



Appeal Decision

Site Visit made on 10 September 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/G2815/W/21/3274415

4 Higham Road, Rushden NN10 6DZ

- 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 Michael Phillips against the decision of East Northamptonshire Council.
 - The application Ref 20/00445/FUL, dated 7 April 2020, was refused by notice dated 26 February 2021.
 - The development proposed was originally described as 'Creation of 39 Flats and 3 dwellings, combination of new build and conversion. Demolition of some buildings on site. Change of use of the majority of the site from retail to residential.'
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Michael Phillips against East Northamptonshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have considered the appeal on the basis of the amended scheme for 'creation of 34 flats and 3 dwellings, demolition of some buildings on the site and change of use of the majority of the site from retail to residential' which was before the Council when it made its decision.
4. Since the Council's decision, the revised National Planning Policy Framework (the Framework) has been published in July 2021. The main parties have been provided with an opportunity to comment on this matter and I have taken any comments received into account as part of my assessment.
5. The proposed development has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations 2017. It has been concluded that the development would not be of a scale and nature likely to result in a significant environmental impact and an Environmental Statement is therefore not required.
6. The site is located within the 3km buffer of the Upper Nene Valley Gravel Pits Special Protection Area (SPA), a European Designated Site protected due to the number and type of bird species present. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected site, either alone or in combination with other plans

and projects. This responsibility falls to me in the context of this appeal. I have therefore considered this matter as a main issue.

Main Issues

7. The main issues are:

- (a) the effect of the proposal on the integrity of the SPA;
- (b) the effect of the proposal on the character and appearance of the area including on the significance of the host building as a non-designated heritage asset;
- (c) whether the development would provide suitable living conditions for future occupiers of 'Townhouse 2', 'Townhouse 3' and 'Flat 2' with particular regard to privacy;
- (d) whether or not the proposal would provide suitable levels of on-site parking provision; and
- (e) whether the development would make adequate provision for affordable housing and any other necessary infrastructure requirements arising from the development.

Reasons

Integrity of the SPA

- 8. The Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document (2016) (SPA SPD) confirms amongst other things that all new development within 3km² of the SPA will result in a significant effect on the SPA. An Appropriate Assessment (AA) has been carried out by the Council and is included with its Committee Report. I do not disagree with the AA completed by the Council.
- 9. The AA confirms that the Habitats Regulations Assessment (HRA) for the Northamptonshire Joint Core Strategy assessed the 'in-combination' impact of proposals involving a net increase of one or more dwellings within a 3km radius of the SPA and concluded that such development would have an adverse effect on the integrity of the SPA unless avoidance and mitigation measures are in place.
- 10. Natural England have confirmed that the proposal is expected to adversely contribute to in-combination effects on the SPA. This would be through increased public access for recreation for example through dog walking, which in turn could lead to disturbance of the notified bird populations and adverse impacts to the ability of birds to use the site for feeding and roosting. In this regard, the Council and Natural England have referred to the requirements of the mitigation strategy set out in the SPA SPD to avoid and mitigate the likely significant effect on the SPA. The mitigation strategy requires that financial contributions are secured towards Strategic Access Management and Monitoring (SAMM) and/or other infrastructure.
- 11. The SPD confirms that for developments of 10 or more dwellings a fixed contribution of £269.44 per dwelling (index linked, with a base date of 2016) for SAMMS would be applicable. However, the appellant has not provided a legal obligation setting out that in the event of planning permission being

granted, such a contribution would be made. I am therefore not in a position to secure the appropriate mitigation which would address the adverse impact of the development. Without this, I cannot be certain that the development would not have an adverse effect on the integrity of the SPA.

12. Consequently, I conclude that based on the AA and in the absence of appropriate mitigation, the proposal would be likely to adversely affect the integrity of the Upper Nene Valley Gravel Pits SPA. In that regard, the development therefore conflicts with Paragraph 182 the Framework and Regulation 63 of the Conservation of Habitats and Species Regulations. The development would also fail to comply with the requirements of the SPA SPD.
13. Even if the appellant had submitted a completed planning obligation, this would not have altered or overcome my conclusions on the other main issues as detailed below. Therefore, I have not pursued this matter any further with the main parties.

Character and appearance including the non-designated heritage asset

14. Higham Road, is a busy main route leading into Rushden Town Centre and is characterised by a mix of residential and commercial uses in buildings of mixed scale and architecture. The former Birch Bros. Coach Station buildings currently occupy the appeal site. They comprise of a 1930's art-deco style building on the Higham Road frontage and associated industrial scale sheds to the rear.
15. The horizontal lines of the art-deco building are articulated through the roofline, minimalist delineation to its upper floor façades and alignment of its upper floor windows including glazing bars. Together with the curved edges within the front elevation and the prominent corner tower, the overall design, bulk and height of this property represents a distinctive landmark on the Higham Road frontage. The utilitarian design of the associated sheds with their lower pitched roof form alludes to the historical use of the site and ensures they appear subservient to the art-deco building both in views from Higham Road and Shirley Road. There is no dispute between the parties that due to the historical and architectural merits of the former coach station, it is a non-designated heritage asset (NDHA). I do not disagree with such a view.
16. The scale and design of buildings varies along Higham Road. However, to the section of Higham Road where the appeal site is located, there is a clear distinction between the scale and density of development on opposing sides of the road. The western side includes two-storey dwellings set back from front boundaries within generous plots and an ASDA supermarket of comparable height to these dwellings. However, when travelling towards the town centre, the NDHA is the first of a group of buildings on the eastern side of the road which front the street and range between three and four-storeys in height. Consequently, the density, layout and greater bulk and mass of these buildings gives them a more dominant presence within the street-scene than those on the opposite side of the road.
17. Paragraph 203 of the Framework confirms, amongst other things, that in weighing proposals that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

18. The extension to the art-deco frontage building would elongate the Higham Road elevation of the NDHA. Even so, the intervening road and offset position in relation to the two storey dwellings at Nos 1 and 3 Higham Road would ensure the extended building would not appear at odds with the surrounding built context. On the contrary, the bulk and height of the extension would sit comfortably within the context of similarly scaled buildings to this side of Higham Road. A centrally positioned glazed façade serving the main entrance, lobby and stairwells would provide clear delineation between the original building and the extension. Consequently, the scale and linear design of the extension would for the most part respect the original building.
19. The subservient industrial sheds would be demolished and replaced with a three-storey block of flats. However, the sheds are not themselves of any significant architectural merit and do not easily lend themselves to conversion for residential purposes. Furthermore, the replacement building would be of a lower but comparable scale to the existing flattened developments which face the site on Shirley Road and would not be highly perceptible from views immediately opposite the principal elevation of the art-deco building on Higham Road. The contemporary design would also clearly distinguish it from the original art-deco building.
20. Notwithstanding the above observations, the proposed first and second floor balconies with French doors serving them would sit less comfortably alongside the original architecture on the roadside elevation on the extension to the art-deco building. In addition, due to their bulk, height and position on higher ground, the new block of flats to the rear would unacceptably compete with the scale of the art-deco building along Shirley Road, diminishing its status as the primary building on the site. The removal of the sheds would also reduce legibility of the historical use of the site. However, the relationship between the new build block of flats to the rear and the art-deco building would mainly be experienced in localised views along Shirley Road, away from the Higham Road frontage.
21. Taking all these factors into account, I find that there would be some low-level harm to the significance of the NDHA and in this specific regard also the character and appearance of the area. To this extent, the development would conflict with the requirements to respond to local character and context and to conserve heritage assets in Policy 2 (Historic Environment) and Policy 8 (North Northamptonshire Place Shaping Principles) of the North Northamptonshire Joint Core Strategy (2016) (JCS) and Policy EN1 (Design in Development) of the Rushden Neighbourhood Plan (2018).

Living conditions for future occupiers

22. The conversion of the art-deco building includes amongst other things three residential units labelled on the proposed plans as 'Townhouse 2', 'Townhouse 3' and 'Flat 2'. Each of these properties have bedrooms with French doors opening onto a shared roof garden. Consequently, there is the potential that the shared use of this area would result in the privacy for occupiers of these individual dwellings being compromised. However, the appellant's statement of case indicates that the roof garden could be sub-divided through the provision of 2.0 metre high opaque glass balustrades. This could be secured by condition and would remove the potential for any invasion of privacy resulting from the use of the roof garden by neighbouring occupiers.

23. I conclude, that subject to the provision of suitable screening within the proposed roof garden, the development would provide acceptable living conditions for future occupiers of 'Townhouse 2', 'Townhouse 3' and 'Flat 2' with particular regard to privacy. In that respect, the proposal would comply with the requirements to protect the amenities of future occupiers in Policy 8 (North Northamptonshire Place Shaping Principles) of the JCS and the Framework.

Parking provision

24. Chapter 9 of the 'Residential Parking Standards' guidance within the Northamptonshire County Council Parking Standards (2016) (RPS guidance) indicates that one-bedroomed dwellings require one space plus one visitor space per dwelling. Two and three-bedroomed units require two spaces plus one visitor space per dwelling.
25. The Council's Committee report suggests that approximately 70 parking spaces, excluding visitor parking, would be required to serve the development and this figure has not been disputed by the appellant. The 38 on-site parking spaces proposed represents a significant shortfall from this figure and the PS guidance particularly if visitor spaces are accounted for.
26. However, the RPS Guidance also confirms that applications for new build flats will be treated on their own merits based upon the local character and information within the guidance. It also confirms that applications for extensions to existing buildings will be dealt with in a similar fashion.
27. The parking spaces provided would secure the equivalent of at least 1 off-road space per residential unit. Whilst on street parking is not available on the Higham Road frontage in the vicinity of the site, the appellant's 'Footmark Surveys' (January 2019) also indicates that unrestricted sections of North Street and Shirley Road provide capacity for a total of 65 parking spaces and that North Street Car Park (NSCP) has 20 parking spaces.
28. I acknowledge that the surveys undertaken only provide a snapshot of parking conditions in the area. Over the periods surveyed, NSCP also displayed high parking stress levels, more often over 80%. Even so, the surveys also indicate that a greater proportion of the on-street space surveyed was more often available, with parking stress on the roads surveyed never exceeding 49%. The site's location close to the town centre with convenient access to a range of services and facilities further persuades me that some flexibility should be applied in terms of parking requirements for the proposal.
29. The Local Highway Authority (LHA) has not objected to the scheme in respect of the parking provision proposed and I find no reason to disagree with the LHA that the tracking plans provided demonstrate that the spaces would also be usable. From the evidence before me, the Council does not have any adopted parking standards. Furthermore, no substantive counter evidence been provided by the Council for example in the form of its own parking surveys or to demonstrate that the development would be likely to contain households in multiple car ownership at a level likely to saturate on-street parking availability in the area.
30. Taking all the above factors into account, I conclude that the development would provide suitable levels of on-site parking provision. In that regard it

would not conflict with the requirements for developments to ensure satisfactory parking provision in Policy 8 (North Northamptonshire Place Shaping Principles) of the JCS.

31. The Council's decision also refers to Policy T1 (Development generating a transport impact) of the Rushden Neighbourhood Plan 2018. This policy does not specifically refer to parking provision, rather it seeks amongst other things to ensure development would not result in a significant residual impact on any aspect of the transport network. Given my findings, I am also satisfied that the proposal would not conflict with this policy.

Affordable housing and other infrastructure contributions

32. Paragraph 57 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations 2010 (CIL Regulations) set out that planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the development; and fairly and reasonably related in scale and kind to the development.
33. Policy 30 (Housing Mix and Tenure) of the JCS sets a target of 30% of the total dwellings on sites in growth towns and market towns to be provided as affordable housing. This would equate to 12 of the proposed units. Policy 30 of the JCS confirms that the precise proportion and tenure mix of affordable housing will take into account identified need and the viability of the development. The Framework also confirms that where major development involving the provision of housing is proposed, decisions should expect at least 10% of the total number of homes to be available for affordable home ownership.
34. In addition, the following requests for infrastructure contributions have been made in respect of the revised scheme for 34 flats and 3 dwellings:
- Northamptonshire Clinical Commissioning Group (CCG) has requested a health contribution of £20,521.06 towards the increased primary health care capacity directly attributable to the population of the proposed development.
 - Northamptonshire County Council (NCC) has confirmed that education contributions of £97,072 towards the provision of additional early years capacity and £44,322 towards primary education would be required. NCC also confirmed that £33,850 may be required towards secondary education.
 - NCC also requested a libraries contribution of £5,838 towards the improvement, enhancement or expansion of library facilities.
35. The Council's reason for refusal also refers to requirements for contributions towards community facilities, open space and the 'Rushden Greenway' although no specific evidence has been provided in respect of any such requirements or whether they would meet the tests in the Framework and the CIL regulations.
36. The appellant's viability consultant has looked at three development scenarios including the scheme for 37 units and an alternative scheme for 16 dwellings with reduced developer contributions. All have returned significant deficits and the Council's independent consultant has verified that the appeal proposal

could not sustain any affordable housing contribution, nor any other contributions to meet the infrastructure requirements that would arise from the development.

