



Appeal Decision

Site visit made on 25 March 2024

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th April 2024

Appeal Ref: APP/Y9507/W/23/3323048

Units C and D, 39 Chapel Street, Petersfield GU32 3DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr H Naef against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/21/05280/FUL.
 - The development proposed is demolition of the existing structure which is no longer fit for purpose and its replacement with a two storey building. The proposed will feature a commercial space at the ground floor, paired with a two bedroom apartment at first floor.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. While different to that on the decision notice, I have taken the description of development from the application form as no confirmation that a change was agreed has been provided.
3. Where comments were received from the parties on the latest National Planning Policy Framework (Framework), I have taken them into account in my reasoning.
4. It is not clear if the Surface Water Drainage Strategy was submitted and before the Authority at the time of their decision. However, in any event, it was provided at the outset of the appeal. The Authority and third parties have had opportunity to comment on it. Therefore, they would not be prejudiced by my taking it into account in my reasoning.
5. Reference is made to details relating to bats and extracts from plans associated with the pending application¹ in the appellants submissions. The bat details have not been included in the appeal submission. Therefore, this information is not before me, and I cannot be sure third parties would have had opportunity to comment on them. Details relating to plans associated with the pending application are only provided in the form of extracts and full revised plans have not been submitted. As such, I have considered the scheme on the plans before the Authority at the time of their decision.

¹ SDNP/23/01900/FUL

Main Issues

6. The main issues of the appeal are:

- Whether the proposed development would provide appropriate living conditions for future occupiers with particular regard to privacy, daylight, sunlight, noise, disturbance and odour as well as bin storage,
- The effect of the proposed development on the living conditions of the occupiers of 37 Chapel Street and Alpine Court, with particular regard to outlook privacy, daylight and sunlight,
- Whether the proposed development would encourage future occupiers to use a range of transport modes, with particular regard to the provision of cycle storage facilities,
- The effect of the proposed development on biodiversity, with particular regard to protected species and biodiversity net gain (BNG),
- The effect of the proposed development on flood risk; and
- The effect of the proposed development on the operation of existing occupiers, and the operation of future ones with regard to bin storage.

Reasons

Living conditions – future occupiers

7. The set back of the rear openings and balconies of Alpine Court mean that the views from there would be angled into one corner of the living area of the proposed residential unit. In addition, as there would be other larger openings on the rear elevation of the proposed unit, this window could be fitted with obscure glazing.
8. However, the proposed clear glazed rooflights facing the lane would be located a very short distance from the first-floor windows in 37 Chapel Street. The existing clear glazed windows would be at a similar height to the proposed rooflights. Therefore, there would be short range, uninterrupted direct views into the bedroom and main living space of the proposed residential unit. This would fail to provide a sufficient level of privacy for future occupiers.
9. There would be a large opening on the end of the proposed residential unit that would allow a good degree of daylight and sunlight into the room it serves. The circulation area is unlikely to be a space where occupiers spend any considerable time and as such the lack of an opening for it would not result in unacceptable living conditions.
10. Nonetheless, while there would be a large window as well as a rooflight for the bedroom and rooflight for the bathroom, there would be limited separation between the proposed building and 37 Chapel Street. Given the height of the proposed and existing buildings as well as the direction of travel of the sun, there would be some shadowing taking place at certain times of the day. This would limit the natural light reaching these rooms. In the absence of any daylight or sunlight surveys to the contrary, I cannot be certain that sufficient light would be provided to these rooms and that appropriate living conditions would be provided in this regard.

