



Appeal Decision

Site visit made on 21 November 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/A1910/W/21/3285827

21/21A High Street, Hemel Hempstead HP1 3AA

- 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 Z Choudhury against the decision of Dacorum Borough Council.
 - The application Ref 4/02356/19/FUL, dated 2 October 2019, was refused by notice dated 30 April 2021.
 - The development proposed is a change of use on ground floor from A1 shops to A3 restaurant and cafes and addition of first and second floors, loft conversion including dormers to create 3 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the Council's consideration of the application the appellant agreed an amended description of development. I have therefore used this in the banner above and determined the appeal on this same basis.
3. During the appeal Natural England issued advice about the effect of residential development on the Chilterns Beechwoods Special Area of Conservation. The Council referred to this in its appeal statement as did the appellant in final comments. Both main parties provided further comments which I have also taken into consideration in determining the appeal. I return to this issue below.
4. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order). The proposed A1 and A3 uses are now within Use Class E. However, having regard to paragraph 4 of the Regulations, I have considered this appeal on the basis of the use classes specified in the Schedule to the Use Classes Order on 31 August 2020.

Main Issues

5. These are:
 - the effect of the proposal on the living conditions of the existing occupants of ground and first floor flats at the rear of No.23 High Street, with regard to outlook and natural light;
 - its effect on the Chilterns Beechwoods Special Area of Conservation; and
 - whether it would be necessary to provide off-street car parking.

Reasons

6. The appeal site is a mid-terraced building facing High Street in Hemel Hempstead Old Town. It is a two-storey vacant shop unit at the front with a single-storey flat roofed part at two levels behind and a taller internal covered yard/loading bay at the rear. It is proposed to sub-divide the ground floor to retain a small shop unit at the front next to a new restaurant or café with a new shop unit at the rear. The first floor and roof would be converted and extended at the rear, above part of the flat roof, to provide three flats.

Living conditions

7. Next to the site, the rear of No.23 High Street includes a ground and first floor flat. Some habitable room windows already have restricted horizontal views facing the site, across the flat roof to a raised parapet wall, over it towards distant buildings and roofs or upwards to the sky. Some windows face the taller covered yard/loading bay so these views are even more restricted, though less so upwards and sideways towards the flat roof.
8. The rear extension would be on the upper part of the flat roof, furthest from these windows, but it would stretch back in-depth along the entire length of this part of the building. Over two floors (albeit one in the roof) it would significantly increase the height and overall scale and massing of built form directly in front of these windows, or upwards to one side, with a narrow gap between. Removing a large roof lantern in the lower, closest part of the flat roof would improve immediate views from the bedroom window of the ground floor flat. The new roof slope would recede away from No.23. Nevertheless, the substantial increase in height and length of the extended building, and its close proximity, would seriously foreshorten and severely restrict views from all of these habitable room windows in the flats, especially the ground floor. This would be overbearing and unduly oppressive.
9. All bar the ground floor bedroom would meet an adjusted (to reflect the constrained built-up location) Building Research Establishment (BRE)¹ vertical sky component target for daylight received at habitable room windows. It would not be a material shortfall at this bedroom in this respect. The other habitable rooms would also achieve the BRE residential daylight distribution standard and receive satisfactory annual and winter sunlight hours. However, this bedroom would only achieve the minimum 'Right to Light' which is a private civil matter; it would fail the BRE daylight distribution and winter sunlight hours standards. It is the only bedroom in this flat but it could be used for other domestic activity during the day or evening. A significant part of this room would be unacceptably gloomy for a substantial proportion of the day and year. Such use of it would be over-reliant on artificial lighting.
10. I find that the proposal would cause significant harm to the living conditions of the existing occupants of ground and first floor flats at the rear of No.23 High Street with regard to outlook and in the ground floor flat with regard to natural light to a bedroom. Consequently, it conflicts with Policy CS12 of the Dacorum Core Strategy 2013 (CS). This policy includes that development should avoid visual intrusion, loss of sunlight and daylight and respect adjoining property in layout, site coverage, scale, height and bulk.