37. The East Northamptonshire Developer Contributions Supplementary Planning Document (2006) (Developer Contributions SPD) sets out amongst other things that for residential development of 10 or more units which would generate additional need for education, health and library services, contributions will generally be sought either to improve existing facilities or towards new build facilities.
38. The CCG has confirmed that there would not be sufficient capacity in the local primary healthcare system to absorb the anticipated increase in demand created by the proposed development and that practices in the area are already at the limit of their capacity. The CCG has explained it has moved away from financial contributions towards a single GP practice and towards new health care models on a larger scale involving multiple organisations including Primary Care Networks. However, the CCG has confirmed that Rushden Medical Centre and Harborough Fields are the Practices in closest proximity and those most likely to be affected by the increase in population.
39. From the evidence before me, the Education Authority has not provided details of specific projects for the requested Education and Library contributions, only confirming that the figures and any specific projects would be reassessed once the final dwelling mix is confirmed and a S106 is entered into. However, the appeal proposal is not in outline form and the mix and type of dwellings is specified. In the absence of further details about this matter, I cannot conclude with certainty that the proposal would necessitate a payment towards a specific Education or Library project and hence that any such contribution would be needed to make the development acceptable in these specific regards.
40. I acknowledge that the Development Plan and the Framework allow for flexibility where there are viability issues. However, no affordable housing would be provided which in itself would represent considerable flexibility when assessed against the usual requirements of the development plan and the Framework. Furthermore, no contributions would be made towards the identified infrastructure requests including where they have been identified as being directly attributable to the increased population resulting from the development. In that regard, the contributions required are substantial both individually, in terms of the healthcare and education requirements, and cumulatively when all other infrastructure requirements are taken into account.
41. In the absence of any contributions, there is the potential that at least some of the existing services in the area would either not be able to accommodate the needs of the increased population or that the availability of these services for future residents of the development and the wider local population would be severely compromised. There is no evidence before me to demonstrate who would cover these costs in the absence of planning obligation payments or that the relevant service providers have sufficient capital in place to absorb the impact of the development.
42. The appellant has drawn my attention to an appeal decision in Lewisham¹. However, in that particular instance although viability was taken into

¹ APP/C5690/W/18/3205926

consideration and allowed for a degree of flexibility, the maximum reasonable amount of affordable housing put forward was found to be acceptable and an accompanying S106 Agreement also made other infrastructure contributions. Therefore, I do not find this example as being comparable to the appeal proposal.

43. I conclude that the development would not make adequate provision for affordable housing nor for at least some of the necessary infrastructure contributions arising from the development. In that regard, it would fail to accord with the infrastructure and affordable housing requirements in Policies 10 (Provision of Infrastructure) and 30 (Housing Mix and Tenure) of the JCS, the Developer Contributions SPD and the Framework.

Conclusion

44. In accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.
45. The Council has confirmed that it is able to demonstrate a deliverable five-year supply of housing sites and this has not been disputed by the appellant. Nevertheless, the provision of 37 dwellings would make a positive contribution towards boosting the supply of housing in the area. There would be social and economic benefits associated with the construction work and the contributions of future occupiers to services and facilities in the area. The development would also result in investment in the art-deco building which would help to secure its longer-term preservation.
46. Notwithstanding the above, I have identified that the proposal would lead to some harm to the significance of the NDHA and in this specific regard also the character and appearance of the area.
47. Moreover, the development would not contribute to the District's affordable housing requirements and would fail to make contributions to the significant infrastructure requirements that would be attributable to the development. In this regard, the proposal has the potential to put significant pressure on local infrastructure particularly in respect of health and education.
48. Furthermore, and in the absence of a legal obligation to secure appropriate mitigation, I cannot be certain that the development would not have an adverse effect on the integrity of the SPA.
49. Notwithstanding the viability position, I find that owing to the harm that would be caused to the character and appearance of the area, the absence of affordable housing, the absence of at least some necessary infrastructure payments and the adverse effect of the proposal on the integrity of the SPA, the appeal should be dismissed. These are matters of overriding concern and outweigh the benefits of the proposal.

M Russell

INSPECTOR