



Appeal Decision

Site visit made on 11 April 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2022

Appeal B Ref: APP/K2420/W/21/3281840

7 - 23 Wood Street, Hinckley, Leicestershire LE10 1JQ

- 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 Onyx Rose against Hinckley and Bosworth Borough Council.
- The application Ref 19/00464/OUT, dated 25 April 2019 and was refused by notice dated 4 March 2021.
- The development proposed is redevelopment of existing site to residential.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Onyx Rose against Hinckley and Bosworth Borough Council. This matter is the subject of a separate decision.

Preliminary Matters

3. The proposal seeks outline planning permission with matters reserved apart from access, layout and scale. The layout shows the conversion of Block C and the addition of new buildings forming Blocks A, B and D. The indicative layout plans provide a useful illustration of one way each site might be developed. As only appearance and landscaping are reserved, I have afforded substantial weight to these details and shall consider the appeal in those terms.
4. The appeal is related to a similar appeal (APP/K2420/W/21/3281844) subject to a separate decision (The Second Appeal). Whilst not linked to this decision, it raises issues that are relevant to planning obligations. I shall return to this matter later.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the living conditions of neighbouring occupiers, especially with respect to overlooking of occupiers of 18 to 26 Wood Street (No's 18-26); and
 - whether the proposed development would make suitable provision toward local infrastructure.

Reasons

Living conditions

6. Wood Street is a narrow highway. The footpath in front of the site is also narrow. Five terraced dwellings, No's 18-26, are opposite the proposed site of Block A. These are traditional two-storey dwellings with short front gardens and front facing windows that overlook the highway and the application site. The building would be three stories and would be recessed from the extended footway by around two metres. This would result in a relatively narrow separation distance.
7. The Council's Good Design Guide (2020) requires that adequate space is provided between and around buildings. Although, the internal layout details of this building are not before me, it is most likely that the front elevation would include windows serving habitable rooms. These rooms would require adequate access to natural light. Future occupiers, and good design requirements, would expect these to be clear glazing to provide a view onto the street. As a result, it is unconvincing that window positioning, room type and/or glazing type could be employed to eliminate all conflict. Consequently, occupiers of the dwellings of No's 18-26 would be overlooked from windows of Block A with close and direct views.
8. Many buildings within the area are close to the highway. This creates a close-knit and intimate pattern of development. The previous building on site, being only two-storeys, would have had a reduced opportunity for overlooking. Furthermore, the relationship of principal elevations, facing each other across such a narrow highway, is not a common feature within the street or the surrounding area. Therefore, whilst recognising that such proximity is seen locally, these are limited and do not set a clear precedent to be repeated in this case. The proposal would result in a substantial loss of privacy that would demonstrably harm the living conditions of neighbouring occupiers of No's 18-26 through overlooking.
9. Accordingly, the proposal would conflict with policy DM10 of the Site Allocations and Development Management Policies DPD (2016) (SADMP) and the Council's Good Design Guide. These policies seek, among other matters, for development to not have a significant effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings.

Planning obligations

10. The Council's Committee report illustrates that the proposal was recommended for approval subject to the applicant entering into a legal Agreement. This sought to secure an off-site affordable housing commuted sum, sums towards civic amenity, library and health care facilities and an off-site open space sum. The Council has not made reference to this requirement within its Statement of Case.
11. In connection with the second appeal, the Council has provided an updated CIL compliance report¹. This concluded that sums are required to fund education, libraries and civic amenities. The submitted justification describes contributions

¹ CIL Compliance Report 4 March 2022

which are directly related to the proposed development and necessary in all terms. However, despite the identified requirements, the Council concluded that the scheme associated with the second appeal would not be viable if these sums were required.

12. The appellant's Viability Appraisal², also made in support of the second appeal, identified that a third of the appeal site had been sold for £290,000. It therefore explores the viability of 26 residential units on the reduced site, with an accordingly reduced land value. This appraisal does not therefore assess the viability of the proposal associated with this appeal. As a result, the evidence is insufficient to illustrate that the proposal, the subject of this appeal, would be unviable if the contributions sought by the Council were included.
13. Consequently, without the submission of a completed S106 Legal Agreement the scheme would conflict with policies 1, 15 and 19 of the Hinckley and Bosworth Core Strategy (2009) (CS) and policy DM3 of the SADMP. These seek development, among other matters, to provide 20% affordable housing on sites of 15 dwellings or greater and to provide improvements to existing green space.

Other Matters

14. The site is within the eastern part of the Hinckley Town Centre Conservation Area (CA). In accordance with the duty³ imposed on me I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, paragraph 199 of the National Planning Policy Framework (The Framework) requires great weight to be given to an asset's conservation when considering the impact of the proposal on its significance. The Conservation Area Appraisal recognises that the buildings on site have local historic and architectural importance and are consistent with traditional factory development in the town and are deemed to be non-designated heritage assets. The significance of the CA seems to derive from its quantity of listed and locally important buildings that reflect the industrial and commercial heritage of the town.
15. The original factory, in the location of Block B and built around 1903, is proposed to be demolished, with Block C being retained and largely converted. The proposed buildings, of Blocks A, B and D, would be commensurate with the scale and pattern of existing development on site and within the surrounding area. Nonetheless, the demolition of the original factory would result in moderate harm to the significance of the CA. In acknowledgement of the advice within the Framework, the harm found would be calibrated as 'less than substantial'. This requires the harm to be weighed against any public benefits that would secure the optimum viable use of the site. The public benefits of the proposal would include the provision of required housing in an accessible location and the reuse of a NDHA. These benefits would outweigh the limited harm and would ensure that the proposed development would preserve and enhance the CA.
16. The site is within allocation HIN147 of the SADMP for employment use. Nevertheless, the site is classed as a 'Category C' site where a flexible approach to its retention should be applied. As such, due to its limited quality

² Financial Viability Assessment, by intali, dated May 2021

³ section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

of the land for employment use and as an alternative use has previously been approved, the conflict with this policy is of limited weight against the proposal.

Planning Balance and Conclusion

17. The proposed development would be within the town and would make efficient use of previously developed land. Moreover, the Council is unable to demonstrate a 5-year supply of deliverable housing sites, with a substantial shortfall resulting in a supply of 4.45 years. As such, footnote 7 of the Framework establishes that the policies which are most important for determining the application are out-of-date.
18. However, Paragraph 219 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Chapter 12, of the Framework, requires development to function well, add to the overall quality of an area and have a high standard of amenity for existing and future users. Although the Council's design policies can be considered to be out-of-date, they display a high degree of consistency with the Framework. Furthermore, paragraph 57 requires planning obligations to be sought where they are necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related in scale and kind to the development. Therefore, the conflict between the proposal and policies DM10 and DM3 of the SADMP and policies 1, 15 and 19 of the CS should be given significant weight in this appeal.
19. Although regeneration of the site as proposed, would be acceptable in many circumstances, this proposal would relate poorly to neighbouring development and would fail to deliver the required infrastructure measures. Consequently, the adverse impacts of the proposal on the living conditions of neighbouring development, and the absence of infrastructure provision, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
20. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

B Plenty

INSPECTOR