11. No bin storage area has been indicated on the plans forming part of this proposal. At the time of my visit, there were already a number of bins within the enclosure at the adjacent premises. It is unclear whether the existing bin storage area would have sufficient capacity for the scheme. Similarly, it has not been shown that outdoor space at the appeal site could accommodate the residential bins as well as those for the commercial units proposed. A lack of space would result in waste being stored internally and this would not provide appropriate living conditions for future occupiers.
12. At the time of my visit which was early afternoon, there was regular pedestrian movements along the lane. This and the comings and goings from the existing buildings on the lane and the nearby car park meant that the lane was not particularly quiet. The level of noise would likely be different at other times of day and the week and in light of some of the uses along the lane could continue into the evening and night.
13. Nevertheless, there are already several residential units along this lane, including ones above and close to commercial uses such as restaurants, cafes and takeaways. There is no compelling evidence that there is currently an issue with noise, disturbance and odour leading to unacceptable living conditions for nearby occupiers. Given the town centre location, some noise associated with comings and goings and commercial premises would be expected.
14. While proposed developments should not result in limitations on existing uses, were the appeal to be allowed, conditions could be imposed regarding matters such as glazing, construction and to control extraction and ventilation equipment at the proposed commercial units below. As such, appropriate living conditions could be provided with regard to noise, disturbance and odour. The scheme would accord with Policy SD54 of the South Downs Local Plan (Local Plan) as it relates to pollution and air quality.
15. Notwithstanding this, the proposed development would not provide appropriate living conditions for future occupiers with regard to privacy, daylight, sunlight, and bin storage. It would be contrary to Policy HO3 of the Petersfield Neighbourhood Plan (NP) and Policy SD5 of the Local Plan where they state that all new homes should be built to an appropriate standard and schemes should avoid harmful impact upon, or from, any surrounding uses and amenities.
16. Moreover, it would fail to accord with the Adopted Design Guide Supplementary Planning Document (SPD) where it requires development to consider amenity for new and existing residents. It would also be contrary to the Framework where it seeks a high standard of amenity for future users.

Living conditions – 37 Chapel Street and Alpine Court

17. The proposed roofline would be stepped, was reduced during the application and there are already 2 storey elements on the same side of the lane as the appeal site. However, currently there are first-floor windows at 37 Chapel Street and at Alpine Court either side of the site that have an outlook over the existing single storey building.
18. There is little space between these windows and the appeal site. The proposal would introduce a taller building in very close proximity to these windows, some of which appear to serve habitable rooms. This would greatly reduce the

outlook from these windows. The scheme would result in an oppressive, uninviting and unacceptable outlook from the rooms they serve.

19. The proposed bedroom window would be obscured and at a high level. But there would be direct closer-range views from the proposed rooflights in the bedroom and bathroom of the appeal scheme into the first-floor windows of 37 Chapel Street than the existing upper floor windows at Alpine Court. This would considerably reduce the levels of privacy for occupiers of these properties and unacceptably harm their living conditions.
20. The existing windows at 37 Chapel Street and Alpine Court facing the appeal site would already be shaded at certain times of day by the existing built form nearby. Nonetheless, the increase in height, would introduce built form closer to them and likely effect both the daylight and sunlight that could reach the rooms they serve. As there is no detailed assessment of the effects of the proposal in this regard, I cannot be certain that sufficient light would still be able to reach these rooms and prevent them becoming gloomy and unwelcoming.
21. Consequently, the proposed development would unacceptably harm the living conditions of the occupiers of 37 Chapel Street and Alpine Court with regard to outlook, privacy, daylight and sunlight. It would fail to accord with the SPD where it requires development to consider amenity for new and existing residents. It would also be contrary to the Framework where it seeks a high standard of amenity for existing users.
22. As Policy SD54 of the Local Plan relates to pollution and air quality it is not directly relevant to this main issue.

Encouraging future occupiers to use a range of transport modes

23. There are a range of services and facilities near the appeal site as well as connections to public transport. Therefore, there would be alternatives to the use of private vehicles. Nevertheless, although facilities have been shown on the plans for the pending application, the plans for this appeal do not indicate any cycle provision. While there is outdoor space at the end of one of the commercial units that could be utilised, being external and not near the entrance of the residential unit mean it is unlikely facilities there would be used by occupiers. The suggested internal location for the residential unit in the pending application would require alterations to the submitted plans and is not before me. The lack of cycle parking would push the use of private car for which there are no parking spaces provided.
24. Consequently, the proposal would not suitably encourage alternative modes of transport with regard to cycle storage provision. It would be contrary to Policy SD19 and SD22 of the Local Plan and Policy HP8 of the NP where they require schemes to promote the use of sustainable modes of transport and provide an appropriate level of private cycle storage facilities. It would also be contrary to the Framework where it seeks to ensure secure cycle parking is provided and that opportunities to promote cycling are identified and pursued.

Biodiversity

25. The Preliminary Bat Roost Assessment February 2022 identified low suitability roosting features associated with the restaurant. However, it stated that further survey work was needed in order to confirm the presence/absence of

roosting bats, characterise any bat roosts, assess the extent that they may be affected by the proposed construction works and develop a proportionate and appropriate mitigation strategy.

26. While reference is made to further details submitted with the pending application, these have not been provided as part of the appeal submissions.
27. On the basis of the evidence before me, there is insufficient information in relation to whether bats are present and if so, what implications the scheme would have for them and their habitat. In addition, it is not clear what, if any, mitigation would be required and whether it could be achieved.
28. Policy SD9 requires schemes to enhance biodiversity and identify and incorporate opportunities for net gain. No potential measures for net gain have been identified. In this instance, given the constraints of the site and extent of the proposed built form, which would limit the possible options on site, it is not clear how or where such measures could be achieved.
29. Given the degree of uncertainty on these matters, the use of conditions would not be reasonable or appropriate in this case for net gain or further survey work.
30. I cannot rule out potentially significant harm to biodiversity with regard to protected species and BNG. As such, the proposal would be contrary to Policies SD2 and SD9 of the Local Plan and Policy NEP7 of the NP where they seek enhancement of biodiversity and protection of habitats.
31. Moreover, the scheme would be contrary to the Framework where it states if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. It would also conflict with the purpose of National Parks to conserve and enhance the wildlife of the area.

Flood Risk

32. From my observations on site and the Surface Water Drainage Strategy, the site is currently wholly hard surfacing or built form and surface water connects to the main sewer system. The proposal would largely use the same method with a small area to be made porous to increase attenuation. There is no compelling evidence to indicate that this proposed arrangement would be unfeasible. Were the appeal to be allowed, conditions could be imposed to ensure final details of any scheme, implementation and maintenance were secured.
33. Therefore, the proposed development would not lead to an increased risk of flooding. It would accord with Policy SD17 of the Local Plan and Policy BEP7 of the NP where they require schemes to conserve the ability of surface water features to function and have a neutral impact on surface water. It would also comply with the Framework where it seeks to ensure that flood risk is not increased elsewhere.

Operation of existing occupiers and the operation of future ones

34. Policy SD1 of the Local Plan makes reference to National Park purposes to conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for the understanding and enjoyment of the

special qualities of National Parks by the public. Policy SD25 of the Local Plan supports development within certain settlements, where they are appropriate to its character and function.

35. Policy SD37 of the Local Plan states proposals will be permitted providing they do not harm the retail function of the centre they are located in and are compatible with its scale and historic nature. Policy RP2 of the NP seeks to maintain an appropriate balance of retail uses so that Petersfield retains its market town character with a mix of retail uses in the town centre being encouraged.
36. The proposal would not include a hatch linking the different parts of the existing restaurant. However, there is no clear evidence to indicate a hatch could not be provided in the future if needed. No detailed financial information has been provided to demonstrate that the smaller size of the unit adjacent to the restaurant would unacceptably harm the viability of the business. Similarly, while the proposal is likely to require the uses to cease during the building works, it has not been shown that the existing occupiers of the units would be unable to re-occupy them once completed subject to adaptations. Furthermore, it has not been clearly demonstrated that there would be a lack of suitable alternative premises that they could re-locate to. Therefore, the existing variety of provision could be retained.
37. While the future users are not defined and the size of the individual units would be different, the proposal would retain the commercial use of the ground floor, in the form of 2 units with a comparable overall commercial floorspace. The lane and the adjacent streets include a mix of uses. The proposed use would fall within Class E of The Town and Country Planning (Use Classes) Order 1987 (as amended) which includes retail and for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. As such, the proposal would not adversely affect the mix of uses in the area.
38. I have no reason to doubt the reputations or viability of the existing businesses. Nevertheless, even without the scheme there is no guarantee the existing businesses would remain in perpetuity or that any different occupiers would not be of an equal community value. There is no specific requirement in the policies in the refusal reasons for the building layout, size or occupier to be a like for like replacement or that justification be provided in relation to the condition of the existing building.
39. The individual considerations relating to the existing businesses in this appeal do not amount to an exceptional or special circumstance as outlined in *Westminster City Council v Great Portland Estates PLC* (1985). Moreover, that case related to a development plan policy rather than a planning appeal so is materially different to this appeal.
40. At my site visit, there was no obvious external bin storage areas at the appeal site for the existing commercial premises. The size of the commercial units would be comparable to the existing ones. As such, while no external area is shown for the proposed units, this would appear to be similar to the existing circumstances. The information before me indicates that the existing businesses are still able to function. Were the appeal to be allowed, a condition could be imposed requiring details of bin storage to be provided which could include the external space adjacent to one of the commercial units.

41. Therefore, the proposed development would not unacceptably harm existing occupiers. It would accord with Policies SD1, SD25 SD37 of the Local Plan and Policy RP2 of the NP where they seek to retain the retail function and a mix of uses in town centres and cultural heritage.
42. Policy HP4 of the NP relates to housing being well designed and schemes being in accordance with other policies. BEP6 of the NP refers to a presumption in favour of sustainable development and that development outside of the settlement boundary will not normally be permitted. Therefore, these are not directly relevant to this main issue.

Other Matters

43. There are other upper floor residential units near the appeal site. Some have similar separation between first-floor windows and did not appear to have internal cycle or external bin storage facilities. Nonetheless, this existing situation where living conditions may be limited or facilities not provided, does not make the proposed scheme acceptable. Furthermore, I am not aware of the circumstances or planning policy context in place at the time of those being permitted.
44. The appeal site is in the Petersfield Conservation Area (CA). From my observations and the evidence before me, the significance of the CA, lies, in part in its Medieval planned layout which includes roads and alleyways with historic buildings. The site forms part of a busy town centre with a variety of style and size of buildings and a mix of uses.
45. The proposal would keep the commercial use of the buildings and introduce residential use above, something already seen on the lane. Therefore, I see no reason why the scheme would not retain the lively and varied historic commercial character of the lane. The proposed design includes changes in the height and form of the building breaking up its bulk. While taller than the existing building and not stepped in the same way as the existing buildings, the proposed one would be in keeping with the general scale of those near the site and with which it would be most readily seen. There is an individuality to buildings along the lane which the scheme would form part of by not being a copy of the existing built form nearby. The materials and overall scale would not be dissimilar to those on the other side of the lane and the appearance and scale would draw on aspects of the existing buildings. Therefore, the proposal would preserve the character and appearance of the CA.
46. The appeal site buildings are identified as non-designated heritage assets in the Appraisal. Even if part of one of the buildings were retained, it would be substantially altered and the other demolished. The significance of the buildings lies in part in them, as with many near the site having their own individual design, more so for the florist building and showing the historic function of the lane as part of the commercial centre of Petersfield. The fabric of the buildings would be lost along with their significance in terms of appearance. However, as above the buildings would retain the link to the historic commercial uses. Moreover, the design of the proposal would be acceptable. Therefore, the harm would be small.
47. Being for a single unit the contribution towards housing supply would be small, as would the economic benefits from the build and occupation of the development including from the proposed commercial elements. Any issues

relating to the contractual details and dealings of those involved with the site are not matters that affect my findings on the main issues.

Conclusion

48. The proposed development conflicts with the development plan when considered as a whole, and the Framework, and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
49. Therefore, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR