



Appeal Decision

Site visit made on 24 August 2021

by Tom Gilbert-Wooldridge MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

Appeal Ref: APP/J0405/W/21/3267952

Verney Close Family Practice, Verney Close, Buckingham MK18 1JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by The Swan Practice against Buckinghamshire Council - North Area (Aylesbury).
 - The application Ref 20/01333/AOP, is dated 21 April 2020.
 - The development proposed is the removal of existing development and the construction 1 residential building comprising 4 x 2 bed flats and 2 x 1 bed flats with off street parking, bin storage and bicycle storage.
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Decision

1. The appeal is dismissed and planning permission for the removal of existing development and the construction 1 residential building comprising 4 x 2 bed flats and 2 x 1 bed flats with off street parking, bin storage and bicycle storage is refused.

Preliminary Matters

2. The application was made in outline with all matters reserved. A block plan has been provided showing an indicative layout for 6 flats. While I have taken this plan into account, it is purely illustrative at this stage.
3. There is a related appeal made by the same appellant on a different site within Buckingham (ref APP/J0405/W/21/3267955 at North End Surgery). There are common issues between both appeals, but also differences. Therefore, I have dealt with each appeal in separate decisions.
4. A new version of the National Planning Policy Framework (NPPF) was published on 20 July 2021. The parties were given the opportunity to comment on any relevant changes and I have taken these comments into account.

Main Issues

5. The main issues are:
 - (a) the effect of the proposed development on the provision of community facilities and employment;
 - (b) whether the proposed development should make provision towards off-site sports and leisure facilities;

- (c) the effect of the proposed development on the living conditions of neighbouring occupiers at Candleford Court and future occupiers of the development, with particular regard to privacy; and
- (d) the effect of the proposed development on flood risk.

Reasons

Community facilities and employment

6. The appeal site contains Verney Close Family Practice and associated parking and access from the High Street. The site forms part of The Swan Practice which provides medical services across three sites in Buckingham (including at North End Surgery). The Buckingham Neighbourhood Development Plan 2015 (NDP) identifies the site as a health facility, with Policy CLH4 supportive of new or extended health care provision on such sites.
7. Policy GP93 of the Aylesbury Vale District Local Plan 2004 (DLP) states that the Council will resist proposals for the change of use of community buildings and facilities for which there is a demonstrable local need. In considering applications for alternative development or uses, the Council will have regard to the viability of the existing use, the presence of alternative local facilities, and the community benefits of the proposed use. The supporting text in paragraph 4.244 states that community facilities make a vital contribution to the social and economic life of the community and include doctors surgeries. It is not uncommon for supporting text to provide clarity to policies.
8. NDP Policy CLH4 and DLP Policy GP93 are broadly consistent with the NPPF which identifies health infrastructure as community facilities in paragraph 20 and seeks, in paragraph 93, to plan positively for the provision of such facilities, guard against the unnecessary loss of valued facilities, and ensure that established facilities are able to develop, modernise, and be retained. As a consequence, there is no reason to say that either policy is out of date or should be afforded reduced weight.
9. The draft text to Policy I3 of the emerging Vale of Aylesbury Local Plan (VALP) also refers to doctors surgeries as community facilities. The policy resists the change of use of such facilities unless the loss resulting from the development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. The policy sets out the same considerations as DLP Policy GP93 for any application for alternative development or use, but also refers to the marketing of the site/use for a minimum period of 12 months at a price commensurate with its use together with proof there has been no viable interest.
10. The VALP was submitted for examination in February 2018 and has been subject to main modifications consultation between 2019 and 2021. The Council has indicated that Policy I3 can be afforded moderate weight as it has been subject to objections but also has been part of the main modifications consultation agreed by the Inspector. In the absence of any contrary view or information, moderate weight to Policy I3 is reasonable.
11. Medical or health services such as a doctors surgery were previously within Class D1 of the Use Classes Order 1987 (UCO) which covered a range of non-residential institutions. They now fall within the new Class E of the amended UCO which contains a range of commercial, business and service uses including

shops and offices. They do not fall with the new Class F2 which cover local community uses. However, the definition of community facilities in planning terms has never been restricted to a single use class. Public houses for example used to fall within Class A4 and are now sui generis yet are still generally regarded as community facilities. Therefore, the amended UCO does not alter my view that the existing site use is a community facility.

12. DLP Policy GP17 seeks to retain existing employment sites and uses and only permit changes of use or redevelopment where specific criteria are met. The DLP does not clarify what is an employment site although the VALP refers to offices, general industrial and storage/distribution uses. Nevertheless, the Council accepts that due to the out of date evidence based underpinning Policy GP17, it can only be afforded very limited weight. I see no reason to disagree.
13. The existing building is two storey and contains a number of consultation rooms and offices accessed from a main entrance and connecting corridors. The appellant argues that the existing building is outdated, too small and unable to meet with the compliance requirements of the Disability Discrimination Act. While it was apparent at my site visit that the building could benefit from modernisation, I have limited evidence to support these points.
14. The appellant also argues that the three existing Swan Practice sites will move to a new health centre within the Lace Hill development on the southern edge of town. It is argued that the redevelopment of the appeal site would help to fund the setting up of a new practice at Lace Hill. It is evident that the Lace Hill health centre benefits from outline planning permission with reserved matters application required to be submitted by 24 December 2021. To my knowledge, even though the only reserved matter relates to landscaping, no applications have yet been submitted. The site is a vacant undeveloped plot at Lace Hill between an existing supermarket and an emerging care home. It is unclear who is responsible for the delivery of the health centre. The Council states that the Lace Hill developer is still active, while the appellant refers to negotiations between the practice and the landowner.
15. Notwithstanding the lack of submitted evidence, it may be the case that the redevelopment of the appeal site is necessary to provide modern facilities at Lace Hill. Nevertheless, the adopted and emerging policy context seeks to resist the loss of community facilities for which there is a demonstrable local need. It has not been adequately demonstrated that there is no interest in an alternative community facility or use, with no marketing or other evidence presented. The lack of viability in terms of the continued existing use of the building as a surgery has not been properly addressed in the evidence before me, mindful that NDP Policy CLH4 seeks new or extended health care facilities on this site.
16. There is little evidence to show that it would not be possible for the building to be adapted and re-used or redeveloped for a community facility that would still enable the surgery to relocate. The development of housing would provide some benefits but not ones that could be classed as a community benefit other than in a general sense. Moreover, given the doubts over the delivery of the health centre, it is not certain that the existing surgery would be replaced by equivalent or better provision at Lace Hill. It is unlikely the surgery would move before another location was ready, while at the same time the planning system cannot prevent the surgery from closing. However, the proposed development

would still result in the loss of a community facility and use to the disbenefit of the local community.

17. Notwithstanding the very limited weight to DLP Policy GP17, and doubts regarding its applicability, a continued community facility and use would provide longer term employment opportunities that would not be the case with housing beyond their construction and servicing. For the avoidance of doubt, even if Policy GP17 was not applicable, it would not affect the weight to be given to the conflict with policies relating to community facilities.
18. NPPF paragraph 81 states that planning should help businesses to invest, expand and adapt, while NPPF paragraph 96 seeks the faster delivery of public service infrastructure including health care though councils working proactively and positively with relevant organisations to plan for required facilities and resolve key planning issues before applications are submitted. It is unfortunate that the appellant has had to appeal on the grounds of non-determination to progress their proposed development and that there appears to be a lack of collaborative working between relevant organisations. However, this does not diminish the importance of the policy context relating to community facilities or negate the potential impact of the loss of such a facility and use from this site.
19. Based on the evidence before me, the proposed development would have an unacceptable effect on the provision of community facilities and employment. Therefore, it would conflict with DLP Policies GP17 and GP93, NDP Policy CLH4, and VALP Policy I3, as well as NPPF paragraph 93.

