
Appeal Decision

Site visit made on 23 February 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2021

Appeal Ref: APP/L1765/W/20/3262887

The Rod Box, London Road, Kings Worthy SO23 7QN

- 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 Dan Salanson (Caliburn Homes Limited) against the decision of Winchester City Council.
 - The application Ref 19/02057/FUL, dated 19 September 2019, was refused by notice dated 24 June 2020.
 - The development proposed is alterations to existing first floor flat reducing it from three bedrooms to two; first floor extension, loft conversion and roof alterations to create an additional two bedroom flat; proposed single storey outbuilding to the rear of the property in addition to that previously permitted under application ref no. 18/02758/FUL; and alterations to existing parking layout at front and rear of property.
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Decision

1. The appeal is dismissed.

Main Issues

2. The Council refused planning permission for a single reason for refusal, which incorporates concerns relating to the impact of the proposal on the character and appearance of the Kings Worthy Conservation Area (KWCA) and on the living conditions of the occupants of neighbouring properties.
3. The Council's formal response to the appellant's statement of case confirms that the second element of the Council's reason for refusal relates to harmful noise impacts arising from increased vehicular activity in St Mary's Close associated with the parking area at the rear of the appeal site, including general noise and associated activities such as manoeuvring of vehicles. I have dealt with the appeal accordingly.
4. The Committee Report recommended a grant of conditional planning permission, subject to a condition requiring the submission and approval of mitigation measures to ensure that additional nutrient input arising from the appeal scheme will not have an adverse impact on the integrity of the Solent Special Protection Areas (Solent SPAs).
5. In the context of this appeal, the responsibility for assessing the effects of the proposal on the Solent SPAs falls to me as the competent authority. Having regard to my conclusions in respect of the first 2 main issues below, I have raised this matter to a main issue in respect of this appeal, and I have sought further comments from the main parties on this matter.

6. Accordingly, the main issues are:

- The effect of the proposal on the character and appearance of the KWCA;
- The effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular reference to noise disturbance impacts associated with increased vehicle trips along St Mary's Close; and
- Whether the proposal provides adequate mitigation for the SPAs.

Reasons

Character and appearance

7. The site is located on the southeast side of London Road, within a mixed residential and commercial area near the edge of the built-up area of Kings Worthy. It lies within the designated settlement policy boundary and the KWCA. There are residential properties adjacent to both sides of the site, including The Old Post Office, which is a Grade II listed building, and on the opposite sides of London Road and St Mary's Close.
8. Section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended (the Act) requires that with respect to development affecting buildings or other land in a conservation area, 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.' Paragraph 193 of the *National Planning Policy Framework 2019* (the Framework) sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
9. The appeal property comprises a modern detached chalet property which fronts onto London Road. It is set back behind a forecourt parking area, and at a lower ground level than the road. There is a 3 bedroomed first floor flat within a steeply pitched roof, which is served by flat-roofed dormers on the front and rear elevations. The ground floor is used as a retail shop and commercial kitchen, together with ancillary staff facilities and storage, in association with a catering services business. The site benefits from an extant permission to erect a single storey timber office outbuilding at the rear. There is currently a prefabricated single storey building in the position of the approved outbuilding.
10. The site benefits from access via an access track leading off London Road which serves a hard-surfaced parking area providing parking for 6 cars at the front of the building and 2 to the side. There is also an existing vehicular access to the rear of the site from St Mary's Close, a private and unadopted no-through lane. This serves an informal gravelled parking area to the rear of the building.
11. The Council's Committee Report assumed that the existing access and parking did not require planning permission, on the basis that they were constructed as permitted development prior to the commencement of the mixed Classes A1/B1 uses approved under permission ref 18/02758/FUL. However, the evidence before me, including the Planning Committee Minutes and the appellant's appeal statement, is that subsequently it was confirmed that the rear access and parking were created after the mixed use of the premises commenced. As they did not form part of the aforementioned approved scheme, notwithstanding the Committee Report, the Council's determination of

the planning application included consideration of the merits of a rear vehicular access and parking area.

12. The determination of what could be carried out under permitted development rights is not a matter for me to decide within the context of an appeal made under Section 78 of the Act. Accordingly, I have dealt with the appeal having regard to the development which was refused by the Council.
13. The proposal seeks to expand the catering business use by means of a single storey outbuilding at the rear of the site, to be used for food preparation and storage. Alterations and extensions at roof level would provide a 2 bedroomed flat at second floor level and decrease the existing first floor flat from 3 bedrooms to 2. The proposed rear parking arrangement would comprise a formal arrangement of spaces with a central access/turning area.
14. The *Kings Worthy and Abbots Worthy Village Design Statement* (2007) (VDS) confirms that the site lies within the historic core of Kings Worthy, which is focused on London Road and Church Road, with its combined architecture, history and setting making it the most distinctive part of the village. It is noted that properties within the KWCA are generally residential, with a few commercial properties. The VDS also notes that all properties tend to be detached or semi-detached and either one and a half or two storeys in height. The existing property is a modern 20th century building of no particular architectural merit, but as a detached, one and half storey building, it falls within the prevalent building form, and it has significance within the KWCA due to its commercial use, which is specifically mentioned in the VDS.
15. The proposed enlargement and alterations to the roof would not notably alter the existing building character. The commercial ground floor appearance would remain, and the proposal would maintain the existing ridge and eaves levels and steeply pitched roof form, comprising 2 distinct elements of different heights. The proposed timber-clad outbuilding would be of similar form to that of the approved rear outbuilding, and would be of a low, flat-roofed design, so that it would sit discretely to the rear of the host property, and would appear ancillary in scale and design to the main building. This element of the proposal, comprising additional commercial floorspace, would also reinforce the significance of the property within the conservation area as a commercial building.
16. The building, together with the rear existing outbuilding and formalised parking area would result in a large area to the rear of the building given over to built development, which would potentially be visible from St Mary's Close through the vehicular access. However, subject to planning conditions to ensure appropriately designed solid rear boundary treatment, including solid access gates, this development would be largely screened in views from the public realm in St Mary's Close. Planning conditions could also secure appropriate materials for the new outbuilding and the surface treatment of the parking area. As such, the proposed changes to the rear of the appeal site would not be unduly harmful to the prevailing character of this part of St Mary's Close, which includes garaging and parking associated with neighbouring residential properties fronting onto the road.
17. Having regard to the impact on the character and appearance of the area arising from additional commercial vehicular traffic using St Mary's Close and any associated activities within the formalised parking area at the rear, the

appellant has confirmed agreement to a planning condition to ensure that commercial traffic associated with the site, including delivery vehicles, would only access the site from the front via London Road. Subject to the inclusion of such a condition, the appeal scheme would not harm the predominantly residential nature of St Mary's Close, as a result of overtly commercial vehicular activity along the Close, or within the vicinity of the site access and rear parking area.

18. For the above reasons, the proposal would preserve the character and appearance of the KWCA and avoid harm to its significance. As such, it would accord with Policies DM15, DM16, DM18 and DM27 of the *Winchester District Local Plan Part 2 – Development Management and Site Allocations* (2017) (the LPP2), in so much as these policies seek to ensure the new developments respect the qualities, features and characteristics that contribute to the distinctiveness of the local area, conserve or enhance the character, appearance, or special architectural or historic interest of conservation areas, ensure that service areas do not dominate the site or the surrounding area, incorporate parking and vehicular access taking account of the character of the surrounding area, and ensure that new buildings are in scale and harmony with adjoining buildings and the area as a whole.
19. For similar reasons, the proposal would accord with Policies of the Framework which seek to conserve the historic environment as set out in Chapter 16.
20. The council has not raised an objection to the impact of the proposal on the setting or significance of the adjacent Grade II listed dwelling at The Old Post Office, part of which dates back to the 17th century. The historical significance of this building includes an L-shaped, 3-bay timber frame and timber core, encased and extended in brick, which has been colour-washed, and an old plain tile and slate roof.
21. Having regard to my statutory duty under Section 66(1) of the Act, which requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest, I concur with the Council on this matter. This reflects my findings that the proposed roof additions would not notably alter the existing character and appearance of the appeal property, and also has regard to the single storey nature of the proposed outbuilding, the degree of separation between the new building and parking area and the listed building, and the presence of intervening boundary fencing and vegetation and an existing outbuilding in the rear garden of the listed building.

Living conditions – noise disturbance

22. Notwithstanding that there is an existing rear vehicular access and parking area to the rear of the site, as noted above, the appeal scheme before me includes the formalisation of the existing rear car park and access, which was not approved under the previous planning permission. As such, the appeal scheme would result in additional vehicle movements passing in front of, and close to, the residential properties which directly front onto St Mary's Close.
23. This road is already used to provide access to garages and parking associated with a number of neighbouring residential properties, and the evidence before

me is that it is well-used by walkers and cyclists as part of a public right of way. Therefore, there is already a notable amount of noise and activity associated with the current use of the Close.

