



Appeal Decision

Site visit made on 13 September 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Ref: APP/G2815/W/22/3295009

13-21 High Street, Irthlingborough NN9 5TE

- 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 Resham PLC against East Northamptonshire Council.
 - The application Ref NE/21/01725/FUL, is dated 25 November 2021.
 - The development proposed is demolition of existing first floor ancillary retail area, and erection of two floors containing 16 residential units with associated car and cycle parking and refuse store.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing first floor ancillary retail area, and erection of two floors containing 16 residential units with associated car and cycle parking and refuse store, at 13-21 High Street, Irthlingborough NN9 5TE in accordance with the terms of the application Ref NE/21/01725/FUL, dated 25 November 2021, and the plans and drawings submitted with it, subject to the schedule of conditions attached to this Decision.

Preliminary matter

2. The application was originally made to East Northamptonshire Council, this has since changed to North Northamptonshire Council. I have proceeded with the appeal on that basis.

Main Issues

3. Although there is no formal decision from the Council, they have offered putative reasons for refusal. Based on these, the main issues are:
 - i) Whether or not the proposal would preserve or enhance the character and appearance of the Irthlingborough Conservation Area ('ICA').
 - ii) Whether or not the proposal makes adequate provision for affordable housing, health care and library services.
 - iii) Whether or not the proposal makes adequate provision for mitigating any effects on the Upper Nene Valley Gravel Pits Special Protection Area (SPA).

Reasons

Character and appearance

4. The appeal property comprises part of larger development block located along High Street in the centre of Irthlingborough.
5. At the ground floor, the appeal property comprises an unoccupied retail unit. At first floor there is storage area associated with the retail unit. The ground floor has a retail frontage with large windows and associated signage above. The first floor has a number of windows in a mainly brick façade.
6. The appeal site is also within the ICA. Additionally, to the south-east of the appeal site is St Peter's Church, which is Grade I listed. The building which adjoins the appeal property to the east is 11 High Street, a two-storey stone-built cottage that has a historic character and appearance, whilst not being listed, this cottage is identified in the Irthlingborough Conservation Area Review as a building that positively contributes to the character and appearance of the ICA.
7. The ICA is centred along High Street and comprises 19th Century buildings, particularly on High Street interspersed with some modern and older development. As such, its significance is derived from its history and the quality architecture of the individual buildings.
8. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Local Planning Authority to pay special regard to the desirability of preserving listed buildings and their setting. Section 72(1) of the same act imposes a requirement that special attention should be paid to the desirability that the character or appearance of the conservation area should be preserved or enhanced. Paragraph 195 of the National Planning Policy Framework ('the Framework') also requires me to assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset).
9. Parts of High Street, near the appeal site are characterised by a range of retail and commercial uses. To the rear of the appeal property is a car park accessed via St Peter's Way. Part of this car park and access form part of the appeal site. The rear area serves the commercial units fronting High Street including the appeal property.
10. The current context of the site is mixed in terms of the scale, designs and materials of the buildings. This includes both two and three-storey buildings. Additionally, there are single storey buildings nearby, including a car showroom as well as retail units on the opposite side of the High Street. As a consequence of this arrangement, there is some variation in roof forms and heights and this results in certain side gables being more apparent than others. These arrangements collectively contribute to the varied and distinctive character and appearance of the ICA.
11. The appeal property because of its modern design and flat roof form is already discernible from the historic character and appearance of 11 High Street and other buildings, including heritage assets to the east of this.
12. The proposal seeks to demolish the existing first floor of the building and to replace this with two new floors of residential accommodation. The proposed

accommodation would broadly extend over the existing ground floor of the appeal property. In keeping with the flat roof design of the appeal property and the wider block that this is a part of, a similar arrangement is proposed for the building as extended.

13. As extended, the appeal property would be taller with a greater mass, relative to the extant building. However, the proposed flat roof design and use of extensive fenestration and variations in external finishes on the proposed front and rear elevations would mitigate the extent of this massing. Such detailing would also add sufficient interest to the otherwise simple front and rear elevations. The proposed palette of materials is consistent with the modern design of the appeal property. Nevertheless, the overall appearance of the building would be dependent on the quality of the proposed finishes and therefore it is important that if the appeal were to succeed, the details and specifications of all external fenestration, doors and finishes are secured by a condition.
14. The new height of the appeal property would reflect that of others nearby, including 36-42 High Street. Furthermore, in the context of existing height variations between buildings along High Street, the difference in height between the appeal property and 11 High Street would not be significant.
15. The proposed eastern elevation of the appeal property would extend beyond 11 High Street. Even so, because of its simple form and design, this would provide an unassertive backdrop to 11 High Street and thereby would not detract from its appearance, in limited views from St Peters Way.
16. In views from the rear of the appeal property, the new façade would elevate the appearance of the extant building and the increase in scale would be absorbed by the open space associated with the retained car parking and turning areas.
17. For the above reasons, the proposal would be of an acceptable design and scale with regard to the existing building and its surroundings. Therefore, the proposal would reinforce the areas varied character and appearance.
18. Consequently, the proposal accords with the aims of Policy 8(d) of the North Northamptonshire Joint Core Strategy 2011-2031, adopted July 2016 ('JCS'). This Policy requires proposals to respond to the site's immediate and wider context and local character to create new streets, spaces and buildings which draw on the best of that local character without stifling innovation.
19. Accordingly, the proposal would preserve the character and appearance of the ICA. I therefore find no conflict with JCS Policy 2. Amongst other things, this Policy requires that proposals should conserve and, where possible, enhance the heritage significance and setting of an asset or group of heritage assets in a manner commensurate to its significance; and those proposals should complement their surrounding historic environment through the form, scale, design and materials.

Provision for affordable housing, health and library services

20. Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Regulations 2010, as amended (CIL Regulations) set out that planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the

- development; and fairly and reasonably related in scale and kind to the development.
21. Policy 10 of the JCS, states that development must be supported by the timely delivery of infrastructure, services and facilities necessary to meet the needs arising from the development and to support the development of North Northamptonshire. This can be in the form of direct provision or will contribute towards the provision of infrastructure required by the development either alone or cumulatively with other developments.
 22. Policy 30 of the JCS sets a target of 30% of the total dwellings on sites in growth towns and market towns to be provided as affordable housing. For the proposed scheme, this would equate to 5 units. Policy 30 of the JCS confirms that the precise proportion and tenure mix of affordable housing will take into account identified need and the viability of the development. However, this does not suggest that schemes with no affordable housing would be acceptable.
 23. The Framework also confirms that where major development involving the provision of housing is proposed, decisions should expect at least 10% of the total number of homes to be available for affordable home ownership.
 24. In addition, the Northamptonshire Clinical Commissioning Group ('CCG') has confirmed that there would not be sufficient capacity in the local primary healthcare system to absorb the anticipated increase in demand created by the proposed new housing development of 16 dwellings. The CCG advise that practices in the local area are already at the limit of their capacity and the increase in population could push practices to the point that they are no longer able to accept new patients. If this were to be the case it could result in the population brought to the area by the new housing development experiencing difficulties accessing primary care health services.
 25. Therefore, the CCG are seeking a financial contribution towards infrastructure support to ensure the new population has access to good quality primary health care services. The development is nearest the Spinney Brook Medical Centre and based on a calculation specific to the proposed tenure, a financial contribution of £5,021.28 is required towards facilities to accommodate additional patients.
 26. Also, Northamptonshire County Council has requested a libraries contribution of £1,744 towards the improvement, enhancement or expansion of library facilities to serve the development. Nevertheless, the correspondence from NNC confirms that this figure will be reviewed, with a specific project identified, at such time as the s106 for the development is entered into. Even so, the NCC has not identified any specific project. As such, I cannot conclude with certainty that the proposal would necessitate a payment towards a specific library project and hence that any such contribution would be needed to make the development acceptable in these specific regards.
 27. In light of the above reasons and based on the specific evidence available in respect of the proposal before me, this would be liable for on-site affordable housing and a financial contribution towards health provision as a direct consequence of the proposed development.

28. The appellant's original viability assessment results in a scheme deficit, when measured against the Benchmark Land Value. On this basis the assessment concludes that the proposed scheme cannot reasonably be required to provide any affordable housing.
29. The appellant's 'Development Viability Rebuttal Appeal Statement' seeks to address concerns raised by the Council about the original viability assessment in respect of the claimed external costs and the sales value figures for the proposed flats. The appellant's updated viability appraisal, which reflects market evidence for the gross development value (GDV) and construction costs, still shows a negative residual land value. Based on a standard developers return at 17.5% of GDV to achieve a positive £1 land value the developers return would need to reduce to 2.5% of GDV.
30. Despite the above, the appellant advises that the development can come forward as all the development and financing costs are funded it shows a marginal return at 2.5% of GDV, but the developer should not be expected to contribute to planning obligations until the return range set out in the Planning Practice Guidance at 15-20% of GDV. I have no reason to disagree with the appellant's viability appraisals.
31. Nevertheless, I have also had regard to Appeal Decision-3274415 ('the Rushden appeal'). Whilst that proposal was for a larger development than the scheme before me, it relates to a site within the North Northamptonshire area and the proposal was also for residential development, which was considered in light of the JCS, including Policies 10 and 30. Furthermore, based on financial viability, the appellant had argued that no affordable housing or other planning obligations could be included due to financial constraints. Therefore, I consider the Rushden appeal to have some similarities and to be of relevance to the appeal before me.
32. In the Rushden appeal, the approach taken by the Inspector, indicates that the impact of a development on the local infrastructure and that towards meeting affordable housing need, is a consideration even in a circumstance whereby it is demonstrated that it would be economically unviable to provide such. In my view, this is a matter of planning judgement on a case-by-case basis.
33. In this case, based on the appellant's financial viability evidence, no affordable housing would be provided. Moreover, there are currently 116 applicants who are active on Keyways who have Irthlingborough among their preference area and who have an eligible bedroom size need for the property type in question. As such, there is a specific and significant need in the area for 1-bedroom affordable units.
34. Whilst I acknowledge that the development plan and the Framework allow for flexibility where there are viability issues. However, no affordable housing would be provided which in itself would represent considerable flexibility when assessed against the requirements of the development plan and the Framework.
35. Furthermore, no contributions would be made towards infrastructure for health care where this has been identified as being directly attributable to the increased population resulting from the development. In that regard, the above requirements are important and significant in terms of meeting the affordable housing needs of the area and supporting health care provision.

36. Therefore, notwithstanding the viability case considered separately, the absence of any affordable housing units and support for health care provision weigh significantly against the proposal, including in a circumstance whereby an application can demonstrate it would be financially unviable to provide such.
37. For the above reasons, the development is contrary to both Policy 30 and Policy 10 of the JCS.

Effects on Upper Nene Valley SPA

38. The site is located within 3km of the Upper Nene Valley SPA and therefore is expected to contribute to recreational disturbance impacts to the bird populations for which the SPA has been notified.
39. As such, the associated Supplementary Planning Document¹ applies which seeks to ensure that developments involving new dwellings make adequate mitigation for the impact of the bird populations of this area. This can be made in the form of a financial contribution to mitigation works, which is based on a fee which is index linked. The current amount is £322.41 per dwelling, which equates to a total of £5,158.56 for the 16 flats.
40. Notwithstanding that the appellant made an initial payment on an incorrect form, the Council has confirmed receipt of £4,744.80. This is less than that required and there is a shortfall of £413.76. However, the submitted and completed Unilateral Undertaking ('UU') includes an obligation for this shortfall.
41. Following the initial consultation on the application, I have subsequently consulted Natural England as part of this appeal. Natural England have confirmed that they are satisfied that, should the mitigation payment be paid in full and provided that North Northamptonshire Council have access to the initial mitigation payment, this would sufficiently avoid any adverse impact to the integrity of the Upper Nene valley Gravel Pits SPA and Ramsar.
42. Based on the foregoing, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the Upper Nene Valley SPA would not be adversely affected by the development. Consequently, I find that the proposal would accord with Policy 4 (d) of the JCS, which requires that developments that are likely to have an adverse impact, either alone or in-combination, on the Upper Nene Valley Gravel Pits SPA or other European Designated Sites must satisfy the requirements of the Habitats Regulations, determining site specific impacts and avoiding or mitigating against impacts where identified. Accordingly, the proposal accords with the Conservation of Habitats and Species Regulations 2017 and would be consistent with the requirements of the associated Supplementary Planning Document.

Other considerations

43. The proposal would deliver an additional 16 dwellings of a tenure for which there is a need locally.
44. As already stated, the appellant has provided a UU. Notwithstanding the submitted viability evidence, the UU confirms that the proposal can support two

¹ The Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document

on-site affordable housing units and the required financial contribution towards primary health care.

45. Whilst the proposed affordable housing would not meet the Council's requirement, this meets the minimum affordable housing requirement (10%) as set out in the Framework. This, and the provision of the primary health care financial contribution, along with any associated social and economic benefits arising from the proposal are matters which weigh in support of the proposal.
46. For the reasons stated above and with the exception of the library contribution, the obligations in the UU accord with the tests that are set out in the Framework and the CIL Regulations. I have taken this into account when determining the appeal.

Other Matters

47. I have taken account of the extant consent for flats at the appeal site. That scheme was for 8 flats and of a different scale and design to the appeal scheme. As such, the two schemes are not directly comparable and I have determined the appeal scheme before me on its merits.
48. In terms of the impact and relationship with the setting of the Grade I listed St Peter's Church, given the separation and the limited visual relationship between this and the appeal site, there would not be a material impact on this particular designated heritage asset.
49. Having found that the proposal would be of an acceptable design and scale with regard to the existing building and its surroundings, I am also satisfied that the proposal would not adversely affect any other nearby designated and non-designated heritage assets.
50. In addition to the above matters, third parties have raised concerns about the effect of the proposal on the living conditions of the occupiers of nearby properties, highways impacts and the implications of the proposal on Policy EN39 of the Emerging Plan. These matters were considered as part of the Council's assessment of the proposal and did not form part of its putative reasons for refusal. I have also considered these matters and on the evidence before me I see no reason why these factors, whether alone or in combination, would justify resisting the scheme.

Conditions

51. I have had regard to the Council's suggested conditions in light of the Framework and the Planning Practice Guidance. Accordingly, I have proposed the standard timescale condition for the implementation of the permission and a condition specifying the relevant plans as this provides certainty.
52. I have specified a condition requiring details of external materials as these are necessary for the reasons already given.
53. I have imposed a condition requiring that each flat has an allocated parking space. This is necessary to ensure that the approved scheme has adequate parking for each flat, the satisfactory functioning of the development and to avoid any unnecessary on-street parking.
54. A condition requiring acoustic glazing is necessary to protect the living conditions of occupiers.

55. Conditions restricting the burning of materials on site and the demolition and construction activities to certain times and days, along with requirement to manage dust emissions are necessary to safeguard the living conditions of neighbours.
56. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.

Planning balance and conclusion

57. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.
58. I have found that the proposal would preserve the character and appearance of the ICA and makes adequate provision for mitigating the impact of the proposal on the Upper Nene Valley Gravel Pits SPA.
59. However, based on the submitted viability evidence, the proposal cannot make any provision for affordable housing and health services. For the reasons already given, there would be conflict with the development plan.
60. Notwithstanding the viability issues, based on the submitted UU, the proposal would deliver some affordable housing and the required payment towards health services. Having taken account of these as part of the other considerations in support of the proposal to which I attach significant weight, I consider these to be sufficiently forceful to outweigh the conflict with the development plan I have identified.
61. Consequently, in the circumstances of this case, the material considerations do justify a decision other than in accordance with the development plan.
62. For the above reasons, I conclude that the appeal should be allowed and planning permission approved.

M Aqbal

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Block Plan and Location Plan – Flintstone Ref. 11; Proposed Flintstone Site Plan ref. 08B; Proposed Floor Plans & Elevations – Bin Store ref. 07; Proposed Floor Plans & Elevations – Bin Store ref. 06; Proposed Elevations – Flintstone ref. 05C; Proposed Ground Floor Plan – Flintstone ref. 02A; Proposed First Floor Plan – Flintstone ref. 03A; and Proposed Second Floor Plan – Flintstone ref. 04A.
3. Prior to their installation, details of all proposed external doors, windows and materials for the development hereby approved, shall be submitted to and approved in writing by the local planning authority. The details shall include the materials, colours indicated on scaled plans, samples and any supporting technical information. Thereafter, the development shall be carried out in accordance with the approved details and retained in perpetuity.
4. Prior to the occupation of any of the flats hereby approved, a scheme for the allocation of a space per flat and a plan showing this shall be submitted to and agreed in writing by the local planning authority. Thereafter, the parking spaces shall be provided in accordance with the approved scheme, prior to the first occupation of the flats and retained for the lifetime of the development.
5. Acoustic glazing as detailed in sections 7.2.7 (including Table 7.2) and 7.2.13 (including Table 7.4) of the submitted Acoustic Planning Report, dated 16/08/2021, shall be fitted to the relevant dwellings, prior to their first occupation.
6. There shall be no burning of any material on site during construction, demolition or site preparation works.
7. No demolition or construction work (including deliveries to or from the site) shall take place on the site outside the hours of 0800 and 1800 Mondays to Fridays and 0800 and 1300 on Saturdays, and at no times on Sundays, Bank Holidays or Public Holidays.
8. During the demolition and construction phases the developer shall provide, maintain and use a supply of water and means of dispensing it, to dampen dust in order to minimise its emission from the development site. The developer shall not permit the processing or sweeping of any dust or dusty material without effectively treating it with water or other substance in order to minimise dust emission from the development site. The developer shall provide and use suitably covered skips and enclosed chutes or take other suitable measures in order to minimise dust emission to the atmosphere when materials and waste are removed from the development site.