Sports and leisure facilities

20. DLP Policies GP86 and GP87 require new housing to provide sufficient outdoor play space and equipped play areas for children, while Policy GP88 clarifies that financial contributions will be sought where off-site provision is more practicable. NDP Policy CLH2 seeks the provision of open accessible green space for new developments, but the wording indicates that the provision and calculations will only apply to dwellings on allocated housing sites within the NDP rather than windfall sites such as this one. Therefore, the policy does not seem to be applicable.
21. No legal agreement has been provided by the appellant to secure the financial contribution. While it is unfortunate that the Council did not indicate the need for such a contribution during the application process, the NDP does identify and evidence a large deficit and requirement for sports facilities within the town. Therefore, the lack of provision would be a missed opportunity to improve the current shortage.
22. Based on the evidence before me, the proposed development should make provision towards off-site sports and leisure facilities. Without such provision, the development would conflict with DLP Policies GP86, GP87 and GP88. There would also be conflict with VALP Policies I1 and I2 which seek the provision of green infrastructure and sports and recreation facilities.

Living conditions

23. Candleford Court is a residential flatted development immediately to the south-west of the site. The block nearest to the site is three storeys plus roof. The elevation facing the site is set back by a short distance from the boundary. It

has a number of tall windows including Juliet balconies that evidently serve habitable rooms.

24. The indicative layout plan suggests a new building on roughly the same footprint as the existing surgery building. Any windows on the south-west elevation would be able to look directly across the short distance to habitable rooms at Candleford Court. The same privacy issues would apply in reverse and could also include overlooking of private outdoor space for the new building such as balconies.
25. As an outline application with all matters reserved, it is possible that the new building could be positioned elsewhere within the site and designed in a way to avoid overlooking issues. The appellant notes that the building could be on the indicative parking area on the north-east side of the site to give greater separation distance to Candleford Court. This side of the site backs onto a footpath screened by dense vegetation with an office building beyond that.
26. From the evidence before me, I am satisfied that a suitable design could be achieved at the reserved matters stage that would ensure satisfactory living conditions for neighbouring occupiers at Candleford Court and future occupiers of the development. Therefore, the development would accord with NDP Policy DHE6, DLP Policy GP8 and VALP Policy BE3. These policies seek to protect the amenity of existing and future residents from unreasonable harm, with a good living standard for future users of a development and its neighbours. NPPF paragraph 130(f) sets out similar aims.

Flood risk

27. The south-eastern side of the site including part of the existing building lies within Flood Zone 2. A flood risk assessment has been provided which indicates that this zone has a medium probability of river flooding, whereas the rest of the site has a low probability of river flooding. NPPF paragraph 159 is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. NPPF paragraph 162 states that the aim of the sequential test is to steer new development to areas with the lowest flood risk and not permit development where there are appropriate sites that are available in areas with lower risk.
28. Given that only a small part of the site lies within Flood Zone 2, and it is the part furthest away from the site access, it should be possible to locate any new building and its access point outside of this zone. As noted above, the position of the building has yet to be fixed. Thus, the sequential test does not need to be applied as the development can be wholly located within Flood Zone 1.
29. On that basis, the proposed development would have an acceptable effect on flood risk. Therefore, it would accord with VALP Policy I4 which seeks to minimise the impact of flood risk, as well as NPPF paragraphs 159 and 162.

Other Matters

30. The appellant states that the development would have no impact on the character and appearance of Buckingham Conservation Area. Interested parties have raised concerns about this matter, but even if the appellant is correct, the absence of harm is neutral rather than positive in the overall planning balance. Given my overall decision, it has not been necessary to consider this matter in any detail. While it may be possible to deliver residential units that comply with

national space standards and provide acceptable levels of space for parking, gardens, and bins, these are neutral matters in the absence of any details.

31. The site currently generates a number of vehicle trips by people accessing the surgery. It is likely the number of trips would reduce as a consequence of residential development. However, the access from the High Street would continue to be used by vehicles going to and from other sites along Verney Close. In the absence of more detailed information, this benefit only carries modest weight.
32. In terms of other environmental benefits, the town centre location is sustainable and the development would make effective use of previously developed land. There would also be social and economic benefits from the construction and occupation of 6 flats. However, given the limited number of units, these benefits can only be afforded modest weight. The benefits taken as a whole would not outweigh the adverse effects I have identified particularly in terms of community facility provision.

Conclusion

33. For the above reasons, and having had regard to all other matters raised, I conclude that this appeal should be dismissed and planning permission refused.

Tom Gilbert-Wooldridge

INSPECTOR