24. The appellant has confirmed agreement to a planning condition restricting access by commercial vehicles to the front of the site only. The parking for the proposed flats is also proposed to be sited at the front/side of the building, so that the rear parking would be used for staff parking only. The appellant has confirmed that conditions restricting the use as such, and also the timing of the use of this parking area, would be acceptable. Furthermore, the appellant has confirmed that there would be no increase in the number of staff as a result of the appeal scheme.
25. Having regard to the above potential to control the type of vehicles accessing the rear of the site, and the hours of access and use of the rear parking area, I am not persuaded, on the basis of the evidence before me, that additional traffic movements associated with the rear parking area would result in demonstrably harmful noise impacts affecting the living conditions of neighbouring occupiers.
26. Third parties have drawn my attention to a number of matters, including the continued use of the existing access, lack of permission from residents to create the access, vehicles entering onto neighbouring land, damage to neighbouring properties, and lack of contribution to the maintenance of the private road. These are not matters for consideration under this appeal, which I must determine on the merits of the appeal scheme before me.
27. Therefore, based on the information before me, and for the reasons set out above, I find that there is no cogent evidence that the proposal would demonstrably harm the living conditions of occupiers of neighbouring properties, with particular reference to noise disturbance impacts associated with increased vehicle trips along St Mary's Close. The appeal proposal would therefore accord with LPP2 Policy DM17, in so far as this policy permits new development that does not cause unacceptable levels of pollution to neighbours by means of noise.

SPAs

28. Natural England has advised that a net increase in housing development within Winchester District is likely to result in impacts to the integrity of the SPAs due to the prospect of increased levels of nitrogen and phosphorus entering the water from waste water from residential development, resulting in eutrophication, whereby the resulting thick mats of algae can cause important habitat and bird feeding grounds to be unavailable for use, thereby affecting the status and distribution of key bird species against the stated conservation objectives of the SPAs.
29. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of these sites, particularly when the impacts are considered in combination with other residential developments in the Solent area. Therefore, it is necessary for me, as the competent authority, to undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017), of the implications for the sites in view of the conservation objectives of the SPAs. I have undertaken this on a proportionate basis with regard to the evidence submitted

- by the Council, including an Appropriate Assessment under the Habitats Regulations 2017, and the consultation response from Natural England in respect of the planning application.
30. The appellant's submitted nitrate calculation indicates a positive nitrate contribution arising from the development, and there is no disagreement between the main parties that mitigation would be required to ensure the development is nutrient neutral.
31. The appellant has confirmed agreement to the Council's proposed Grampian condition, which would require that the mitigation is calculated and details provided at condition discharge stage, and that the approved measures would be secured, by means of a section 106 Agreement, prior to the occupation of the approved dwelling. This accords with the Council's *Nitrate Mitigation Position Statement* (2020).
32. I have been provided with draft section 106 heads of terms, which include options for off-site or on-site nitrogen mitigation measures. These could include either a financial contribution towards nitrate credits arising from the purchase of agricultural land by the Council and its subsequent de-commissioning to reduce nitrate production, or the purchase of/or de-commissioning of suitable land by the appellant direct.
33. However, as the competent authority, I need to be satisfied that any mitigation scheme for neutralising nitrogen is certain at the time of Appropriate Assessment, so that no reasonable scientific doubt remains as to the effects of the development on the international sites. As it stands, the Council has not identified any specific mitigation measures. It is understood that the Council is currently working towards a mitigation scheme, and that this matter may be resolved within the standard time limit applied to a planning permission for the appeal scheme. However, in the absence of certainty in respect of the mitigation details at the Appropriate Assessment stage, there remains a risk that the appellant may not be able to implement appropriate mitigation measures, and that the Grampian condition may not be capable of being discharged.
34. As such, notwithstanding Natural England's agreement to the Council's approach, and the fact that the Council has adopted this approach in respect of other residential developments, I find that, as matters stand, there are no detailed mitigation proposals in place as part of this appeal to directly address the likely significant effects upon the European designated sites, and the full details and implications of any such proposals remain unknown.
35. Accordingly, I conclude that the appeal scheme, in the absence of any satisfactory mitigation and the necessary mechanism for achieving it, would not accord with Policy CP16 of the *Winchester District Local Plan Part 1 – Joint Core Strategy* (2013), which, amongst other things, supports development which has regard to protecting sites of International, European and national importance from inappropriate development, and supporting habitats that are important to maintain the integrity of European sites.

Conclusion

36. Whilst I have found the appeal scheme to be acceptable having regard to the first two main issues, I cannot allow the appeal in the absence of a favourable Appropriate Assessment.

37. For the above reason, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR