



Appeal Decision

Site visit made on 15 November 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2022

Appeal Ref: APP/U3935/W/22/3302373

30 Marlborough Road, Swindon SN3 1QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Tim Hinton against Swindon Borough Council.
 - The application Ref S/21/1056 is dated 16 June 2021 .
 - The application sought planning permission for the erection of a two-storey coach house, to accommodate 2 no. apartments and associated works. without complying with a condition attached to planning permission Ref S/19/0288/TB, dated 12 February 2019.
 - The condition in dispute is No 2 which states that: This approval shall be in respect of drawing number 100 A received by the Local Planning Authority on 20th February 2019 and drawing numbers: 110 B, 111 C and 101 B received on 3rd December 2019.
 - The reason given for the condition is: To define the scope of the development hereby permitted, in accordance with section 72 of the Town and Country Planning Act 1990.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-storey coach house to accommodate 2 no. apartments and associated works without compliance with condition 2 from previous permission S/19/0288/TB at 30 Marlborough Road, Swindon SN3 1QY in accordance with the terms of the application, Ref S/21/1056, dated 16 June 2021, subject to the conditions in the attached Schedule of Conditions.

Background and Main Issues

2. Permission was granted in 2019 to construct a two-storey coach house to the rear of 30 Marlborough Road to provide two additional flats to the existing 6 flats within the main building. This included a change to the parking layout to accommodate the building and parking for 8 vehicles.
3. The appellant applied to vary the 2019 permission to alter the approved layout, floorplans and elevations plans. This change proposed a side extension to the coach house, a single storey lean to, an additional roof light on the rear roof plane as well as design changes to the gable projection and dormers. Internally the flats would increase from the approved one-bedroom flats to two-bedroom flats. To achieve this, the block, layout and elevations plans detailed in condition 2 of the 2019 permission would need to be replaced. Condition 2 would need to include alternative plans and condition 10 would also need to refer to three rather two roof lights.

4. For clarity, I will hereafter refer to the original development as 'the approved development', and the increased accommodation, extensions and design changes to the coach house and parking layout as the 'proposed development'.
5. In view of the above, the main issues are the effect of the proposed development on:
 - the character and appearance of the area, with regard to the setting of a heritage asset, a Grade II Listed Building (30 Marlborough Road);- and
 - parking and highway safety.

Reasons

Character and Appearance

6. The appeal site is within the rear yard of 30 Marlborough Road, a Grade II Listed Building (Listed Building). Based on my observations, and the evidence provided, the significance of the building is largely defined by the materials and architectural features of the period building as well as its historical use as a purpose-built veterinary surgery and the offices of the Royal Veterinary Society. The external period features include an asymmetrical frontage, with stone bay windows with pierced parapets and sash windows. The rear yard currently has no buildings within it, its hard surfaced and used as a car park for the existing flats.
7. In respect of its setting, this part of Marlborough Road is a busy B-road and a public transport route within a central urban location. The Listed Building fronts the main road, with a small set back behind a low stone boundary wall. The building is adjoined by more contemporary developments of two to three storey flatted buildings and terrace dwellings opposite as well as to the side and rear. In terms of size, the Listed Building is not the dominant building in this context, but the setback, low stone boundary wall and the appreciable gaps either side of the building provide openness that is a positive aspect of its setting, adding to its significance as a heritage asset.
8. The proposed development would be sited in the existing rear car park, adjacent to the northern boundary, and facing in a southerly direction towards the proposed car park. The dormer windows and a central gable projection enable first-floor accommodation to be provided in the roof. The proposed building and cycle store would not be attached but would be sited within close proximity of the rear elevation of the main building. Its position, close to the northern boundary of the car park, means it would be visible from Marlborough Road in the gap between the Listed Building and the adjoining property.
9. I note the concerns raised over the pitch and height of the main gable and dormers, together with the single storey ground floor porch addition impacting upon the design and symmetry of the 'approved development'. However, there are numerous gable projections in this context with different pitches, and the Listed Building itself is not a symmetrical design. Furthermore, these features would largely be most noticeable in the car park area and not from wider public views. Consequently, the design features of the proposed development would not have a detrimental impact upon the Listed Building or its setting.
10. Despite its close proximity to the Listed Building, the proposed development would be detached, and the orientation, scale and height would ensure it

appears physically subservient. In this respect, the proposed development is of a scale, height and position where it would not undermine the Listed Building as the dominant or important building. However, the proposed development would be visible in the gap between the Listed Building and adjacent property, diminishing the space to the side of the building that is a positive aspect of the setting. However, the set back of the cycle store and coach house coupled with their orientation and height ensures that proposed building would not completely erode the gap, resulting in a minor 'less than substantial' harm to the setting of the Listed Building.

