outweigh the harm that I have identified would be caused through the inadequate provision for parking and resulting harm to highway safety and the flow of traffic. Although I have found that it has not been demonstrated that financial contributions to mitigate the effect of the proposal on local infrastructure or towards sustainable construction or carbon offsetting would be necessary, the proposal would conflict with the development plan as a whole, and there are no material considerations which indicate that a decision contrary to the development plan should be reached.
33. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR