



Appeal Decision

Site Visit made on 1 December 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2020

Appeal Ref: APP/H2835/W/20/3254100

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 (EARA Property) against the decision of Borough Council of Wellingborough.
 - The application Ref WP/20/00152/FUL, dated 30 April 2019, was refused by notice dated 12 May 2020.
 - The development proposed is construct new block of 4 residential units.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site, its environs and the substance of the proposed development are broadly the same to a relatively recent appeal¹. This is therefore a material consideration of significant weight in my deliberations, as like applications should be considered in a like manner.
3. In light of previous appeal and the evidence before me, the main issues are the effect of the proposed development on the living conditions of future occupiers, with particular regard to odour and noise and disturbance, and the Upper Nene Valley Gravel Pits Special Protection Area.

Reasons

Odour

4. The appeal site concerns the rear courtyard of a three-storey terraced building in Silver Street. The proposed development would adjoin and have outlook towards Angel Lane, Orient Way and the Market Square beyond. A large number of the proposed windows and balconies would therefore either face toward the market or the Council's market bin store or be in close proximity of the buildings in Silver Street.
5. The appellants' Odour Impact Assessment (OIA) suggests that odour from the extraction system serving Jenny's restaurant, situated at 18-19 Silver Street, can be experienced within the site and would be likely to be a nuisance to the bedrooms in flats 2 and 3.
6. One of the principle methods of mitigation proposed in the OIA relates to the extraction system serving the restaurant. This would require the cooperation of the owner of the restaurant, but does not appear to have been explored further

¹ Appeal Ref: APP/H2835/W/19/3238117.

- and there is no means to ensure this mitigation could be implemented. The OIA therefore proposes to mitigate the impact by ensuring those bedroom windows would be fixed shut and served by mechanical ventilation.
7. While the OIA refers to a prevailing south-westerly wind direction, there is no dispersion model to demonstrate that odour would not affect other habitable rooms within the residential units and whether any other ventilation required for noise mitigation would enable odour to enter habitable rooms.
 8. The baseline survey for the OIA was undertaken for an hour on a Thursday afternoon in February, which followed the last refuse collection from the bin store the previous day. This would therefore be unlikely to provide an accurate picture of the worst-case scenario in respect of the odour associated with refuse stored between collections, especially in warmer weather. The potential impact of odour on other habitable rooms, principally those windows closest to the bin store, is therefore unknown.
 9. I appreciate that the appeal site is situated in a busy town centre location in close proximity to commercial premises and the precise nature of the proposed mitigation methods could be dealt with at a later stage, including for other habitable rooms. However, based on the evidence before me, a precautionary approach is reasonable and appropriate where living conditions are at issue, particularly as it would not be an unreasonable expectation for residential occupiers to be able to open their windows, particularly in the summer, without being harmed by odours emanating from nearby.
 10. I appreciate that other residential properties exist nearby and the Council's Environmental Health Officers (EHOs) are required to take enforcement action, in accordance with the Environmental Protection Act 1990, where there is harm to living conditions. There is also some doubt as to whether the extraction system for Jenny's restaurant has been approved by the Council and how a planning enforcement case was dealt with. Nevertheless, other than point to the possibility of the occupants of flats situated in close proximity of the extraction system being affected by odour from it, the appellants have not provided any evidence to substantiate this position, including the nature of the impact or any complaints made. In any event, the impact of odour upon those properties is not before me as part of this appeal.
 11. Similarly, the accumulation of waste within the bin store prior to its collection is not ideal but it is inevitable given that is its primary function. The approach advocated in the National Planning Policy Framework (the Framework) would also suggest that enforced changes to the operation of the bin store, to accommodate the proposed development, would not be reasonable.
 12. Having regard to all of the above and the particular circumstances of this case, I must conclude that there is insufficient evidence before me that odour within the vicinity of the site would not have a harmful effect on the living conditions of future occupiers of the proposed development. Hence, the proposal would be contrary to Policy 8(e) of the North Northamptonshire Joint Core Strategy 2011-2031 (Adopted July 2016) (JCS) which, amongst other things, requires development to not result in an unacceptable impact on the living conditions of future occupiers by reason of odour. The proposal would also conflict with paragraph 182 of the Framework in respect of the implications of new development on existing businesses.