11. Paragraph 202 of the National Planning Policy Framework (the Framework) is applicable in these instances and indicates that less than substantial harm to heritage assets should be weighed against the public benefits of the proposal. The proposed development would be considered a windfall site that would contribute two new flats to the local housing stock in an accessible location. The proposed development and its landscaping would improve the overall appearance of the rear yard, and there would also be social and economic benefits from the construction of the building, in terms of additional expenditure in the local economy and the creation of construction jobs. Future occupiers would also use shops, services and facilities within the locality. These public benefits can be afforded moderate weight in this instance.
12. I consider that the moderate public benefits would be sufficient to outweigh the minor 'less than substantial' harm that I have identified to the setting of the Listed Building. In coming to this decision, I have given considerable weight and importance to paying special attention to the desirability of preserving or enhancing the setting of the Listed Building.
13. Accordingly, the proposed development would not have an adverse effect on the character and appearance of the area, including the setting of the Listed Building. Therefore, the proposed development would comply with Policy DE1 and EN10 of the Swindon Local Plan 2015, which amongst other things, requires development to have high standards of design with due regard to the surrounding built form. Also, proposals should conserve or enhance heritage assets and their settings. Policy EN10 specifically indicates that proposals will be weighed against the public benefits, and whether it has been demonstrated that all reasonable effects have been made to the mitigate the harm to the significance of the asset.

Parking and Highway Safety

14. The Council are concerned that the provision of one off-street parking space per unit would be insufficient with the level of demand created by six one-bedroom flats and two 2-bedroom flats. The proposed development proposes 8 spaces in the rearranged layout.
15. The Council's Technical Guidance on Parking Standards 2021 (Parking Standards) sets out that the existing flats and proposed development generates a parking demand of 10 spaces, six for the existing flats and four for the proposed development. The Council also determined that 2 additional visitor spaces would be required for 8 units (1 per 4 units). However, the 6 flats in the main building are existing and the proposed development is only for two flats. As a consequence, based on the Parking Standards, the proposed development would not require any additional visitor spaces, and a shortfall of 2 spaces would potentially need to be accommodated elsewhere.

16. The appellant accepts a shortfall in parking but contends that the existing six flats do not use all of the existing parking spaces. The site is also situated in a highly sustainable location on the edge of the Old Town District Centre, and is within easy reach of all day-to-day amenities, such as general shops, services as well as doctors and schools. Bus stops are situated directly outside the site offering a frequent and regular bus service into Swindon. Furthermore, car parks for visitor use are in the vicinity of the site, such as The Planks and Hoopers Place, which are a short walk from the site.
17. Although I appreciate it is a snap shot in time, from what I saw on site, the existing car park was less than 50% occupied at the time of my visit (10:30am Tuesday). The site is in a very accessible location, a short walk to shops, amenities and services. Car parking on the surrounding road network was also strictly controlled via double yellow lines, with most, if not all, of the neighbouring flats, houses and estates having dedicated parking, some of which were controlled by a private company on private land. I did not see any indiscriminate parking in or around the site. A bus stop was available directly outside the site, providing access to Swindon on a regular basis.
18. I accept that there is a shortfall in the parking provision when assessed against the Parking Standards. However, without any evidence to indicate otherwise, the car occupancy at the current flats is low. Moreover, based on the size and nature of the proposed accommodation, the accessible location of the site and the alternative means of transport available, one parking space per flat would appear to be sufficient to serve the development. Furthermore, there is limited evidence before me to demonstrate that currently there is any issue with indiscriminate parking within the area, which has led to any accidents or any significant highway safety issues. Visitor parking could also be accommodated for within the nearby car park at The Planks, which is a short walk from the proposed development.
19. Accordingly, the parking requirements generated by the proposed development, over and above the 8 spaces provided, would be likely to be limited and would therefore not materially add to or create any localised parking stress or highway safety issues. Therefore, despite a technical conflict with that part H of Policy TR2 of the LP, which requires parking to be provided in accordance with the Council's adopted standards, I find that no harm would arise, and there would be no conflict with paragraph 111 of the Framework relating to highway safety.

Other Matters

20. I have had regard to the other issues raised by the Highways Authority, in particular turning within the site and being able to enter and leave in a forward gear. However, the approved development is a viable and plausible fall-back position in the event that the proposed development is not approved. The approved development has the same number of spaces, and a similar level of manoeuvrability when all spaces are occupied. As such, the manoeuvrability within the site and the ability to exit and enter in a forward gear would be no more harmful to highway safety than the 'approved development.'
21. I have also had regard to the Conservation Officer's concerns regarding the changes to the design of the approved development. Particularly, the quality of approved development being materially diminished between permission and completion, contrary to the advice set out in paragraph 135 of the Framework. Although I understand the Conservation Officer's position, this is a Section 73

appeal to vary the permission of the approved development. Consequently, the approval of the proposed development would not supersede the approved development but create two separate planning permissions. As such, allowing this appeal would not diminish the quality of the approved development, or be contrary to advice set out in Paragraph 135 of the Framework.

Conditions

22. As I have concluded that the proposed development would be acceptable in respect of character and appearance as well as parking and highway safety, it would be necessary to remove condition 2 of the permission and replace it with a condition detailing the plans approved. This is to ensure that the proposed development is carried out in accordance with the approved details. The remaining conditions were not in contention and remain largely unaltered. However, the time implementation condition would run from the date of the original permission, 19th December 2019, and condition 10 has been amended to refer to three rooflights.
23. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

24. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed.

M. P. Howell

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin before the expiration of three years from 19 December 2019.
2. The development hereby permitted shall be carried out in accordance with the following approved plans; 21-358-09, 21 358 10 Rev Aa, 21-358-11, 21-358-12 Rev Aa.
3. Prior to the construction of the buildings hereby permitted above ground level, details of all external facing materials and surface treatments shall be submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with these approved details.
4. Prior to the construction of the buildings hereby permitted above ground level, details of the existing and proposed levels across the site and relative to adjoining land, together with the finished floor levels of the proposed buildings, have been submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
5. Prior to the construction of the buildings hereby permitted above ground level, a scheme of soft landscaping to include a planting schedule and time table of works, shall have first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented as per the approved timetable. Any tree or shrub planted in accordance with the scheme which is removed, dies or becomes diseased within a period of five years from first being planted, shall be replaced by one of a similar size and the same species.
6. Construction work associated with the development hereby permitted shall only take place between 08:00 - 18:00 Monday - Friday and 09:00 - 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
7. The flats hereby permitted shall not be occupied until the parking spaces and the associated turning areas shown on the approved plans have been surfaced in accordance with the details approved under condition 3, marked out and made available for use. Thereafter, the parking and turning areas shall be kept clear of obstruction and shall not be used for any purpose other than the parking and turning of vehicles in connection with No. 30 Marlborough Road and the new flats hereby permitted.
8. Adequate and appropriate provision for surface water drainage within the site must be made so that none discharges onto the highway or adjacent land.
9. No development shall take place until a Construction Method Statement (CMP) has been submitted to and approved in writing by, the Local Planning Authority. The CMP shall
 - i. specify the type and number of vehicles;
 - ii. specify point of construction access and access route to the site;

- iii. provide for the parking of vehicles of site operatives and visitors;
- iv. provide for the loading and unloading of plant and materials;
- v. provide for the storage of plant and materials used in constructing the development;
- vi. provide for wheel washing facilities (where necessary);
- vii. specify the intended hours of construction operations;
- viii. measures to control the emission of dust and dirt during construction

The CMP shall be adhered to throughout the construction period.

- 10. Notwithstanding the submitted plans, the three rear roof windows shall be a minimum of 1.8 metres in height from the finished first floor level.
- 11. Prior to the occupation of the flats hereby permitted, the approved cycle and bin storage shall have been provided in accordance with the submitted plans. The bin and storage shall be retained thereafter to serve the approved development.