



Appeal Decision

Site visit made on 11 June 2024

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 July 2024

Appeal Ref: APP/U3935/W/24/3339011

151-152 Regent Hotel, Victoria Road, Old Town, Swindon SN1 3BU

- 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 Brett (Brett Invest Ltd) against the decision of Swindon Borough Council.
 - The application Ref is S/23/0486/RACH.
 - The development proposed is subdivision of hotel (Class C1 use) into 2 (five bed) small HMO's (C4) and creation of 12 x one bedroom apartments with associated external alterations and replacement roof.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of Hotel (use class C1) to 2 no. (5no. bed) HMO's (use class C4) and 12 no. apartments with associated external alterations and replacement roof at 151-152 Regent Hotel, Victoria Road, Old Town, Swindon SN1 3BU in accordance with the terms of the application Ref S/23/0486/RACH and the plans submitted with it subject to the following conditions.
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawing nos 797/001,797/050,797/404,797/410, 797/200, 797/100, 797/201 and 797/210 rev A.
 - 3) No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 4) No part of the development hereby permitted shall be occupied until cycle storage facilities have been provided in accordance with the approved plans. Such facilities shall be kept clear of obstruction and retained thereafter only for the parking and storage of cycles.
 - 5) No part of the development hereby permitted shall be occupied until refuse storage facilities have been provided in accordance with the approved plans. Such facilities shall be kept clear of obstruction and retained thereafter only for refuse storage in connection with the development hereby permitted.
 - 6) The swift bricks shown on plan 797/210 rev A shall be installed in accordance with the submitted specification prior to the first occupation of apartments 5, 6, 7 and 8 as shown on first floor plan 797/100.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Procedural Matter

3. The description of development in the banner heading above is taken from the application form. The Council used a different form of wording on the decision notice, and this has also been entered onto the appeal form. Given that this amended description describes the development more accurately, I shall use it in my formal decision.

Main Issue

4. The main issue is whether the proposed development would make suitable provision for off-site open space, off-site outdoor sports facilities, and allotments.

Reasons

5. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the National Planning Policy Framework (the Framework) require that a planning obligation may only constitute a reason for granting planning permission if the obligation is a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
6. Swindon Borough Local Plan 2026 (SBLP) Policy IN1 sets the general approach to making provision for infrastructure, including mitigating the impact of development on existing infrastructure. SBLP Policy EN3 relates specifically to open space. It requires that residential development contributes towards public open space including provision for outdoor sports facilities; general recreational areas; and allotments.
7. Policy EN3 requires provision to be in line with open space standards ("the standards") set out in Appendix 3 to the policy. The standards also refer to an Open Space Audit and Assessment ("the Audit") updated in 2014 which provides a summary of the quantity, quality and accessibility of open space according to each Council Ward. By complying with the standards, harm arising from additional demand would be suitably mitigated.
8. The Audit is approximately 10 years old and the appellant has drawn attention to spending which appears to have taken place at various local facilities since the Audit. Paragraph 102 of the Framework indicates that planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Whilst in principle contributions towards open space may be necessary to secure compliance with Policies EN3 and IN1, I cannot be sure that the impact of the development on existing provision has been quantified on the basis of an up to date assessment. It is therefore unclear whether the contributions are necessary to make the development acceptable in planning terms.
9. The Council uses an "Open Space Calculator" to translate the requirements in the standards into monetary values. It appears to use standard formulae based

on the number of units, bedrooms and average occupancy. This gives an indication of how the amounts sought have been calculated. However, it does not explain the costs, values and assumptions on which it is based.

10. Whilst the Audit identifies deficiencies in the various open space provisions in Eastcott Ward, it is not demonstrated how the contributions would be spent or how the impact of the development on the existing facilities would be mitigated. I therefore am unable to conclude that the contributions are directly related to the development and reasonably relate in scale and kind to it.
11. Consequently, and notwithstanding the aims of SBLP Policies EN3 and IN1 which seek to mitigate the impact of new development on existing infrastructure, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the CIL Regulations 2010 or paragraph 57 of the Framework. Therefore, the lack of an obligation should not be a reason to dismiss the appeal.

Other Matters

12. The Council's evidence states that the appeal proposal is exactly the same as an approved, extant scheme (Council reference S/22/0389). The principle of the development, its design and appearance, the impact on living conditions and highway matters were considered acceptable. No evidence has been produced to suggest that there has been a material change in circumstances since that approval which would necessitate a reassessment of those matters. Whilst the Officer's report refers to the 2021 version of the Framework, my attention has not been drawn to any changes made in the December 2023 version which would cause me to arrive at a different view to the Council. The Council report on the approved scheme did not consider the need for that proposal to make contributions towards offsite open space provision. I have found no reason to come to the conclusion that contributions are justified for the appeal proposal.
13. I have noted that North Wiltshire Swifts expressed concerns regarding nesting swifts. The plans provide "swift bricks" in the side elevations of the building. A condition can be imposed to ensure the development is carried out in accordance with those plans and related details.
14. The Council has noted that there is a risk that bats may be present at the site. It has not indicated that any further measures are required and no evidence has been submitted to cause me to come to a different conclusion.

Conditions

15. A condition specifying that the development must be carried out in accordance with the approved plans provides clarity and certainty for the parties. It is necessary to ensure the materials used in the new external works are suitable and complement those of the existing building. However, as the existing building comprises a variety of external finishes, I have amended the wording from that proposed by the Council to require details to be submitted.
16. The Council has suggested a condition to secure provision of cycle-parking facilities prior to the occupation of the development and the permanent retention thereof. Such a condition is necessary to ensure that bicycle parking is provided in accordance with the relevant standards. Similarly, a condition has been suggested requiring provision of the refuse storage facilities in

accordance with the approved plans. This ensures that the refuse storage facilities are provided in an appropriate location on the site and would be reasonable.

17. The appeal scheme provides no on-site car parking and the Council has suggested a condition relating to the availability of on-street parking permits and a requirement that prospective tenants and occupiers are advised that no on-street parking permit will be issued to occupiers of the development. From my site visit, I noted that the proposal is within walking distance of local shops and services and is located on a bus route, with bus stops close by on either side of Victoria Road. Whilst nearby streets appear to be restricted parking zones where permits are required, I am satisfied that future occupants of the development would not need to rely on a private car for their day to day activities. This is consistent with the objectives of Policy TR2. The Council's Parking Standards for New Development make clear that residents of new developments will not normally be granted parking permits. I therefore do not consider that a condition duplicating that statement is necessary or fulfils a planning purpose.
18. Swift bricks have been shown on the amended elevation drawings and I consider it reasonable and necessary to attach a condition to ensure they are provided in accordance with the submitted plans and details. So as not to prevent the development progressing, the condition is worded so that they are in place before the first-floor flats in the relevant rear elevations are occupied.

Conclusion

19. For the reasons given above the appeal should be allowed.

R Kent

INSPECTOR