



Appeal Decision

Site visit made on 25 June 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2024

Appeal Ref: APP/D1265/W/23/3327824

Former Coop store and car park, High Street, Gillingham SP8 4AG

- 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 Nathan Hopkins of Hopkins Estates Ltd against the decision of Dorset Council.
- The application Ref is P/FUL/2022/02397.
- The development proposed is demolition of existing former Coop store and redevelopment of the site to provide 42 residential units, comprising 4 houses (C3), 30 apartments (C3) and 8 assisted living apartments (C2), 83sqm of commercial space (Class E), allotments, landscaping and other associated works.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing former Coop store and redevelopment of the site to provide 42 residential units, comprising 4 houses (C3), 30 apartments (C3) and 8 assisted living apartments (C2), 83sqm of commercial space (Class E), communal garden, landscaping and other associated works at former Coop store and car park, High Street, Gillingham SP8 4AG in accordance with the terms of the application, Ref P/FUL/2022/02397, subject to the conditions in the attached Schedule.

Applications for costs

2. An application for costs was made by Mr Nathan Hopkins of Hopkins Estates Ltd against Dorset Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The description of the development on the application form, Decision Notice and appeal form all refer to the provision of 'allotments'. I have therefore included this in the banner heading above. However, both the Council and the appellant have advised that during the course of the consideration of the application by the Council, the allotments were removed from the scheme. Revised plans were submitted indicating a communal garden area in their place. I understand that these are the plans upon which the Council made its decision. Therefore, in my formal Decision above, I have replaced the word 'allotments' with 'communal garden' to more accurately reflect the appeal proposal as shown on the approved drawings. Given that these were the drawings upon which the Council made its decision, there would be no prejudice to the interest of any parties by my doing so.

Main Issues

4. The main issues in this appeal are:

- Whether the appeal proposal would provide an appropriate level of affordable housing having particular regard to viability; and,
- The effect of the appeal proposal on the vitality and viability of the town centre.

Reasons

Affordable Housing

5. Policy 8 of the North Dorset Local Plan Part 1 adopted January 2016 (LP) sets out the requirement for proposals to provide affordable housing. On sites in Gillingham that deliver 11 or more additional dwellings, 25% of the total number of dwellings are required to be affordable.
6. The Policy goes on to say that in instances where a lower level of provision can be justified on the grounds of viability, a planning obligation will be required to secure the maximum level of provision achievable at the time of the assessment and that the assessment shall be carried out by the District Valuer (DV) subject to an 'open book' approach. This reflects the advice in Paragraph 58 of the National Planning Policy Framework (the Framework).
7. The appellant has provided detailed financial information that has been independently reviewed by the DV. The Council has accepted the recommendation of the DV that the development cannot support the provision of any affordable housing. I therefore see no need to question the robustness of the evidence presented and have given the viability assessment significant weight in my decision.
8. In fact, the DV goes further and indicates a financial deficit and therefore concern over the deliverability of the scheme as a whole. In response, the appellant advises that the developer is the owner of the land so they will see a small return from the land. In addition, maintenance, security and business rates are current financial liabilities which require that the site is redeveloped. In Short, they say, the current building is a drain on company resources which needs to be addressed even if no profit is forthcoming. The Council do not dispute the evidence provided by the appellant in this respect.
9. I accept that there is a notable need for affordable housing and that the provision of new affordable housing is an important and pressing issue as evidenced by the Dorset and BCP Local Housing Needs Assessment dated November 2021. That said, development plan policies are clear that the level of affordable housing provision will be subject to viability considerations.
10. The evidence before me demonstrates that there would not be sufficient financial headroom to support affordable housing provision. Consequently, no such provision would be justified, and in this regard the scheme would not conflict with Policy 8 of the LP which permits a lower level of provision where supported by robust viability evidence. I also find no conflict with Paragraph 66 of the Framework which expects at least 10% of affordable housing provision on site to be available for affordable home ownership as part of the overall affordable housing contribution from the site. In this instance, there is no affordable housing provision on site.

Vitality and Viability

11. Policy 12 of the LP seeks to prevent development resulting in the change of use from an existing ground floor A1 Use Class within a unit fronting a street or pedestrian thoroughfare where this would result in any loss of retail frontage or ground floor net retail floorspace. The appellant contends that the appeal site is set well back from High Street and consequently does not front a street or pedestrian thoroughfare. The Council's Strategic Planning Policy Comment acknowledges that it is 'arguable' whether Policy 12 of the LP is applicable to the appeal site and as such, the Council's evidence on this point is inconclusive.
12. Notwithstanding this, Policy 7 of the Gillingham Neighbourhood Plan, made July 2018 (GNP) states that the loss of retail outlets to residential use on the ground floor areas of primary shopping frontages will be resisted. Figure 8.1 of the GNP indicates that the appeal site is located within the primary shopping frontage.
13. The proposal involves the demolition of a building with 1427 sqm of floorspace and its replacement with a new 83 sqm unit for Class E use (commercial, business and service), with the remainder of the site being redeveloped for residential use. This would result in a net loss of ground floor retail floorspace, which the Council say would be detrimental to the viability and vitality of the town centre.
14. The appellant does not dispute that there would be a loss of retail floorspace. However, the case that has been put to me is that this will not adversely affect the viability or vitality of the town centre. To the contrary, the case is made that the appeal site has not contributed to the vitality or viability of the town centre for a significant period of time and has to some extent, detracted from it.
15. The appeal site has been vacant for ten years following a fire which damaged the building. I saw during my visit that the site has been fenced off and detracts somewhat from an otherwise pleasing street scene. It has now been marketed for a period in excess of eight years but this has failed to secure a new occupier. The property was marketed for sale or rent and included incentive packages. The Council listed the property as available on Property Pilot Dorset for over six years. The Council advise they are satisfied that genuine attempts have been made the market the site and from the evidence before me, I see no reason to conclude differently.
16. Policy 7 of the GNP states that new residential dwellings can come forward as part of a mix use scheme with other town centre uses or on sites away from the main pedestrian routes and shopping frontages to provide a suitably vibrant mix of uses in the area. The supporting text to Policy 7 of the GNP states that where buildings are no longer suitable for re-use (for example, because the design of the building does not meet the requirement of most modern retail outlets), they can be redeveloped, providing an opportunity to incorporate retail or other town centre uses, potentially with flats or apartments on the upper floors or in areas away from the main pedestrian thoroughfares. It also recognises the importance of redeveloping sites to enhance the character of the town centre.
17. It is reasonable to draw the conclusion from the marketing exercise undertaken that the existing building is no longer suitable for re-use. The appeal proposal would incorporate a retail unit, albeit with a significantly reduced floorspace area, and provide residential accommodation away from a main pedestrian

thoroughfare. The appellant argues that the retail floorspace offer would be more relevant to the current market and the Council's Economic Development Officer is satisfied that the amount of floorspace being provided is acceptable. In this respect, there would be no conflict with Policy 7 of the GNP.

18. Paragraph 90 of the Framework requires a positive approach to growth, management and adaptation to support the role of town centres. In the particular circumstances of this appeal, the current site has been vacant for around ten years and has not been contributing to the vitality and viability of the town centre during that time. Genuine attempts have been made to find new occupiers indicating that the building is no longer suitable for re-use. The proposed redevelopment would enhance the character of the town centre, provide additional housing and some commercial floorspace.
19. In the absence of substantive evidence from the Council that the loss of the retail floorspace would be detrimental to the vitality and viability of the town centre, overall I find no conflict with Policy 7 of the LP which permits the redevelopment of buildings which are no longer suitable for re-use as part of a mix use scheme with other town centre uses with apartments on upper floors or in areas away from the main pedestrian thoroughfares.

Other Matters

20. I have before me a signed and sealed Section 106 Agreement ('planning obligation') to secure the on-site provision of open space and local area of play and financial contributions towards off-site provision of primary and secondary education; acute, community and primary care branches of the NHS; and open space provision and maintenance.
21. The Council have provided documents which set out the need for major housing developments to maintain and enhance the level of grey, green and social infrastructure as required by Policies 13, 14 and 15 of the LP.
22. The appellant accepts that whilst the scheme cannot bear policy compliant financial contributions in full, there is a need to mitigate the effects of the development where possible and therefore a lower level of contribution has been agreed between the appellant and the Council.
23. In the particular circumstances of this case, I am satisfied from the information provided that the submitted planning obligation is directly related to the development proposed, fairly and reasonably related in scale and kind, and necessary to make the development acceptable¹.
24. Interested parties raise concerns about the increased use of Buckingham Road by traffic associated with the appeal proposal, the inadequate number of electric vehicle charging points and lack of sufficient parking. However, the appellant has provided a Transport Assessment and the Highway Authority have concluded that the residual cumulative impact of the development in relation to highway and parking impacts would not be severe. On the evidence before me, I see no reason to disagree.
25. Interested parties have suggested that underground parking would be preferable, but that proposal is not before me.

¹ As required by Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010

26. The Council's Urban Design Officer was satisfied that the appeal proposal would create a high quality development. From all that I have seen and read and on the evidence before me, I see no reason to disagree.
27. The proposed scale of Block B and its positioning on the site would prevent overlooking and the loss of privacy to occupiers of existing properties on Buckingham Road. A condition to limit the hours of construction on site would protect the living conditions of existing residents from noise and disturbance.

Conditions

28. I have had regard to the advice in the Planning Practice Guidance and the conditions provided by the Council. The appellant has had sight of those conditions and has not indicated that I should not impose them. I have considered these and imposed them where they meet the tests set out in Paragraph 56 of the Framework, amending where necessary for the sake of simplicity, clarity and precision.
29. In addition to the standard time limit (1), I have imposed a condition requiring that the development is carried out in accordance with the approved plans (2). This is in the interests of certainty.
30. Three pre-commencement conditions are necessary and the appellant has given their consent in writing that these may be imposed. A condition requiring a Construction Traffic Management Plan is necessary in the interest of highway safety (3). A condition requiring the submission of a surface water scheme is necessary to ensure that arrangements are in place for the disposal of surface water and on-going maintenance (4) and a Construction and Environmental Management Plan and Landscape Ecological Management Plan is necessary to secure the necessary biodiversity enhancements (5).
31. A condition requiring details of the proposed materials is necessary in the interests of visual amenity (6). Conditions securing a landscaping scheme and its ongoing management and maintenance are reasonable in the interests of the character and appearance of the area (7,8).
32. A condition restricting construction times is necessary in the interests of protecting the living conditions of residents (9). Conditions to ensure the remediation of contamination and potential contamination are necessary to ensure the site is safe for the use proposed (10,11).
33. Conditions requiring that access, visibility, parking and turning areas are provided and suitably bonded and thereafter retained are necessary in the interests of highway safety (12,13,14,15). Conditions are also necessary to secure cycle parking, electric car charging points and a travel plan to encourage the use of sustainable transport modes and ultra-low emission vehicles (16,17,18).

Conclusion

34. For the reasons set out above, I conclude that the appeal should be allowed.

Alison Fish

INSPECTOR

Schedule of 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 the following approved plans:

21035-0100-P Rev 2 - Location Plan
21035-0100-P Rev 2 - Site Plan
21035-2100-P Rev F - Masterplan Ground Floor Plan – Proposed
21035-2101-P Rev C - Masterplan First Floor Plan – Proposed
21035-2102-P Rev C - Masterplan Second Floor Plan – Proposed
21035-2103-P Rev C - Masterplan Third Floor Plan – Proposed
21035-2104-P Rev C - Masterplan Fourth Floor Plan - Proposed
21035-2201-P Rev 2 - Masterplan Section/Elevation - Proposed
21035-2110-P Rev B - Block A - Ground Floor Plan – Proposed
21035-2111-P Rev B - Block A - First Floor Plan – Proposed
21035-2112-P Rev B - Block A - Second Floor Plan – Proposed
21035-2113-P Rev B - Block A - Third Floor Plan – Proposed
21035-2114-P Rev B - Block A - Fourth Floor Plan - Proposed
21035-2211-P Rev 1 - Block A - Section A1/C1 – Proposed
21035-2212-P Rev 1 - Block A - Section A2 – Proposed
21035-2213-P Rev 1 - Block A - Section A3/C4 – Proposed
21035-2214-P Rev 1 - Block A - Section A4/C3 – Proposed
21035-2215-P Rev 1 - Block A - Section A5/C5 – Proposed
21035-2216-P Rev 1 - Block A - Section A6 – Proposed
21035-2311-P Rev C - Block A - North Elevation – Proposed
21035-2312-P Rev C - Block A - East Elevation – Proposed
21035-2313-P Rev C - Block A - South Elevation – Proposed
21035-2314-P Rev C - Block A - West Elevation - Proposed
21035-2120-P Rev A - Block B - Floor Plans – Proposed
21035-2217-P Rev 1 - Block B - Section B1 – Proposed
21035-2218-P Rev 1 - Block B - Section B2 - Proposed
21035-2219-P Rev 1 - Block B - Section B3 – Proposed
21035-2321-P Rev 1 - Block B - North and East Elevation – Proposed
21035-2323-P Rev 1 - Block B - South and West Elevation – Proposed
21035-2130-P Rev A - Block C - Floor Plans – Proposed
21035-2220-P Rev 1 - Block C - Section C2 – Proposed
21035-2331-P Rev A - Block C - North, East, South and West Elevation – Proposed
21035-5000 - Proposed Bin Store 1
21035-5001 - Proposed Bin Store 2
21035-5002 - Proposed Cycle Store

3. No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Traffic Management Plan shall be implemented in accordance with the approved details.

4. No development shall commence until a detailed surface water management scheme for the site based upon the hydrological and hydrogeological context of the development, including clarification of how surface water is to be managed during construction, has been submitted to, and approved in writing by the local planning authority. The submitted details shall include a timetable for its implementation and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. The development shall be carried out in accordance with the approved details. The surface water system shall be managed and maintained thereafter in accordance with the approved details.

5. No development shall commence until a Construction Environmental Management Plan (CEMP) and Landscape Ecological Management Plan (LEMP) (referred to in the Preliminary Ecological Appraisal dated March 2022 and Ecological Impact Assessment dated June 2022 by Richard Green Ecology) which shall incorporate the measures set out in the Biodiversity Plan certified by the Dorset Council Natural Environment Team on 11 July 2023 and include a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The approved CEMP and LEMP shall be implemented in accordance with the approved timetable.

6. Prior to development above damp proof course level, details and samples of all external facing materials for the walls and roofs shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be carried out in accordance with the agreed details.

7. Prior to any construction taking place above damp course level, full details of both hard and soft landscape works, including the communal garden area, and a timetable for their implementation shall be submitted to and approved in writing by the local planning authority. The approved hard and soft landscape works shall be carried out in accordance with the approved details and in accordance with the agreed timetable. If within a period of 5 years from the date of completion of the development any tree or plant is removed, uprooted, destroyed, dies or becomes seriously damaged or diseased, it shall be replaced in the next planting season with a tree or plant of a similar size and species.

8. Prior to any construction taking place above damp course level, a Landscape Management Plan, including long term design objectives, management responsibilities, maintenance schedules and a timetable for implementation and/or phasing for all landscape areas (other than small, privately owned domestic gardens,) shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development. Thereafter the Landscape Management Plan shall be implemented in accordance with the approved details.

9. Demolition or construction works shall take place only between the hours of 0700 – 1900 on Mondays to Fridays, 0800-1300 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.

10. The development hereby approved shall be carried out in accordance with the terms and findings of the Phase 1 Desk Study by AG Geo-Consultants Ltd dated 7 March 2022. The local planning authority shall be given two weeks written

notification of commencement of the remediation scheme works. None of the development shall be occupied until the approved scheme of remediation has been completed, and a verification report demonstrating the effectiveness of the remediation carried out has been submitted to and approved in writing by the Local Planning Authority.

11. Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development, or relevant phase of development, shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

12. The development hereby permitted shall not be occupied until the access, parking and turning areas have been constructed in accordance with details shown on Drawing Number 21035-2100-P Rev D. Thereafter, these shall be maintained, kept free from obstruction and available for the purposes specified.

13. Before the development is occupied, the first 10.00 metres of the vehicle access from the High Street, measured from the rear edge of the highway shall be laid out and constructed in accordance with a specification which shall have been submitted to and approved in writing by the local planning authority.

14. Before the development is occupied or utilised the first 5.00 metres of each vehicle access from Buckingham Road, measured from the rear edge of the highway shall be laid out and constructed in accordance with a specification which shall have been submitted to and approved in writing by the local planning authority.

15. Before the development is occupied, the first 5.00 metres of any access, access crossing and drive must be constructed to a gradient not exceeding 1 in 12.

16. Before the development is occupied the cycle parking facilities shown on Drawing Numbers 21035-2100-P Rev F and 21035-5002 shall have been constructed. Thereafter, these shall be maintained, kept free from obstruction and available for the purposes specified.

17. The development hereby permitted shall not be occupied until the precise technical details of the electric vehicle charging points and parking bays shown on Drawing Number 21035- 2100-P Rev F shall have been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be constructed prior to the development being occupied and thereafter, shall be maintained, kept free from obstruction and available for the purpose specified.

18. Before the development hereby approved is occupied, a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan, shall provide for:

- Measures to promote sustainable travel; and,
- Travel plan implementation and a monitoring schedule.

Thereafter the Travel Plan shall be implemented in accordance with the approved details.

End of Schedule