Noise and disturbance

13. The Council has confirmed that their Market normally operates four days each week and is open to stallholders from early morning until after its closure. The same access entitlements apply to the bin storage area, including the collection of boards and scaffolding planks for setting up stalls and for the mechanical compaction and baling of cardboard. Bins are emptied in the morning on Tuesdays and Wednesdays. These are therefore sources of noise that could affect the proposed development. The appellants' Design and Access Statement also suggests that other sources of noise could include road traffic and the arrival and departure of patrons of nearby public houses, night clubs and gyms.
14. The main parties were not able to agree on the approach to assess the potential effects of noise on the proposal but my role is to consider the evidence before me in the context of planning policy and other relevant considerations.
15. In the previous appeal, the Inspector referred to the Council's stallholder regulations, and its Market Rights Policy, which require stallholders to not cause disturbance to nearby residential premises. Those requirements do not apply to the bin store or the other potential sources identified above.
16. The appellants' Environmental Noise Assessment (ENA) refers to several excessive noises being recorded in the vicinity of the site. While these are said to be associated with the setting up of the busiest Market Day on Wednesday, the origin of noise sources is not clear, as audio recordings were not made to determine this. The ENA also did not consider the effect of noise at weekends, when the possibility of disturbance is more likely, particularly from some of the other potential noise sources. The ENA does not therefore provide a fully representative picture of existing background noise or for the potential for noise to affect the future occupants of the proposed development.
17. The noise mitigation contained in the ENA only relates to two of the proposed units, but it is unclear to which units this relates. For bedrooms, windows would need to be closed for the night-time and ventilated by alternative means. Other habitable rooms would be able to rely on normal window specifications with windows open. Such measures would not, in all reality, prevent doors and windows from being opened or left open and these situations would be unlikely to be confined to Summer, particularly as passive or mechanical ventilation would be unlikely to offer future occupants the same degree of comfort.
18. While detailed specification for mitigation could be dealt with at a later stage, without a more comprehensive assessment, the mitigation measures that could be required could not be adequately assessed, including whether mechanical ventilation required for noise or odour mitigation could increase noise within the proposed development. Compliance with the Building Regulations, which are separate legislative requirements, would also not be sufficient to mitigate the harm.
19. Although the site is situated within a town centre location and future residents are likely to expect some level of noise and disturbance, the evidence before me does not offer sufficient clarity and robustness to be able to conclude that their living conditions would not be unacceptably harmed by noise and disturbance from the identified sources. Accordingly, the proposed development would be contrary to the aims of Policy 8(e) of the JCS in respect

of noise and living conditions. The proposal would also conflict with the aims of paragraphs 180 and 182 of the Framework which seek to mitigate and reduce to a minimum the potential adverse impacts resulting from noise from existing businesses.

Upper Nene Valley Gravel Pits Special Protection Area

20. The Upper Nene Valley Gravel Pits Special Protection Area (SPA) is internationally important for nature conservation as it is a wetland that supports wintering water birds and migrating birds. There is evidence to suggest that recreational activity is causing disturbance to this important habitat. Consequently, any intensification of these activities could lead to further disturbance. From the evidence before me the appeal site is located within the 3km Zone of Influence of the site. With that in mind, the appellant has committed to make a financial contribution to the Council to ensure that appropriate mitigation is implemented.
21. I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on the SPA. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that this requirement is only necessary where the competent authority is minded to give consent for the proposed development. Given that I have found harm in respect of living conditions, unless there is another material planning consideration which suggests that permission should be granted, it is not necessary for me to consider this matter in any further detail.

Other Matters

22. The site is within the setting of the Grade I listed 'All Hallows Church' and the Grade II listed 'Orient House'. I have therefore had regard to the statutory duty referred to in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). However, due to the proximity and physical relationship of the proposal with these designated heritage assets, their settings will be preserved and the proposal will not detract from them.
23. The appeal site is also situated within the Wellingborough Town Centre Conservation Area (CA). I have had regard to Section 72(1) of the Act, which requires that special attention be given to the desirability of preserving or enhancing the character or appearance of the CA. The church acts as a key focal point in the town centre but the edges of Market Square are poorly defined, including by some modern lower-quality buildings. I have had regard to the context of the site and note that the design of the proposal remains the same from the previous appeal, which the Council and the Inspector found would enhance this part of the CA. There is nothing before me that would lead me to a different conclusion.
24. I acknowledge the appellant's concerns with the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.

Planning Balance

25. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations, such as the Framework, indicate otherwise.

26. I appreciate that the proposed development would help to boost the supply of housing in the Borough and this would be accessible to shops, facilities and services, which would be supported by future occupants. Nonetheless, as the proposals would provide only four units, such benefits would be limited in scale and kind, and consequently carry only limited weight.
27. There is agreement between the parties that the proposal would accord with development plan policies in respect of a number of matters identified in the Officer Report. These include the setting of listed buildings, to which I have referred above but, as those matters would have a neutral benefit, they would weigh neither for nor against the appeal scheme. However, the proposal would enhance the character and appearance of part of the CA, which would carry moderate weight.
28. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the living conditions of future occupiers of the proposed development with regard to odour and noise and disturbance.
29. The proposal would not amount to sustainable development under the terms of the Framework. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.

Conclusion

30. I have found harm in respect of the living conditions of the future occupiers of the proposed development and there are no other considerations which would outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR