



Appeal Decision

Site visit made on 13 December 2022

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal Ref: APP/M2840/W/22/3304578

57 & 59 College Street, Wellingborough, Northamptonshire NN8 3HF

- 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 Tony Hardie of Jackson Design Associates Ltd against the decision of North Northamptonshire Council.
 - The application Ref NW/22/00116/FUL, dated 23 February 2022, was refused by notice dated 7 April 2022.
 - The development proposed is the conversion of 2no existing terraced houses into 4no supported living apartments (C3A).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Tony Hardie of Jackson Design Associates Ltd against North Northamptonshire Council. This application is the subject of a separate decision.

Procedural Matters

3. The address within the banner heading above differs from that on the planning application form. However, it is clear from the submitted Location Plan that the appeal site incorporates both 57 and 59 College Street. This was confirmed by the appellant when the appeal was registered. I have therefore determined the appeal on this basis.

Main Issue

4. The Council has stated that the appellant has paid directly to them a sum of money towards measures to mitigate any adverse impacts of the development on the Upper Nene Valley Gravel Pits Special Protection Area (SPA)/Ramsar site. The Council has confirmed that this satisfies their requirements. Nevertheless, it is incumbent upon me as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is therefore necessary for me to consider this matter as a main issue.
5. Therefore, the main issues are the effect of the proposed development on:
 - the living conditions of the occupiers of neighbouring properties, with particular reference to noise and disturbance and privacy; and
 - the integrity of the SPA.

Reasons

Living Conditions of Occupiers of Neighbouring Properties

6. The appeal site comprises 2no two-storey terraced dwellings sited adjacent one another. They are located on a predominantly residential street of terraced properties, close to the town centre of Wellingborough. The proposed development would involve the conversion of each terraced property into two flats (one on the ground floor and one on the first floor) that would be accessed independently and share the existing rear garden. Each flat would be used as a supported living apartment falling under Class C3A of the Town and Country Planning (Use Classes) Order 1987 as amended ('the UCO'). Low level support would be provided to the four occupants, with the appellant describing such support as akin to an elderly person living within their own home and receiving limited care/support.
7. The existing dwellings each contain three bedrooms which could be occupied by a family. The proposal would contain four one-bedroom flats that would each be occupied by a single person. The comings and goings associated with two, three-bedroom family homes would, in my opinion, result in more activity than the proposed development, even when considering the additional low-level support that the occupants may receive. Therefore, the proposal would not result in a level of activity that would unacceptably affect the living conditions of the occupiers of the adjacent neighbouring properties.
8. To facilitate the proposed development, the existing first floor accommodation within each terraced property would be altered to include an en-suite within the front bedroom, the larger rear bedroom would be altered to a lounge, and the smaller rear bedroom would be altered to a kitchen. The first floor lounges would share a party wall with each other, whilst the proposed en-suite and kitchen of each first floor apartment would share a party wall with a neighbouring terraced property. Concern has been raised by third parties that the internal reconfiguration would lead to noise and disturbance.
9. It is recognised that the provision of a kitchen and an en-suite along the party wall could result in more noise and disturbance to the occupiers of the bedrooms of the adjacent neighbouring properties. However, the proposed development would be subject to the requirements of Part E of the Building Regulations that sets out the soundproofing standards for new homes and conversions. There is nothing to suggest that the development would not be undertaken in compliance with Building Regulations and therefore the living conditions occupiers of the adjacent properties should not be adversely affected by the proposed internal reconfiguration. Furthermore, I note that the Council's Environmental Protection Officer in respect of noise and air quality, has not raised an objection in this regard or recommended the provision of conditions. In addition, the inclusion of an en-suite within the first floor front bedroom could be undertaken without planning permission and without complying with Part E of the Building Regulations.
10. Concern has been raised that the positioning of a kitchen adjacent to a first floor bedroom would result in cooking smells penetrating into the bedroom when the bedroom window is open, adversely affecting the living conditions of the occupiers of the neighbouring properties. The first floor kitchen windows would be located in close proximity to the bedroom window in the neighbouring properties. However, the apartment would be occupied by a single person and

therefore the kitchen would have a domestic intensity that would be lower than a family-occupied dwelling. Furthermore, an additional window is positioned within the kitchen that faces away from the neighbouring properties, and there is nothing to suggest that mechanical extraction would not be fitted within the kitchen areas to reduce the effects of any cooking smells. I also note that the Council's Environmental Protection Officer in respect of noise and air quality, has not raised an objection in this regard or recommended the provision of conditions.

11. There are no changes to the positioning of the existing windows within each property and the use would remain domestic in nature and fall within the definition of a Use Class C3A dwellinghouse. Therefore, the degree of overlooking of neighbouring properties would not change, and therefore the harm to the occupiers of neighbouring properties in this respect would not be adversely affected.
12. Concern has been raised by third parties in respect of the previous use of the dwellings as supported living accommodation and the associated impact that this had on the living conditions of occupiers of neighbouring properties. However, the previous use was as shared supported living units, rather than independent supported living units and it would be operated by a different company, albeit linked to the original provider. The proposal would promote a greater level of independence for occupiers compared to the previous use. Furthermore, the appellant has stated that each occupier would have a tenancy agreement with a Registered Provider (RP) and therefore should an issue arise, the RP would be able to take steps to resolve it or ultimately end the tenancy of the occupier. The differences between the previous and proposed use is such that a direct comparison cannot be made. In any event, each proposal must be determined on its own merits.
13. In respect of the first main issue, the proposed development would not significantly affect the living conditions of the occupiers of neighbouring properties, with particular reference to noise and disturbance and privacy. The proposal would therefore comply with Policy 8(e)(i) and (ii) of the North Northamptonshire Joint Core Strategy 2011-2031, adopted 2016 (CS) which seek to, amongst other things, not result in an unacceptable impact on the amenities of neighbouring properties or the wider area by reason of noise and overlooking. The proposal would also comply with paragraph 130(f) of the National Planning Policy Framework (NPPF) which seeks to, amongst other things, create places with a high standard of amenity for existing users.

Integrity of the SPA

14. The appeal site lies within 3km of the SPA. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other plans and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA),

rather than at the screening stage¹. This responsibility now falls to me as the competent authority.

15. Evidence shows that the SPA is under significant pressure from an increase in the level of public access for recreation, and disturbance of bird and reptile species, as a result of urban development. The proposed development has the potential to impact on the integrity of the SPA, through increased recreational disturbance. The increase in recreational pressure can lead to an increase in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion. Accordingly, disturbance by humans and their pets, amongst other factors, can have an adverse effect on the SPA.
16. There would be a likelihood of future occupiers visiting the SPA. Natural England has advised that the proposed development would be likely to result in recreational disturbance to the bird populations. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
17. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPA. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council has been operating a strategy for the protection of the SPA, which is set out in the Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document, adopted 2015 (SPD) and the Addendum to the SPA SPD: Mitigation Strategy, adopted 2016 ('the Addendum'). Natural England has stated that mitigation could be suitable and such measures could contribute towards the strategic mitigation project. The SPD identifies that mitigation could take the form of management of recreational activities, access/visitor management and habitat management.
18. The evidence before me suggests that the appellant has paid £299.95 per additional dwelling to the Council towards the mitigation strategy to mitigate any adverse impacts of the development on the SPA. This complies with the approach detailed within the Addendum. However, paragraph 4.4 of the Addendum requires the contribution to be secured either through a planning obligation or through a Section 111² template, to ensure the money is to be used for the Strategic Access Management and Monitoring (SAMM) of the SPA. Although requested, no evidence has been provided that either a planning obligation or a Section 111 template accompanied the payment of the monies. Without such a mechanism, the payment would not be properly secured, and therefore I am unable to give it any weight.
19. In respect of the second main issue, insufficient information has been submitted to verify that the proposal would not harm the integrity of the SPA. The proposal is therefore contrary to Policy 4 of the CS, which seeks to ensure the integrity of the SPA is protected.

Other Matters

20. Concern has been raised that the siting of the proposed first floor en-suites adjacent to the party wall with neighbouring properties could lead to damage,

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

² Section 111 of the Local Government Act 1972

such as leaks, and that the previous use of the properties as shared supported living units led to damage to neighbouring properties. There is nothing before me to suggest that the en-suites would not be installed correctly, that the proposed development or its future occupants would necessarily cause any damage to neighbouring properties, or that any future issues that may arise would not be dealt with in an appropriate manner.

21. Third parties dispute the findings of the appellant's Beat Survey submitted in support of the planning application, as they have great difficulty in parking on College Street. However, these comments have not been substantiated with evidence and I also note that the Local Highway Authority has not disputed the results of the survey. Therefore, there is nothing before me to dispute the result of the appellant's Beat Survey.
22. I have had due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The Act sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149.
23. The negative impacts of dismissing this appeal would arise from people with a protected characteristic to not be able to live in the manner proposed at the appeal site. However, it does not follow from the PSED that the appeal should succeed. I have not been provided with evidence that the people who may reside at the appeal proposal are not currently being catered for elsewhere, or that there is an urgent need for such accommodation to be provided, particularly as the appeal site is currently vacant and was previously used for a similar type of development. My actions in this respect, and my decision therefore on the appeal, are a proportionate response to the requirements of the Act and those of the plan led system.

Conclusion

24. I have found for the appellant in regard to the first main issue and compliance with the development plan. As a lack of harm however, this would not be sufficient to weigh against my findings and subsequent conflict with the development plan in regard to the second main issue. There are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. For the reasons given above, and having regard to the development plan as a whole and all other matters raised, I conclude that the appeal is dismissed.

A Berry

INSPECTOR