The Planning Inspectorate

Appeal Decision

Site visit made on 7 January 2022

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2022

Appeal Ref: APP/J0405/W/21/3280476
243 Tring Road, Aylesbury HP20 1PH

- 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 planning permission
- The appeal is made by Mr A Nathwani against Buckinghamshire Council - North Area (Aylesbury).
- The application Ref 21/01448/APP, is dated 31 March 2021.
- The development proposed is Demolition of existing semi-detached children nursery building and erection of semi- detached residential building with associated parking, cycles and bins.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   - whether the proposal would accord with the Council's development strategy for the loss of employment sites;
   - the effect of the proposed development on the character and appearance of the area;
   - the effect of the proposal on flood risk; and
   - the effect of the proposed development on the living conditions of the neighbouring occupiers of No 245 Tring Road (No 245) with regard to privacy.

Reasons

Loss of employment sites

3. Policy E2 of the Vale of Aylesbury Local Plan 2013-2033 Adopted Plan September 2021 (VALP) permits the redevelopment and / or reuse of employment sites to an alternative non-employment use subject to a number of criteria. One such criteria is that any existing appropriate class E, B2 and B8 businesses affected by the loss of employment land should be relocated to alternative premises so viable businesses are not affected.

4. The existing site contains a privately owned day nursery and therefore falls within Class E of the Town and Country Planning (Use Classes) Order 1987 as amended. The proposal is to demolish the nursery and build a semi-detached residential building. Since the nursery is not proposed to be relocated to an

alternative premises, the scheme would result in the loss of the employment site. Therefore, the proposal would not meet this criterion.

5. I note the presence of a nursery facility in the building adjacent to the site as well as other nurseries and employment uses such as a dentists' surgery and pharmacy in the wider area. I also note the Appellant's assertion that the loss of space could be accommodated by these provisions and that it is not viable to maintain a smaller day nursery such as the appeal site.

6. However, there is little substantial evidence to demonstrate that these facilities have the capacity to accommodate additional children or staff. Accordingly, there has not been a demonstration of substantial over-supply of suitable alternative employment sites in the local area. Furthermore, there is no evidence such as a viability assessment to demonstrate that the existing use as a nursery is unviable.

7. Another criterion of VALP Policy E2 is that the site has been marketed as an employment site for an employment use suitable to the site and location at a suitable price, by appropriate means for at least two years with no viable interest.

8. Since no marketing has been undertaken for the site, this criterion has not been met. I acknowledge the evidence regarding the impacts that the Covid-19 pandemic has had on small businesses as well as the internal condition of the building. However, given the absence of any detailed financial evidence, there has not been a demonstration that the existing use of the site is unviable. Accordingly, the scheme would conflict with this Policy.

9. VALP Policy I3 resists proposals for the change of use of community buildings and facilities for which there is a demonstrable local need, unless the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. The Policy goes on to require the marketing of the site for a minimum of 12 months. While the provision at the site is a private nursery, from the evidence, the development plan does not preclude private commercial uses as community facilities. While I acknowledge the other nursery facilities in the area, there has not been a demonstration that there is no local need for the nursery. Furthermore, the proposal does not include the relocation of the nursery and no marketing evidence or viability assessments are before me. Therefore, the proposal would conflict with this Policy.

10. In any event, even if the site was not considered to be a community facility, the scheme would result in the loss of an employment site and would conflict with VALP Policy E2.

11. Consequently, the proposed development would not accord with the Council's development strategy for the loss of employment sites and would conflict with VALP Policies E2 and I3.

Character and appearance

12. The area of Tring Road surrounding the site is characterised by a mix of buildings of varied forms and styles but generally of a two-storey height and moderate spacing and set back from the highway such that the area has a pleasant spacious character and appearance.

13. The existing building is part of a pair of semi-detached properties with a modest gable feature in the centre of the front elevation. While there is some accommodation in the roof space, the building retains a two-storey appearance overall, in keeping with the character of the area.

14. The adjacent building includes a single storey element with two small dormer windows of a lower height than the appeal building as well as a modest single storey link. Given the modest scale and set back from the highway, the composition as a whole is in keeping with the spacious character of the area.

15. The proposal would involve the demolition of the appeal building including the gable feature, retaining the adjacent property. The proposed building would have a similar ridge height as the adjacent building. However, it would extend to the side boundary of the site and would include two gable extensions at roof level, the ridge of which would be slightly below and above the ridge of the primary roof form.

16. These gable extensions would be significantly larger than the existing modest gable feature and would include windows on the second floor such that the building would have a three-storey appearance with a much greater massing than the adjacent building. Moreover, the larger gable extension would project forward of the existing building line, further emphasising the larger massing. Therefore, the proposal would have a dominant effect on the street scene, harmfully eroding the spacious character of the area.

17. I acknowledge that the scale of the buildings may be tiered, from the smaller buildings at the corner of Tring Road and Parton Road, to the larger proposed buildings. However, given the modest scale of the surrounding buildings as well as their set back from the road, the increase in massing would have a discordant effect on the character and appearance of the area.

18. Consequently, the proposed development would unacceptably harm the character and appearance of the area. Therefore, it would conflict with VALP Policy BE2 which seeks, among other things, development that respect and complement the physical characteristics of the site and its surroundings.

Flood risk

19. While the site lies within Flood Zone 1, the evidence indicates that there is a high risk of groundwater flooding due to the water table levels. I have considered a condition to deal with surface water drainage, however since there is little substantial evidence before me to indicate whether any mitigation would be successful, a condition would not necessarily be effective.

20. While I acknowledge the existing use of the site and the construction of the building at No 245, these matters do not override the risk of flooding identified.

21. Consequently, the proposed development would adversely affect flood risk. Therefore, it would conflict with VALP Policy I4 which requires, among other things, that all development design and use sustainable drainage systems (SuDS) for the effective management of surface water run-off on site, and not increase flood risk elsewhere.

Living conditions

22. No 245 is set a significant distance back from the highway such that its front elevation would be set further back than the rear elevation of the proposed building.

23. As such, the front windows of No 245 would be visible from rear windows of Flats 4 and 7 of the proposal. However, the upper floors of the building at No 245 would be a substantial distance to the side of the first and second floor rear windows of the proposal, particularly given that No 245 has a single storey side extension near the boundary with the appeal site. Therefore, while I note the separation distances, given the oblique angle of views from the windows of Flats 4 and 7, the proposal would not result in undue harm to the privacy of the occupiers of No 245.

24. The Appellant has submitted amended plans as part of the appeal which indicate additional windows in the side elevation and obscured glazing in the rear elevation of the bedrooms of Flats 4 and 7. Even if I were to have regard to these plans, they have not altered my finding on this main issue.

25. Consequently, the proposed development would not harm the living conditions of the neighbouring occupiers of No 245 with regard to privacy. Therefore, it would not conflict with VALP Policy BE3 which resists, among other things, unreasonable harm to the amenity of existing residents.

Other Matters

26. I note the Appellant's evidence regarding housing supply and the sustainability of the location. The scheme would contribute eight dwelling to the housing supply and there would be some temporary economic benefit during the construction phase as well as some economic and social benefit from the contribution of future occupiers to the local community.

27. However, since the Council are able to demonstrate a five-year supply of housing and the number of proposed dwellings is modest, these benefits would be limited. Given the loss of employment land and the harm to the character and appearance of the area as well as harm to flood risk, these matters have not altered my overall decision.

Conclusion

28. For the reasons given above, the proposed development would conflict with the development plan as a whole and in the absence of material considerations to indicate otherwise, the appeal is dismissed.

R Sabu

INSPECTOR