
Appeal Decision

Site visit made on 5 November 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2024

Appeal Ref: APP/K0425/W/24/3336594

280 Main Road, Walters Ash HP14 4TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
 - The appeal is made by Mr N Smith of J Smith & Sons (Walters Ash) Ltd against the decision of Buckinghamshire Council - West Area (Wycombe).
 - The application Ref is 21/08463/FUL.
 - The development proposed is demolition of existing commercial buildings on site and replacement with mixed use development consisting of A1 retail to ground floor and C3 residential flats to first floor plus associated landscaping, parking, and servicing for both uses.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the above banner heading has been taken from the original application form. The decision notice includes works to accesses and I have determined the appeal accordingly.
3. A screening direction was issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulation 14 (1) and 7 (5) of the EIA Regulations, the Secretary of State directed that the development is not EIA development.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the living conditions of existing occupiers of surrounding properties with particular regard to privacy and noise and disturbance; and
 - The effect of the proposed development on the character and appearance of the site and surrounding area, including the Chilterns National Landscape (formerly known as the Chilterns Area of Outstanding Natural Beauty (AONB)).

Reasons

Living conditions

5. The appeal site relates to a roughly rectangular plot situated along Main Road through the village of Walters Ash. The site is currently occupied by a tyre

business with a number of buildings located predominantly towards the rear – northeast boundary and along the side – northwest boundary with parking and storage areas towards the front and along the southeastern side. Two access points give entry into the site from Main Road to the west and the site is bound by residential properties on three sides with others located across the road on the opposite side of Main Road. The site is situated within the Chilterns National Landscape (formerly known as the Chilterns AONB).

6. The proposed development seeks planning consent for the demolition of the existing buildings on the site and its redevelopment for a mixed use, comprising a retail unit on the ground floor and four, two-bedroom flats above. The proposal also involves the alteration of the two existing access points to the site and the provision of parking and landscaping.
7. The properties located along Allen Drive to the northeast have their rear elevations facing onto the appeal site along with their rear amenity areas which are shallow in depth. The closest of these properties are No 20 and 21 Allen Drive. The proposed flats above the retail unit would have a number of habitable room windows to the rear facing the properties along Allen Drive.
8. At my site visit, I observed the relationship that exists between the appeal site and the properties along Allen Drive including their amenity areas. The shallow depth of the rear garden areas particularly No 20 and 21, means that their rear elevations are in close proximity to the appeal site and its boundary with only short garden areas separating the two. The presence of the appeal site was very apparent from the properties located along Allen Drive with the existing buildings being very close to and clearly visible above the boundaries. This is largely due to a level difference which exists across the site sloping down from the west to east towards Allen Drive.
9. The Residential Design Guide, 2017 (RDG) covers matters relating to achieving privacy whereby a minimum gap of 25 metres would be required between the backs of houses and flats. The RDG explains that the gap can be increased where amongst others, there are unequal relationships between the dwellings due to level differences or storey heights.
10. The proposed rear windows would be at a distance of 23.5 metres from the properties in Allen Drive which is below the required standards as set out. Additionally, the proposed residential flats would sit at a higher level than the dwellings located along Allen Drive and thus there would be an unequal relationship between the properties which would further exacerbate any impact.
11. Given the close relationship that exists and taking into account the above and my own observations onsite, then I consider the distance to be insufficient to ensure the privacy of the dwellings located along Allen Drive and their rear amenity areas. These existing properties particularly No 20 and 21 would be overlooked from a number of the habitable room windows at first floor level, and I consider that a greater distance of that proposed would be required in the particular circumstances of this case. Lower separation distances may have been accepted elsewhere although this would not bring me to a different conclusion as I have determined the appeal based on its own merits and site-specific context.

12. One of the flats to the rear would have doors opening out onto a balcony and a communal roof terrace is proposed over the flat roof rear section for the occupiers of the flats. These elements would be closer to the rear boundary although a living plant based visual screen with further planting around the perimeter of the flat roof is proposed to help restrict views. Such enclosures/treatments for the communal terrace and balcony including ensuring they are sufficiently high enough so that privacy is retained for those properties to the rear, and those either side of the site could be secured by an appropriately worded planning condition were I minded to allow the appeal. This element is therefore of lesser concern to me but would not overcome the other harm I have identified in relation to privacy.
13. Given the overall small size of the communal terrace, I am not convinced that this area would lead to large communal gatherings which would result in significant levels of noise and disturbance to nearby residents over and above what can otherwise be expected in a residential setting. Many properties including flats have amenity spaces which vary in size and such situations are not uncommon in close proximity to other residential uses. This area would also not be the only sitting out area for occupiers of the flats as they also have the use of a balcony space as an alternative. This means that occupiers would not be totally reliant on the space to the rear which is likely to reduce its use. On balance, I do not find that the size of the communal terrace in this case would result in unacceptable noise nuisance and disturbance to existing residential amenity.
14. In coming to these findings, I have had due regard to the extent of the rear wing, boundary treatments and the existing garages/buildings that exist within neighbouring gardens, but this would not alter my findings as a number of the habitable room windows to the rear would still provide for overlooking opportunities across the site towards No 20 and 21 which is exacerbated by the proposed flats sitting at a higher level than these dwellings. The proposed use of these rooms as bedrooms would also not alter my findings as occupiers would still spend time utilising the bedroom spaces whereby in this case, the privacy of neighbouring properties would be compromised to an unacceptable degree.
15. In terms of noise and disturbance, the site is currently in commercial use, which includes deliveries to the site, vehicles arriving and leaving without any restriction on hours of use. However, I understand that the site is currently used during normal daytime hours in an otherwise quiet residential area. At my site visit, I found that the operations taking place were not particularly noisy although this is only a snapshot in time and not determinative although this would align with third party representations regarding the levels of noise of the existing use being relatively minimal. The proposal would intensify the use of the site with an increase in customer movements both on foot and by vehicle. It would entail deliveries throughout the day and visitors throughout the day and up until late into the evening. I acknowledge some of the existing operations/activities put forward and appreciate that there may be higher peaks, but I am not sufficiently convinced that levels of noise created would be less than the normal operations of the existing use on site. This is not only because of the nature of both uses but also the difference in opening hours whereby the proposed use would be at times when more people will likely be at home during the evenings opposed to during the day when they may be at work/schools etc.

16. The activities associated with the proposed use include amongst others; access and egress, opening and closing of doors, loading and unloading of products including vehicle hoist movements and movement of cages, associated plant/machinery, staff/customers conversing, music playing from vehicles etc. These would all be an emitter of noise which needs to be carefully considered having regard to this predominantly residential context. The proposed parking spaces and the delivery vehicle turning area would be located down the side boundaries and towards the rear boundary within close proximity of neighbouring properties and their garden areas. On this basis, such activities have the potential to impact the living conditions of those located nearby particularly in the early mornings and the evenings.
17. I acknowledge that a condition can be imposed to restrict deliveries to certain times of the day whilst also requiring details of any plant/machinery. It cannot however be assumed that for the remainder of the time there would be very little noise. Moreover, noise does not just come from the deliveries and plant/machinery taking into account the other activities associated with the site as identified. There would be no restriction over these uses other than the opening hours of the store which is indeed proposed to open until late in the evening and the level of noise and disturbance created by such uses would be difficult to control. Vehicles may have developed overtime making them quieter, but this would not be sufficient to overcome the harm identified and it cannot be assumed that all vehicles would be quiet.
18. I have had regard to the mitigation measures proposed including acoustic fencing although I find there to be a general lack of supporting information relating to the operations of both the existing use of the site and proposed use. Consequently, the levels of noise in comparison to the existing use of the site and effectiveness of such mitigation measures cannot be fully understood. Taking into account the increased comings and goings, the intensification of the use of the site, coupled with the late opening hours and a lack of information to demonstrate how noise and disturbance would be controlled, then I cannot conclude with certainty that the proposed use would not be detrimental to the amenity of nearby residents. I appreciate that the opening hours may be similar to other retail units in residential areas in the district and that there may be no issues in terms of noise at other premises. This would not however alter my findings as I have determined this appeal based on its own merits.
19. I am aware of concerns regarding people congregating on the site after hours although I have no compelling evidence to suggest that this would be the case or that this could not be overcome by other means such as the installation of CCTV etc. This matter is therefore of lesser concern to me.
20. For the above reasons, I conclude that the proposed development would unacceptably harm the living conditions of existing occupiers of surrounding properties with particular regard to privacy and noise and disturbance. It would therefore be contrary to Policy DM35 of the Wycombe District Local Plan, 2019 (LP) which amongst other matters, seeks to prevent significant adverse impacts on the amenities of neighbouring land and property.

Character and appearance

21. The proposed building would be located fairly centrally on the site with the two-storey element towards the front of the site with a single storey projection

to the rear. The development would retain the two points of vehicle access albeit slightly altered with parking for the flats, staff and service access located from the northernmost access and customer parking from the southernmost access. Landscaping and tree planting would be located within and around the parking areas and I have had due regard to the Landscape Masterplan submitted for the scheme.

22. The building would be located closer to the front boundary than the existing built form with a large frontage width and depth. However, despite being close to its boundary to the rear which is discussed further below, there is otherwise a good level of space around the building to the north, south and west which would allow for a sense of openness and space surrounding the building whilst not appearing as overdevelopment of the land. Although these areas would largely be given over to access and parking, these areas are already occupied by large expanses of hardstanding with a number of buildings and parking/storage areas. There is also sufficient space for landscaping and tree planting within and around the parking areas which could be secured by condition were I minded to allow the appeal along with long term management/maintenance of these areas. This would help to screen and soften the development and would result in more planting over and above that of the existing site which is welcomed.
23. As referred to above, there would be limited space remaining at the rear boundary of the site. Nonetheless, the existing buildings already occupy a proportion of this area which would be removed with the proposed building brought further forward with a single storey wing located to the rear and the two-storey element towards the front of the site. On this basis, the rear most part of the site would not be any more harmful than the existing buildings onsite in terms of visual outlook from surrounding properties.
24. Given the overall footprint and mass, the proposed development would increase the built-up appearance of the site over and above that of the existing. It would nevertheless be seen in context of the built-up frontage along Main Road including predominantly two storey residential properties but also some commercial uses that are located along the road. The height of the building would also be below that of the property to the northwest, and slightly above that of the property to the southeast reflecting the change in levels across the site and thus being in keeping with the neighbouring buildings along Main Road. This, together with the level of space retained to the majority of the site boundaries, then I cannot agree that its impact would be significant in visual terms nor particularly harmful in the street scene and from the immediate surrounding properties. The Council explain that the reduction in the size of the building would in turn lead to reduced parking provision and thus allowing more space for landscaping. Whilst this may be the case, I do not find it necessary given my overall findings on this matter.
25. Residential properties surrounding the site comprise traditional brick-built properties with traditional pitched roof forms. Although a more contemporary design approach is proposed to reflect the nature of the proposed use which is retail with residential uses above, it would still include some traditional materials comprising bricks for the ground floor element. Full length windows on two sides are proposed and dark grey metallic panels would clad the first floor, with silver grey projecting window reveals. Balconies are provided as an integral part for the upper floor flats and the building would have a flat roof

design. Although the design approach differs from the domestic style of the neighbouring dwellings, I can understand the appellants' claims that attempting to design such a traditional style building would not be appropriate, given that the proportions required for a retail unit do not lend themselves to this approach. Additionally, the flat roof element does allow the overall height of the building to remain in keeping with that of its neighbours to the front and such flat roofs as well as a variety of designs are found within the wider context. On this basis, I find the development to be appropriate in this context and would indeed create some visual interest for this location.

26. For the above reasons, the proposed development would not unacceptably harm the character and appearance of the site and surrounding area including the Chilterns National Landscape (formerly known as the Chilterns AONB). It would therefore comply with Policies DM35, CP9 and DM30 of the LP in this regard. Such policies amongst other matters, require all development to improve the character of the area and the way it functions whilst conserving, and where possible enhancing, the natural beauty of the AONB. For the same reasons, the proposed development would also comply with sections 12 and 15 of the National Planning Policy Framework (the Framework) relating to achieving well-designed and beautiful places and conserving and enhancing the natural environment.

Other Matters

27. The appellant claims that the Council is under performing in terms of its housing land supply and makes reference to various parts of the area. The Council has confirmed that the most recent position statement for the Wycombe District Local Plan area identifies a 5.4 year supply. On this basis and without any compelling evidence to the contrary, the tilted balance as set out at paragraph 11 d) of the Framework is not engaged.
28. The proposed development would provide both an economic generating use and housing provision. There are benefits associated with this along with other benefits such as energy efficiency and biodiversity enhancements which I have considered. I am also aware of changes made to the scheme and efforts made in this regard following discussions with the Council. Such matters would not however be sufficient to outweigh the harm identified taking into account my findings on the living conditions of existing occupiers of surrounding properties.

Conclusion

29. Although I have found a lack of harm in relation to character and appearance matters, I have found harm to the living conditions of existing occupiers of surrounding properties with particular regard to privacy and noise and disturbance. It follows that the proposal conflicts with the development plan and there are no material considerations, including the advice of the Framework, which would outweigh this conflict.
30. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

N Teasdale

INSPECTOR