



Appeal Decision

Site visit made on 16 January 2024

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2024

Appeal Ref: APP/L3245/W/23/3325077

16 Beatrice Street, Oswestry, Shropshire SY11 1QG

- 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 David Ellis Morgan against the decision of Shropshire Council.
 - The application Ref 22/04740/FUL, dated 14 October 2022, was refused by notice dated 11 January 2023.
 - The development proposed is conversion of communal residential floor space into four one-bedroom flats; division of flat no. 1 into two flats and installation of new windows to the north east elevation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the application form, omitting wording that is not an act of development.
3. Additional information has been submitted by the appellant with the appeal. The information relates to an offer made by the appellant to the Council, during consideration of the planning application, to provide parking spaces outside of the 'red line' boundary of the appeal site and an 'Option 1' to provide an area of outdoor amenity space within the existing car park at the site. From the information before me, it is clear that the information introduces land that was not part of the original application and the plan indicating the area of outdoor amenity space in the appellant's appeal statement is not the plan that was determined by the Council or upon which the views of interested parties were sought. I cannot therefore be certain that if I was to accept the information, no interested party would be prejudiced by my so doing. Accordingly, I have not taken them into account in my assessment of the appeal.
4. During the appeal, a new version of the National Planning Policy Framework (the Framework) came into effect. Having regard to the matters that are most relevant to this appeal, there have been few notable changes albeit that the numbering of paragraphs has changed. Nevertheless, the main parties have been given the opportunity to comment on the revised Framework. Therefore, I am satisfied that no one would be prejudiced by this change to the national policy context.
5. The title of relevant development plan was not referenced in the Council's decision notice; however, it is clear from the delegated Officer Report that the policies listed as CS6 and CS7 relate to the Shropshire Core Strategy, March 2011 (CS) and Policy MD2 relates to the Site Allocations and Management of

Development Plan, December 2015 (SAMDP) which, taken together, form the development plan. I have reviewed the policies of the CS and the SAMDP that are most relevant to this appeal against the Framework and find them to be broadly consistent with it.

6. Both parties have referred to the emerging Shropshire Local Plan 2016-2038 (ELP) in the appeal submissions. This has been submitted for examination to the Secretary of State. Paragraph 48 of the Framework states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with the Framework. I have not been provided with copies of the relevant draft policies of the ELP or whether there are any unresolved objections to them. As such, there is no certainty on the outcome of the ELP. Thus, I afford limited weight to the ELP in my determination of this appeal.

Main Issues

7. Notwithstanding the single reason for refusal on the Council's decision notice, having regard to the information provided with the appeal, for clarity, I sought the views of both main parties on what I considered to be the main issues in the appeal. Therefore, they would not be prejudiced by my taking their submissions into account in forming the main issues. In this case, the main issues are:
 - Whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to outdoor private amenity space; and,
 - The effect of parking associated with the proposal on local parking stress and the living conditions of nearby residential occupiers, with particular reference to disturbance.

Reasons

Living Conditions – amenity space

8. The appeal site is located in Oswestry town centre on Beatrice Street, a one-way road. It comprises of a two-storey detached building with an external car parking area to the rear. The building currently incorporates offices and 1 flat on the ground floor and 5 flats on the first floor. The plans indicate that the central part of the ground floor and part of the first floor is redundant communal space.
9. The car park and entrance to the flats are accessed off from Madog Place, a narrow access road alongside the west elevation of the appeal building, which leads to several small private car parks, a small number of residential properties and the rear of properties along Oswald Road. A further narrow access road runs alongside the eastern elevation of the appeal building via an undercroft which leads to a tattoo parlour, garages and parking area. A pedestrian path connects this access with Madog Place. Four dwellings face the rear parking area of the appeal site, which is enclosed by a low wall on two sides.
10. It is proposed to use the redundant communal space in the appeal building to create 4 new flats and subdivide the existing ground floor flat into 2 separate flats, which would result in an overall increase in the number of flats from 6 to

11. There would be 3no. 2-bedroom flats and 8no. 1-bedroom flats. The ground floor office space facing Beatrice Street would be retained.
11. Policy MD2 of the SAMPD requires, at criterion 5, that the design of open space should be considered holistically as part of development to provide safe, useable and well-connected outdoor spaces. This includes, at 5ii) providing adequate open space of at least 30sqm per person that meets local needs in terms of, amongst other things, function and quality. In addition, whilst I have not been provided with a copy of the Council's 'Shropshire Type and Affordability of Housing' Supplementary Planning Document 2012, the Council's officer report states that the document reiterates the importance of maintaining acceptable living standards for occupants of dwellings, including the provision of adequate external private amenity space.
12. The proposal as set out in the 'Proposed Plans Ref PA03' would not include any private outdoor amenity space. Even where the amount of private outdoor space available to residents living in town centre accommodation may reasonably be expected to be less than other locations, I find the lack of any outdoor amenity space for future occupants to carry out minimal day to day activities such as drying clothes or sitting outside would be significantly harmful to the health and wellbeing of residents.
13. I recognise that no private outdoor amenity space is currently provided for residents of the existing flats at the appeal site, although it has been drawn to my attention by the main parties and other interested parties that when planning permission was granted for the conversion of the building from a night club to mixed office and residential use in 2000¹ (the 2000 permission) the area now used as a car park was shown on the approved plans as an area of outdoor amenity space. In this regard, whether the enclosed rear external area of the site has the necessary consents to operate as a car park is not a matter for me in the consideration of this appeal. I have considered the appeal only on the basis of the proposed plans.
14. In the absence of any outdoor private amenity space, the proposal would not provide acceptable living conditions for future occupiers. It would conflict with Policy CS6 of the CS and Policy MD2 of the SAMPD which together, amongst other things, seek that new development is designed to a high quality, with well-connected outdoor spaces and which contributes to the health and wellbeing of communities.
15. The proposal would also conflict with Sections 8, 11 and 12 of the Framework, including Paragraphs 96, 123, 128, 131, 135 and 139. These set out the social and wellbeing benefits of outside space and seek for proposals to make effective use of land that ensures healthy living conditions and a high standard of amenity for existing and future users.

Parking

16. 'Proposed Plan Ref PA03' indicates that 6 car parking spaces are currently provided to the rear of the appeal building and would continue to be provided with the appeal scheme. At the time of my morning site visit, I observed 5 cars parked in this area as well as various items of furniture and rubbish. I also saw numerous signs warning that private parking and wheel clamping were in

¹ LPA Ref: 00/11254/FUL

operation affixed to walls and garage doors on other, separate parking areas in the vicinity of the site.

17. The Council have not directed me to any car parking standards in their submissions. Furthermore, in transport terms, the appeal site is in an accessible town centre location with access to public transport, as well as Oswestry's facilities and car parks. A good number of day-to-day services could be reached on foot or by bicycle from the site. It is not unusual for flatted developments in town centres not to have on-site parking facilities. Indeed, it could encourage car users to seek alternative means of transport. For that reason, the highway authority did not object to the proposal. Neither did the Council raise a concern regarding highway safety and from the information before me I have no reason to disagree.
18. While future occupiers of the appeal building would not be reliant on a private motor vehicle to access services and facilities given the accessible location of the site, a small car park is proposed to be retained that would provide 6 parking spaces for use by occupants of the appeal building.
19. However, from the information available to me, it is unclear whether the future occupants of the proposed flats would be aware of the number of parking spaces available to them. Even if parking was provided for future occupants on a different site nearby, I do not have any mechanism before me by which this could be secured. Consequently, there is potential that, at times, all occupants within the appeal building would seek to park at the appeal site.
20. It is clear from the evidence of interested parties that the demand for parking at the site is already more than the supply of spaces. The proposed development would be likely to increase the demand further.
21. In the absence of details regarding the management of car parking spaces for all occupants of the appeal building, it would be likely that residents and visitors with vehicles would first attempt to park on the car park and only if no spaces were available, would an alternative parking space be sought elsewhere. Due to the limited number of parking spaces at the site, and the parking restrictions on surrounding roads, the demand for parking in the wider area would be exacerbated.
22. My attention has been drawn to several public car parks in the town centre. Even if all future occupants of the proposed flats required parking spaces in alternative locations in the town and it resulted in the displacement of spaces used by existing nearby residents, visitors and workers, from the information provided, I cannot be certain that it would significantly add to parking stress locally. The argument that the increased demand would cause significant harm to the living or working conditions of future or existing residents/workers in the local area has not been supported by any substantive evidence.
23. However, in the absence of information about its management, the presence of a car park at the appeal site would be likely to lead to competition for the limited number of spaces and conflict between occupants of the appeal building. Evidence from interested parties also suggests that there would be potential for conflict with surrounding car park users as indiscriminate parking already takes place.

24. In addition, unnecessary vehicular movements would take place by drivers of vehicles who may have to abort parking at the site due to a lack of available spaces. Such vehicular movements would take place within a constrained space close to residential properties and in an area without footways.
25. Limited information has been presented by the Council to indicate their specific concerns in this respect, although I note that reference has been made to the likely impact on residential amenity in the Council's statement. Whilst I acknowledge several small private parking areas are already served off Madog Place and the site is in a central town centre area where a degree of activity is to be expected, any increase in occupancy levels of the appeal building would incrementally increase vehicle movements in and around the site from residents of the appeal site checking to see if there was space in the car park. This would cause further disturbance in a confined space by engines running, doors slamming and conversations in close proximity to nearby residential properties, particularly along Oswald Row where there is no substantial screening from the appeal car park. Such noise would also not be constant and would in all likelihood fluctuate. Hence, it would also create disturbance in this respect.
26. The appellant has drawn my attention to alternative ways to address parking for occupiers of the appeal building and has suggested the use of conditions to address disturbance to the living conditions of nearby residents. However, even if there would be alternative parking arrangements in place for additional spaces, including a planning obligation, car sharing or parking permits available, there are no such mechanisms or conditions before me to be certain that these would be effective, secured for the lifetime of the development, or would not result in a different form of development and consideration to that currently before me. As such, they carry no weight in my consideration of the appeal.
27. I recognise that the location of the appeal site is within a town centre where there are alternative travel options and less need to travel by vehicle to obtain day to day services and facilities and the provision of parking in this case would not be at a level to cause a severe residual cumulative impact on the road network, in terms of Paragraph 115 of the Framework. Nevertheless, given the lack of information in relation to the management of the car park at the appeal site, and on the basis of the evidence before me, whilst the proposed development would not give rise to significant parking stress in nearby streets, it has not been sufficiently demonstrated that the effect of parking associated with the proposal would not cause unacceptable harm to the living conditions of nearby residential occupiers, with particular reference to disturbance.
28. Accordingly, for the reasons given above, there would be conflict with the overall aims of Policies CS6 and CS7 of the CS and Policy MD2 of the SAMPD which together, seek to manage the need to travel, achieve development that responds positively to how a place functions and safeguards residential amenity. It would be contrary to the aims of paragraph 108 of the Framework which sets out that patterns of movement, streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places.

Other Matters

29. The appeal site is located within the Oswestry Conservation Area (CA) therefore I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservations Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. There would be minimal fenestration alterations to the building. Furthermore, neither the use nor appearance of the outdoor space at the rear of the building would change as a result of the proposal. As such, I consider that the character and appearance of the CA would be preserved.
30. The appellant has set out in their submissions that as a fallback position, the proposed occupancy of the building would be less than that approved by the 2000 permission, which did not include any parking, and there would be less demand for parking.
31. For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out, but it would also need to be more harmful than what would be allowed by the scheme for which permission is sought. As a result, an element of planning judgement is also involved in that assessment process.
32. From the available evidence and my observations on site, as set out above, the outside private amenity space approved by the 2000 permission has not been implemented. In its place there is currently a car park. In the absence of details regarding the management of the car park, including whether spaces are already allocated to existing residents as part of sale or lease arrangements, I cannot be certain that there would be a real prospect of the approved amenity space provision being re-instated and the 2000 permission being implemented.
33. Nonetheless, in *Schneck v SSHCLG & West Berkshire DC* [2022] EWHC 3335 (Admin) the Court held that 'the prospect of the fall back position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect.' Although the possibility of the fallback position happening may be very slight, this is sufficient to make the position a material consideration.
34. In addition, in *R (SPVRG Ltd) v Pembrokeshire CC* [2022] EWHC 143 (Admin) it was held that although it may not be possible to implement a planning permission due to other restrictions or matters outside planning legislation, it does not mean that it cannot be considered as a fallback position. The weight to be attributed to a fallback in those circumstances would be a matter for the decision-maker.
35. On this basis, although I consider the implementation of the 2000 permission would be very slight, I have no contrary evidence that it would not have a real prospect of being implemented. The 2000 permission is therefore a fallback position and as such, a material consideration.
36. The fallback position does not include on-site car parking whereas the appeal scheme includes a limited number of parking spaces. Although disputed by the Council, taking the appellant's figures, the implementation of the 2000 permission would include a maximum number of 29 occupants and no parking,

against a potential of 19 occupants and 6 parking spaces with the appeal proposal. This is a significant material difference.

37. Occupiers in the fallback scheme would be aware of the absence of on-site parking upon purchase or lease of a flat or office and would not attempt to park at the site. Therefore, there would be fewer vehicle movements close to existing neighbouring residential occupants. The exclusion of a dedicated car park in an accessible town centre location would not necessarily conflict with Section 9 of the Framework to promote sustainable transport. However, the existence of a limited on-site car park in this case would cause harm for the reasons I have set out above.
38. In addition, in the absence of outdoor private amenity space I have also found that the appeal scheme would not provide acceptable living conditions for future occupiers, whereas the fallback position would provide outdoor private amenity space.
39. On this basis, I consider the effect of the proposed development to be more harmful than the fallback position. Consequently, the existence of the 2000 permission fallback position would not justify the harm arising from the development in this case.
40. The appellant has drawn my attention to a recent planning permission granted by the Council at 5-9 Cross Street, Oswestry and argues that, as it is a similar development to the proposal, it sets a precedent². Limited information has been submitted to make a robust comparison between this permission and the appeal proposal, although I have been provided with a copy of the Officer Report. Whilst there appear to be some similarities in terms of the location of the sites within the town centre and the amount of residential units, the Council's statement confirms that the Cross Street development did not include either parking or outdoor private amenity space for future occupants. In that case, the Council concluded that the heritage and regeneration benefits outweighed any other harm. That is not the case in the appeal before me. As such the circumstances of this permission are not sufficiently similar to the appeal before me to weigh in its favour.
41. Both main parties have referred to a recent appeal decision at Oswald House, Oswald Road, Oswestry³. As in the Cross Street case above, there appear to be some similarities in terms of the location of this site within the town centre and the number of residential units, although I have not been provided with the full details that were available to the inspector when making the decision. The appeal was dismissed due to inadequate provision of private outdoor amenity space, as I have found here. Although the Inspector in the Oswald House appeal found no harm to highway safety, with regard to parking provision and access to deliveries and refuse collection, there was no dispute regarding the effect of parking provision on the living conditions of nearby residential occupiers.
42. Although relevant, these examples are not therefore directly comparable due to their contextual differences. In any event, decisions are not binding and do not limit the scope of judgement in individual case circumstances. I have determined the appeal on its individual merits.

² LPA Ref: 20/05387/FUL

³ Appeal Ref: APP/L3245/W/23/3314590

43. The appellant has made reference to a number of paragraphs set out within the Framework. Although these have not all been directly referred to within the issues set out above, I have been mindful of them and they have contributed towards my assessment, including the planning balance set out below.
44. The parking of vehicles on private land is not a matter within my jurisdiction in determining this appeal. I have also had regard to other third-party representations made including, amongst other things, storage of refuse, affordable housing, drainage, noise and anti-social behaviour. However, as I am dismissing the appeal on other grounds, I have not pursued these matters further.
45. The Council's handling of the planning application, or the handling of the planning application at 5-9 Cross Street, has not affected my findings on the planning merits of the scheme.

Planning Balance and Conclusion

46. The Government's objective is to significantly boost the supply of housing and the proposal would provide five new flats in an accessible location with access to transport links. It would also make effective use of a redundant part of the building and would be likely to provide low-cost housing options. The proposal would also lead to a small and time-limited economic benefit during the construction phase, as well as some limited economic benefits from spending by future occupants. Given the small scale of the proposal, these matters would collectively attract moderate weight.
47. It has been put to me that the re-use of the building would offer the opportunity to address key health and well-being factors that form the periphery of the sustainability criteria, would have a low environmental impact, reduce heating demands and would enable the council to ensure regularisation of accommodation so that it meets best practice of rental properties. However, there is no detailed information regarding these aspects or how this would be achieved. Therefore, I afford this limited weight.
48. Even if the existing flats require new windows, it has not been shown that the proposed development represents the only way of achieving this aim. As such, I give this matter negligible weight.
49. Even if I were to agree that there was no harm in relation to national space standards for internal rooms, the absence of harm is neutral and does not weigh in favour of the proposal.
50. I have found that the proposal would harm the living conditions of future occupiers, with particular regard to outdoor private amenity space and the living conditions of nearby residential occupiers, with particular reference to disturbance, contrary to Policies CS6 and CS7 of the CS and Policy MD2 of the SAMPD.
51. Paragraph 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission, and therefore appeals, be determined in accordance with the development plan, unless material considerations indicate otherwise.
52. The proposal would conflict with the development plan when read as a whole. There are no material considerations, including the provisions of the

Framework that indicate the decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

A Veevers

INSPECTOR