



Appeal Decision

Site visit made on 18 July 2023

by H Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/C1055/W/23/3316983

220 Osmaston Road, Derby DE23 8JX

- 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 Samuel Elgie (EB Property Solutions) against the decision of Derby City Council.
 - The application Ref 22/00568/FUL, dated 6 April 2022, was refused by notice dated 26 January 2023.
 - The development proposed is described as "demolition of former hotel building and erection of new residential apartment buildings containing 42no. apartments. Application to include change of use of site from C1 Hotel to C3 dwellinghouses."
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Decision

1. The appeal is allowed and planning permission is granted for 'demolition of former hotel building and erection of new residential apartment buildings containing 42no. apartments. Application to include change of use of site from C1 Hotel to C3 dwellinghouses' at 220 Osmaston Road, Derby DE23 8JX in accordance with the terms of the application, Ref 22/00568/FUL, dated 6 April 2022, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect of the proposal on highway safety and neighbouring residential amenity with regard to parking provision, and whether the proposal would provide sufficient cycle storage and bin storage.

Reasons

3. The appeal site is located on Osmaston Road and consists of a former hotel building in a derelict state. The site is accessed off the dual carriageway section of Osmaston Road. The surrounding area is mainly mixed use.
4. The Council is concerned that the proposal would add to on-street parking demand that could lead to highway safety issues and a detrimental impact on the amenities of neighbouring occupiers.
5. The appeal site is close to bus routes, and I observed that the site is within easy walking and cycling distances of local services and facilities. Indeed, retail facilities and employment opportunities in Derby city are located within a short walk of the site. Furthermore, there are bus stops located close to the site with regular bus services.
6. In addition, the proposal would include cycle storage and is located near to cycle lanes that form part of a route connecting to the railway station and city centre. This would encourage alternative means of transport other than the private car.

7. Consequently, the appeal site is reasonably accessible by public transport, walking and cycling. Due to the accessible location of the site and the proposal's provision of cycle storage and good access to nearby bus stops, future occupiers of the proposal would not be reliant on a private motor vehicle to access services and facilities.
8. The proposal would provide 42 apartments comprising of 8 one-bedroom apartments and 34 two-bedroom apartments. As such, it is likely that the proposed development would attract individuals and couples rather than families. The proposal would provide 21 on-site parking spaces, which equates to 50% provision for the 42 proposed apartments. Given the sustainable location of the proposal, this provision of on-site parking spaces would be sufficient for the development.
9. Furthermore, the appeal site is located on a dual carriage and there are double yellow lines and a bus lane in front of the site, which would discourage parking in front of the appeal site. In addition, the site is not located within a resident only parking zone. The nearest resident only parking zone is some distance away and would require a resident permit to park there. It is therefore unlikely that the proposal would result in increased on-street parking demand in an area with resident only parking zones.
10. I acknowledge that the nearby streets are narrow and mainly consist of terraced housing. However, no tangible evidence has been provided to articulate any existing parking issue in the nearby streets, or to clearly demonstrate any potential harm that could arise if the development were to go ahead. Although only a snapshot in time, during my site visit I did not observe any particular parking issues, and numerous spaces were available on the side streets near to the site.
11. Therefore, in the absence of substantive evidence to the contrary, the proposal would not exacerbate on-street parking to the extent that highway safety and neighbouring residential amenity would be materially harmed.
12. Paragraph 111 of the Framework is clear that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. I am also mindful that the Highway Authority did not object to the proposal. As such, I find that the proposal would not result in a harmful effect on parking provision and highway safety in the area.
13. The Council is concerned that the proposal would not provide adequate cycle storage. However, the proposal would provide an indoor cycle store with capacity for 20 bicycles within Block A, and a covered cycle stand with capacity for 7 bicycles in front of Block B. Furthermore, there is no substantive evidence indicating that it would be unfeasible to sufficiently accommodate additional cycle storage within the proposed development.
14. The Council is also concerned that the proposal would provide inadequate bin storage provision. However, the proposal would accommodate around 80 people and the appellant has indicated that the site plan shows a refuse storage compound that would accommodate up to 6 wheelie bins with around 1,100 litres capacity, providing 82.5 litres of refuse storage per person. It would also be positioned close to the site's access to enable the refuse collection service to access the bins. The Council has not provided any

substantial evidence to the contrary. On this basis, I am satisfied that the proposal would provide adequate bin storage appropriate to the scale of the development.

15. Neither Policies CP3 and CP4 of the Derby City Local Plan, Part 1, Core Strategy (2017), or Saved Policy GD5 City of Derby Local Plan Review (2006) explicitly prohibit the conditioning of final details pertaining to cycle storage and bin storage in the event that planning permission is granted. Consequently, the proposed development would not be in direct conflict with these policies for this matter.
16. For the reasons given, the proposed development would not be harmful to highway safety or neighbouring residential amenity, with specific regard to car parking provision. It would also provide sufficient cycle storage and bin storage. As such, the proposal would accord with Policies CP3 and CP4 of the Derby City Local Plan, Part 1, Core Strategy (2017), and Saved Policies GD5 and H13 of the City of Derby Local Plan Review (2006). Collectively, these policies amongst other things, seek to ensure development provides well-integrated vehicle and cycle parking and adequate external storage space and does not cause unacceptable harm to the amenity of nearby areas.
17. In addition, the proposal would also accord with the National Planning Policy Framework (Framework) (paragraph 130), which states that developments should create places that are safe, inclusive and accessible, and which promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

18. Local residents have suggested that the proposal would result in a loss of privacy and natural light to their properties. However, the proposed development would not cause a loss of natural light or privacy through overlooking to neighbouring residents due to the sufficient separation distances between the proposed development and the neighbouring properties.
19. Local residents raise a number of concerns including effect on wildlife, trees, too many flats in the area, noise and disturbance, vandalism and anti-social behaviour. I have given careful consideration to these matters but based on the information provided they would not constitute reasons to dismiss the appeal.
20. The appeal site sits alongside the locally listed Ashtree House and is close to other locally listed buildings on this section of Osmaston Road. The Council has not raised this as an issue. Based on the evidence before me and the observations I made during my site visit, I find that the proposal would have a neutral effect on the significance of these heritage assets and would preserve their setting.

Planning Obligation

21. The appellant has submitted a planning obligation in the form of a Section 106 Agreement dated 21 July 2023.
22. The Framework states that planning obligations should only be sought where they meet the tests set out in paragraph 57. These tests, which mirror those set out in Regulation 122 of the Community Infrastructure Levy (CIL)

Regulations 2012, require that planning obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

23. Within the obligation the owners of the appeal site undertake to provide 6 dwelling units as affordable rented housing, and contributions towards amenity green space and major open space. The obligation meets the requirements of Regulation 122 of the CIL Regulations and secures compliance with policies in the development plan.

Planning Balance

24. The Council has confirmed that it cannot demonstrate a 5-year housing land supply (5YHLS) of deliverable sites as required by the Framework. The latest published figure is 3.17 years (shown in Officer's Report). As such, there is an undersupply of deliverable housing sites within the city.
25. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development, and that, under criterion 11d), where the policies that are most important for determining the application are out of date, planning permission should be granted unless: i) the application of policies within the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
26. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. The tilted balance set out within the second limb of paragraph 11d) is therefore relevant.
27. The Council's housing land supply shortfall is considerable and as such the benefits of housing delivery carry substantial weight in favour of the scheme.
28. The appeal site is situated in a sustainable location and occupants of the proposed development would have good access to a wide range of services and facilities by use of sustainable modes of transport. The proposed development would make an important contribution to addressing the significant housing shortfall. It would also deliver a scheme for 6 affordable housing units and financial contributions towards amenity green space and major open space, thereby contributing to the social aspect of sustainability. The proposal would also replace a derelict building with a well-designed scheme that contributes positively towards the character and appearance of the area. Taken together, these benefits of the proposal would attract substantial weight.
29. In comparison, the identified harms are relatively few. The Council has raised no objection to the proposal in respect of matters including living conditions of neighbouring occupiers, heritage assets, biodiversity, trees, drainage, and flooding. Based on my observations on site and the evidence before me, I have no reason to disagree. In terms of the planning balance, I find that a lack of identified harm in respect of these matters would comprise a neutral factor.
30. The submitted S106 Agreement provides an appropriate mechanism to secure affordable housing and the contributions towards amenity green space and major open space. I am satisfied that this obligation is directly related to the

development and fairly related in scale and kind. It therefore carries substantial weight in favour of the proposal.

31. I have identified no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. The proposal constitutes a sustainable form of development within the meaning of the Framework. Therefore, having regard to the provisions of the development plan and all material considerations, I conclude that planning permission should be granted.

Conditions

32. The Council has suggested conditions which I have considered, making amendments where necessary in the interests of clarity and consistency, and to ensure compliance with the tests contained in the Planning Practice Guidance.
33. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings and to require the development to be carried out in accordance with them as this provides certainty.
34. A condition relating to a Construction Management Plan is required to protect the living conditions of neighbouring occupiers and for the purposes of highway safety throughout the development works. This is worded as a pre-commencement condition so that the approved scheme is implemented in accordance with the Construction Management Plan.
35. Conditions requiring ground contamination investigation and a remediation scheme are necessary to ensure safe development of the site and to protect human health and the environment. These are worded as pre-commencement conditions so that the investigation and any remediation measures are implemented prior to ground disturbance.
36. A condition requiring a noise assessment is required to protect future residents from excessive noise arising from traffic on Osmaston Road. I have also imposed a condition to ensure the adequate drainage of the site and to avoid flooding. These are worded as pre-commencement conditions so that the approved scheme is implemented in accordance with the agreed details.
37. I have imposed a condition to ensure surface water is not deposited on the public highway. I have also imposed a condition to ensure that adequate off-street parking is provided on site. In the interests of highway safety, a condition relating to the vehicular access serving the development is imposed.
38. In the interests of sustainable travel, I have imposed a condition requiring the provision of bicycle storage. A condition is also imposed for refuse storage facilities in the interests of sustainable waste management and recycling.
39. A materials condition is appropriate to ensure that those used are in keeping with the area. Conditions relating to hard and soft landscaping and boundary treatments have been imposed to ensure the satisfactory appearance of the development.
40. A condition imposing security measures is necessary to ensure the safety and security of the development and its occupiers.

41. Conditions relating to a Biodiversity Enhancement Plan and lighting are necessary to safeguard and increase opportunities for biodiversity and wildlife on and around the site.
42. Finally, a condition is imposed relating to air quality in the interests of health and well-being.

Conclusion

43. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

H Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans:
 - Location Plan – Drawing No: 01002, Rev P1
 - Site Plan as Existing – Drawing No: 01003, Rev P1
 - Site Plan as Proposed – Drawing No: 01004, Rev P3
 - Block A Plans as Proposed – Drawing No: 02001, Rev P4
 - Block B Plans & Elevations as Proposed – Drawing No: 02002, Rev P3
 - Block A Elevations as Proposed – Drawing No: 03001, Rev P3
 - Site Sections – Drawing No: 04001, Rev P1
- 3) No development shall take place, including and ground works or works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period. The Plan shall provide for:
 - a. Parking of vehicle of site operatives and visitors
 - b. Routes for construction traffic and delivery times
 - c. Hours of operation and deliveries
 - d. Method of prevention of mud being carried onto highway
 - e. Methods for minimising noise and dust emissions.
- 4) No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be submitted to approved in writing by the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing by the local planning authority. The scheme shall then be undertaken in accordance with the agreed details.
- 5) No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall then be undertaken in accordance with the agreed details.
- 6) In the event that contamination is found, no development other than that required to be carried out as part of an approved scheme of remediation shall take place until the approved remediation scheme has been carried out in accordance with its terms. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.

- 7) No development shall take place until a detailed noise assessment on the existing noise climate at the development site has been submitted to and approved in writing by the local planning authority. Any noise insulation measures for the residential accommodation, which are recommended by the assessment, shall be implemented and be designed to achieve noise insulation to a standard that nuisance will not be caused to the occupiers of the apartments. The noise assessment shall be carried out by a suitably qualified acoustic consultant/engineer and shall take into account the provisions of BS8233:2014 Guidance on sound insulation and noise reduction for buildings.
- 8) No development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include, as far as reasonably practicable, a sustainable drainage solution and be implemented as approved.
- 9) No part of the development hereby permitted shall be brought into use until the access parking area is constructed with provision to prevent the discharge of surface water from the parking area to the public highway in line with details to be submitted to and approved in writing by the local planning authority. The provision to prevent the discharge of surface water to the public highway shall then be retained for the life of the development.
- 10) No part of the development hereby permitted shall be brought into use until the parking area is surfaced in a bound material with the parking bays clearly delineated in accordance with plans to be submitted to and approved in writing by the local planning authority. The parking area shall be maintained in the bound material for the life of the development and shall not be used for any purpose other than the parking/turning/loading and unloading of vehicles.
- 11) No part of the development hereby permitted shall be brought into use until a dropped vehicular footway crossing is installed to a minimum of 5.5m and is available for use and constructed in accordance with the Highway Authority specification.
- 12) No part of the development hereby permitted shall be brought into use until provision has been made within the application site for secure parking of bicycles for at least 50% of the units, details of which must be submitted to and approved in writing by the local planning authority. The secure bicycle parking shall be located near to the main entrance to the development and be covered. The bicycle storage shall be provided in accordance with the approved details and thereafter be retained and kept available for the parking of bicycles.
- 13) Prior to the first occupation of the development, refuse and recycling storage facilities shall be provided in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The approved facilities shall be retained as such thereafter.
- 14) Before construction of the development above foundation level, details of external facing materials, including window and door joinery, to be used in the buildings, shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with agreed details.

- 15) Before construction of the residential development hereby permitted, above foundation level, details of retained and new boundary treatment to be carried out on the site boundaries shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with agreed details.
- 16) No part of the development hereby permitted shall be brought into use until a scheme of hard and soft landscaping, which shall include details of retained and details of new planting and hard surfacing, including native species and trees, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented so that planting is carried out no later than the first planting season.
- 17) Before occupation of any residential units, details of the following, shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved details:
- Security and entry management measures for securing the main entrances to the buildings and the undercroft access to Block A for residents and visitors and for mail delivery.
- 18) Before construction works commence above foundation level, a Biodiversity Enhancement Plan to provide biodiversity enhancement features within the development shall be submitted to and approved in writing by the local planning authority. Measures shall include (but are not limited to) the following:
- Integrated Bat Boxes
 - Integrated Universal Nest Brick
 - Native and wildlife-attracting planting i.e. trees, hedgerow, shrubs and/or herbaceous perennials to provide resources for pollinators, birds and other wildlife.
- The scheme shall be implemented in accordance with the approved details and retained for the lifetime of the development.
- 19) Prior to the installation of lighting fixtures, a detailed lighting strategy to safeguard bats and other nocturnal wildlife shall be submitted to and approved in writing by the local planning authority. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of light spill. The scheme shall be implemented in accordance with the approved details and retained for the lifetime of the development. Thereafter, no additional lighting shall be installed without the prior written permission of the local planning authority.
- 20) Prior to first occupation, details of a ventilation system shall be submitted to and approved in writing by the local planning authority. The ventilation system shall be incorporated into the development's Block A building, to be designed in order to minimise the risks associated with traffic emissions arising from the A514. The development shall be carried out in accordance with agreed details.

****End of Conditions****