¹ Building Research Establishment Guidelines "Site Layout Planning for Daylight & Sunlight. A Guide to Good Practice" 2011 Second Edition and British Standard 8206:2 Part 2

Chilterns Beechwoods Special Area of Conservation (SAC)

11. The appeal site is within a zone of influence of the SAC and its important habitat of Beech forests on neutral to rich soils, semi-natural dry grasslands and scrubland facies on calcareous substrates and dry grasslands and scrublands on chalk or lime. A significant individual or in-combination effect on this European habitats site would be likely to occur due to disturbance from increased population arising from any residential development in an area where these inhabitants would be in such proximity to the SAC that they would be likely to visit it for recreational purposes.
12. The Council has prepared a Mitigation Strategy (MS) in concert with other affected Councils, working closely with Natural England (NE). The appellant suggests it has been approved by the Council at a committee meeting. The electronic file name provided is 'Appendix A - Draft Mitigation Strategy'. Even if it has been approved, I have not been informed that it was in anything other than a draft form. It refers to intended or on-going strategic environmental assessment screening and statutory consultation, including with NE and that responses 'will be taken account of in this document'. It also refers to intended consultation with NE (and others) on the outcome of the Council's Habitats Regulation Assessment of the MS and its screening report.
13. I am not, therefore, satisfied that the MS before me is in a final, adopted form. As such, it is subject to change and timescales for outstanding work are not before me. Consequently, the appeal cannot be held indefinitely in abeyance nor can I safely proceed on the basis of the MS before me. In the meantime, NE has advised that residential development requires individual habitats regulations assessment (HRA) and must demonstrate how adverse impacts on the integrity of the SAC would be avoided by appropriate mitigation.
14. I appreciate that this issue emerged during the appeal process. Nevertheless, the appellant has not submitted an HRA and there is no planning obligation before me. Even if the proposal was a car free development, there is no evidence that future occupants of the flats would not, or could not, travel to the SAC by other modes of transport. A 'Position statement on nutrient neutral development' prepared by Havant Borough Council does not apply to the Council's area and relates to the impact of development on the Solent coast.
15. I have considered whether a negatively worded planning condition could be imposed to limit the development that can take place until a planning obligation has been entered into, in this case to secure suitable mitigation. However, Planning Practice Guidance (PPG) sets out that this is unlikely to be appropriate in the majority of cases. In this case, I am not certain what final form of mitigation such a condition might lead to. I cannot therefore be sure that mitigation would be suitable and relevant to the development to be permitted, reasonable and enforceable or therefore meet all the tests set out in the Framework and in PPG for a planning obligation.
16. Based on the evidence before me, as the competent authority in this appeal I am unable to undertake an appropriate assessment, which would also necessitate consultation with NE. In turn, I cannot be certain that the proposal would not harm the nature conservation interests of the SAC. In these circumstances I find that the proposal would adversely affect the integrity of the SAC. Consequently, it conflicts with CS Policy CS26 which includes objectives to protect designated habitats sites.

Car parking

17. The Council seeks at least 3 off-street car parking spaces for the flats and 12 for the restaurant or café and additional shop unit. No off-street car parking is proposed. There is no evidence of long term parking near the site (including overnight) that would be suitable or available for future occupants of the flats. However, the site is within the defined town centre of Hemel Hempstead and very close to the edge of Accessibility Zone 1, which is the highest accessibility area. It is a 16 minute walk (significantly less by cycle) along lit pavements to the town centre with its extensive range of shops, services, facilities and employment, including bus services and a train station. Other shops and other facilities lie en-route into the town centre from the site and in High Street.
18. Short stay on-street car parking bays in High Street and long stay public car parks near the site operate throughout the day, including weekends and after 1800. Albeit a snap-shot I saw that spaces were available and would be convenient for customers of the shops and a café, especially a restaurant in the evening after shops closed and some local residents could walk or cycle. The site is also located near bus stops and convenient for taxi drop-off and pick-up, including to and from the town centre and destinations elsewhere.
19. In these circumstances car ownership would be a matter for future occupants in deciding whether living in the flats would meet their needs. Notwithstanding the provisions of Class E (change from a shop to a restaurant or café is not development that requires planning permission) there is no compelling evidence that the proposal would not function effectively with no off-street parking or that customers would be unduly disadvantaged. This would be consistent with aims of the Council to reduce parking provision and encourage lower car ownership in the most accessible, higher density locations². The marginal distance of the site beyond Accessibility Zone 1 is not significant in this case and the proposal is for conversion and extension on a constrained, historic built-up site. A flexible approach is justified in this case.
20. I find that it would not be necessary for the proposal to provide off-street car parking. Consequently, it complies with CS Policies CS8 and CS12. These policies include that development should provide sufficient parking taking account of accessibility, promoting economic development and regeneration, supporting shopping areas and safeguarding residential amenity.

Other Matters

21. The site is in the Hemel Hempstead Old Town Conservation Area (CA) and the appeal building is a locally listed building. Nearly all of the buildings along High Street are either a listed building or a locally listed building. Their significance includes their siting and design as mainly of Georgian or Victorian origin, or overlaying earlier buildings, as well as their historic or present day use including commercial and residential. The significance of this part of the CA includes the listed and locally listed buildings and good quality, historic shopfronts with modern interventions mainly confined to rear extensions and associated alterations.
22. The proposal would retain a relatively rare bronze shopfront and its recessed entrances. It would improve this vacant building, which is in poor condition, by

² Parking Standards Supplementary Planning Document November 2020

repair, refurbishment and change of use with extension and alteration suitable in design and detailing for appropriate ground and upper floor uses. This would meet specific objectives of the Council for the appeal building³ and enhance the positive contribution this locally listed building makes to the character and appearance of the CA. It would also have a positive effect on the setting of the nearby listed buildings and as such preserve the setting of these listed buildings. This would also have a positive effect on this part of the CA, and on the CA overall. The proposal would therefore preserve and enhance the character and appearance of the CA.

Planning Balance and Conclusion

23. The Council accepts that there is a 'need for housing in the Borough'. There is, though, no evidence before me about whether the Council is able to currently demonstrate a 5-year supply of deliverable housing sites. However, in this appeal the application of policies in the Framework that protect areas of particular importance (habitats sites) would provide a clear reason for refusing the development. Accordingly, even if there is no 5-year supply of deliverable housing sites, by virtue of Framework paragraph 11 d) i) the presumption in favour of sustainable development would not apply in this case.
24. In number and size the flats would make a small contribution to housing supply and be aligned with objectives of the Framework to significantly boost the supply of homes and meet people's needs for smaller homes. The limited social and economic benefits associated with building and occupying the flats have limited weight. There is no evidence that the flats are enabling development or required to make the proposal viable, nor about other efforts to seek to bring the appeal building back into use. Nevertheless, the proposal would achieve aims of the Framework to conserve and enhance the historic environment and support the vitality of town centres and the local economy. These important economic and environmental benefits have considerable weight.
25. However, the proposal would not promote the health, well-being or a high standard of amenity for some local residents. Nor would it conserve or protect the natural environment and a habitats site of biodiversity value, and its interest, in a manner commensurate with its statutory status. It would conflict with the Council's relevant development plan policies in these respects. These are consistent with aims of the Framework to balance the benefits of the proposal with these other objectives of sustainable development. These are both influential factors and as such each has substantial weight. The benefits do not, therefore, outweigh the harm in this appeal.
26. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
27. For the reasons given above the appeal does not succeed.

Robin Buchanan

INSPECTOR

³ Hemel Hempstead Old Town Conservation Area Character Appraisal & Management Proposals 2012