



Appeal Decision

Site visit made on 7 January 2025

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th April 2025

Appeal Ref: APP/M2840/W/24/3345309

105 High Street, Rushden, Northamptonshire NN10 0NZ

- 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 Briggs & Hulland Ltd against the decision of North Northamptonshire Council.
 - The application Ref is NE/22/00909/FUL.
 - The development proposed is demolition of existing public house (class C4) and erection of three-storey building to a mixed use consisting of 2-retail (class E), 2 offices (class E & 10 two bedroom apartments with associated access, car parking, refuse storage & landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council's determination of the planning application and the submission of this appeal, revised versions of the National Planning Policy Framework (the Framework) were published in December 2023 and December 2024. The further comments of both main parties have been sought in respect to the publication of the latest version of the Framework and its relevance to their respective cases. References to Framework paragraphs hereafter are to the current December 2024 version. I have determined the appeal accordingly and in so doing I am satisfied that neither main party would be disadvantaged.

Main Issues

3. The main issues are:

- The effects of the proposed development on the living conditions of future occupiers of the proposed apartments, with particular regard to the provision of external amenity space and outlook;
- The provision of affordable housing;
- The effects of the proposed development on the Upper Nene Valley Gravel Pits Special Protection Area (SPA);
- Whether or not the proposed development would preserve or enhance the character or appearance of the Rushden Conservation Area (the CA); and
- Surface water drainage.

Reasons

Living conditions

4. With regard to the residential element of the appeal scheme, there would be no provision of any communal private amenity space. The appellant has directed me

to the provisions of Rushden Neighbourhood Plan (RNB) Policy CL2 which seeks to secure open space and amenity space on schemes that result in a net gain of 15 or more dwellings, or on sites of greater than 0.42 hectares in area. The supporting text to this policy goes on to state that it is recognised that certain developments may not have scope to incorporate open space and, in such circumstances, that alternative ways to secure such provision offsite may be pursued.

5. Nevertheless, East Northamptonshire Local Plan Part 2 (ENLP2) Policies EN2 and EN11 and North Northamptonshire Joint Core Strategy (JCS) Policy 8 set out the Council's development and design principles and seek to support proposals. Amongst other things, these policies together seek to ensure that developments respect the importance of open greenspace, incorporate accessible and well-designed amenity space and make safe and pleasant streets and spaces and creating safer and healthier communities through access to amenity space.
6. It may well be that RNP Policy CL2 does not actively seek to secure the provision of open space and amenity space within developments of fewer than 15 dwellings. However, there would be no amenity space, whether private or communal, provided for the proposed apartments. There would be no balconies or patios associated with the individual apartments, whilst the surface areas of the site would be dedicated to the movement and parking of vehicles, providing access and servicing to the commercial and office units and for cycle and refuse storage.
7. Rather, what little space there would be within the layout for landscaping would be on sloping ground alongside the ramped private access leading to the adjacent car park and retail unit. It would be neither accessible, usable nor conveniently located for any of the residential units. Nor would residents be able to benefit from, for example, the ability to sit outside or to air their clothes outside. The relative proximity to Hall Park, stated as being an approximate 7-minute walk, would not in my judgement adequately compensate for the relatively mundane, but nevertheless important day-to-day activities, that a resident might expect to be able to undertake on a balcony, patio or terrace more closely associated with an apartment or flat.
8. Moreover, in the absence of amenity open space, communal areas or private amenity space, the close outlook from many of the residential units would be across the car park area. Such an outlook may not necessarily be unexpected within a built-up urban context, whilst the residential units would be located on upper floors and thus benefit from a degree of elevation over and above the car park for an outlook towards tree canopies of the neighbouring site, the layout of the site arising from the quantum of development proposed is such that the outlook would be unduly and harmfully dominated by vehicle access, parking and servicing. For these reasons, the appeal scheme is in conflict with the provisions of ENLP2 Policies EN2 and EN11 and JCS Policy 8 and fails to achieve the high-quality form of development and living spaces that together they seek to secure.

Affordable housing

9. It seems that there was broad agreement between the two main parties as to the requirement of the proposed development to make appropriate provision for affordable housing. JCS Policy 30 sets out the Council's approach to housing mix and tenure, requiring affordable housing provision of 30% on private sector developments of 15 or more dwellings. At 10 dwellings, the appeal scheme did not meet the JCS threshold for making provision.

10. However, at the time of the Council's determination of the application, the Council drew on the provisions of paragraph 66 of the December 2023 iteration of the Framework to seek at least 10% affordable housing provision on 'major' developments. The current version of the Framework differs in its approach to affordable housing provision at paragraph 66. Whilst consistent in stating that affordable housing should not be sought on developments that are not major developments, where major developments involving the provision of affordable housing are proposed, the expectation is that the mix of affordable housing should meet identified local needs.
11. Neither party has commented directly on the implications of the latest version of the Framework in respect of affordable housing provisions arising from the appeal scheme. However, the appellant's Statement of Case reiterated that it was 'always [the appellant's] intention that some form of affordable housing would be required' and that it could take the form of a contribution with a commuted sum. Equally, I have not been presented with any evidence from the Council that a single affordable dwelling would not meet, or work towards meeting, identified local needs. For a major development such as the appeal scheme, the appellant's approach would at least be consistent with the Framework and would follow the principles that appear to have initially been agreed between appellant and the Council.
12. However, whilst that may be so, it remains the case that there is no mechanism before me by which to secure such affordable housing provision. It appears that this may have been something that the appellant had sought to pursue with the Council, but without success. Although the development plan policy imperative for the provision of affordable housing is not met with a scheme of this scale, the Framework's provisions in this respect are a recent material consideration to which I give significant weight. The nature of these requirements has changed with the publication of the 2024 Framework, but I am satisfied that it would not be unreasonable for a scheme of this nature and scale to make provision for affordable housing in this context and the context of previous agreement between the parties in this regard. In the absence of a mechanism to secure such provision however, the scheme is contrary to the broad approach to housing mix and tenure set out in JCS Policy 30 and supported by the supporting text and the Framework of seeking to meet specific, local housing needs.

The Upper Nene Valley Gravel Pits Special Protection Area (SPA)

13. The appeal site lies within the zone of influence of the Upper Nene Valley Gravel Pits Special Protection Area (SPA). The Council adopted a Supplementary Planning Document¹ (SPD) on the SPA in 2015 which identified recreational disturbance as the most significant threat to the SPA. The SPA itself is noted for its bird populations, particularly seasonal populations of bittern, golden plover, gadwall and mallard amongst others. Residential development resulting in 10 apartments would be expected to contribute to increased recreational disturbance impacts from the occupiers of those additional residential units upon the bird populations for which the SPA is noted.
14. It is common ground between the parties that a previous application² to develop the appeal site had been subject to an appropriate financial contribution to mitigate the

¹ Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document (August 2015)

² LPA Ref No: 19/01569/FUL

adverse impacts arising from increased recreational disturbance. The payment was retained by the Council and it was agreed that the appeal scheme was to pay a 'top-up fee' to cover the additional dwelling units and inflation in the intervening period. It seems, however, that the appellant was unable to ascertain the exact amount of the 'top-up' payment despite repeated attempts to do so³. Nor do I have before me evidence confirming the amount payable, whether just the 'top-up fee' or the cumulative amount.

15. Whilst I have some sympathy for the appellant in attempting, and seemingly failing, to receive confirmation of the additional amount payable, it remains the case that a payment had not been made at the time of the Council's determination of the matter. Nor have I been provided with any confirmation that the required payment has since been made, or that an appropriate mechanism exists to secure its payment. Whilst the appellant's intentions are not doubted, in the absence of such, it has not been adequately demonstrated that the appeal scheme would not result in unacceptable harm to the integrity of the SPA and its habitat as a consequence of increased recreational disturbance. I am not therefore persuaded that the appeal scheme would make appropriate provision to mitigate its impact on the SPA and as such does not accord with JCS Policy 4 or the guidance set out within the SPD and Framework.

Character and appearance

16. The appeal site is a large town centre site situated on High Street. The High Street site frontage is occupied by the remains of a former public house, damaged by fire in 2018, and which has remained derelict since.
17. The application was initially accompanied by a structural survey of the building, carried out in August 2022, at which point parts of the building and its High Street façade existed to first floor level and was surrounded by scaffolding. However, at the time my visit to the site the High Street frontage had been reduced to ground floor level, the scaffolding removed and the site enclosed by solid timber panel fencing. It is clear therefore that the building and site has been an untidy and unattractive presence within High Street for an extended period of time.
18. The site extends a considerable distance to the rear to a retaining wall and embankment above the adjoining retail unit and car park on Duck Street, with a lengthy spur that extends behind other High Street commercial premises and links up with West Street. The former public house dated back to the 1930's and was itself a replacement of a previous public house on the same site. There is a broad agreement between the parties that the public house previously made a positive contribution to the character, appearance and significance of the Rushen Conservation Area.
19. From the plans and photographs set out within the submissions of both parties, I agree. A centrally positioned projecting two storey bay was flanked on each side by a two storey, triple bay with vertically aligned window openings, with a pleasing sense of symmetry across the façade. The hipped roof was well-proportioned and whilst the building sprawled towards the rear of the site with flat roofed two storey and single storey additions, the façade was a well-balanced and proportioned component of the High Street streetscene.

³ Appendix 18 Planning Appeal Statement (May 2024) – various e-mails

20. It is clear that the design of the proposed frontage building has attempted to reflect elements of the previous building in its appearance. It too would incorporate a centrally positioned, projecting two storey bay with an overall form not dissimilar to that which it would replace. The building's main façade would also have a degree of symmetry and balance, with the central bay flanked on either side by slightly recessed double bay elevations.
21. However, the proposed building would lack the more modest and well-balanced proportions of the previous building. Although three storey buildings are not absent from High Street, and indeed there are 3 storey buildings opposite, and close to, the appeal site they are generally more traditional in their appearance and proportions, featuring pitched roofs, peaked gables and dormer windows set into the roofs. Similarly, flat roofed buildings are present along High Street and also on College Street close to the appeal site. However, where flat roofed buildings are present, I saw that they generally, although by no means exclusively, tend to be two, rather than three storeys in height.
22. Despite the slightly awkward, barely set-back side element to the frontage building with its mansard roof, the proposed building would nevertheless pleasingly reflect the positive elements and proportions of the previous building. Amongst a streetscape of rising and falling facades and rooflines, the extra height and bulk of the additional storey in this instance would not cause harm when viewed in its surrounding context. I am not persuaded that its increased visual prominence, by way of its additional height, would be harmful in, and of, itself, or to the character or appearance of the High Street or the wider Rushden Conservation Area.
23. It is stated that the previous building had a crown roof, whereas the proposed frontage building would be largely flat roofed. In practice, I am not persuaded that the flat roof of the proposed building would be harmful and it would, other than the additional storey, be largely similar to the form of the buildings on either side of it. Nor would it be inconsistent with the wider mix of scale, bulk and massing present in buildings along High Street and its flat roof nature would be no more evident than other large flat roofed buildings, such as those that have been brought to my attention on College Street.
24. With regard to the second building, located to the rear of the frontage building, depth of development in plots that extend rearwards from High Street is not uncommon, whether with in the form of single larger and deeper buildings, or with detached buildings on land to the rear. The layout of buildings and the built form on plots to the north of the site between it and West Street provide ready examples. Nor, when viewed from the west, would the presence of a building of the nature proposed appear incongruous or contrived when set against the buildings around it on the rear of these plots, as well as those buildings that line High Street.
25. Indeed, it is not explained what it is about the rear building that the Council consider to be contrived. The building would, I accept, be located close to the rear of the frontage building, and whilst I consider the implications of this in terms of living conditions of future occupiers elsewhere, I do not find this degree of proximity to be harmful to the character or appearance of the appeal site, the surrounding area or the wider CA.
26. Furthermore, whilst the proximity of the buildings to each other, and the consequential effect that this would have on outlook is considered in relation to

living conditions, I do not find this to be out of keeping with the surrounding urban grain and built form. Furthermore, although the remaining space around the buildings at the rear would be dominated by car parking and manoeuvring space for vehicles, service yards and similar such layouts are not uncommon in commercial settings. There may not be much scope for provision for landscaped areas or outdoor amenity space within the scheme, but any harm that arises from that manifests itself more directly in terms of living conditions rather than in terms of character and appearance in the context of a development site in a central, largely commercial setting.

27. Thus, whilst I have found harm in relation to the site layout and position of buildings in terms of effects upon living conditions, the proposed development would avoid harm to the character and appearance of the surrounding area. The development of the site frontage to High Street would have a positive effect on the character and appearance of the High Street, albeit that the positive effect of the removal of the currently fire-damaged building and the site's redevelopment on the CA would be localised. Nevertheless, the appeal scheme would in overall terms result in a neutral effect overall on the character and appearance of the CA, thereby preserving its character and appearance and this adds weight to my conclusion that there would be no harm to the character and appearance of the appeal site, surrounding area and the CA as a whole.
28. ENLP2 Policies EN2 and EN11 and JCS Policy 8 together set out the Council's approach to development principles and securing high quality design. For the reasons set out, the appeal scheme would be consistent with the aims and provisions of these policies and would preserve the character and appearance of the Rushden Conservation Area, a matter to which I am required to pay special attention to by virtue of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Surface water drainage

29. In order to accompany the appeal, the previously submitted Flood Risk Assessment⁴ (FRA) was accompanied by an additional site drainage layout⁵, storm water calculations⁶ and e-mail correspondence⁷ that sought to respond to the Lead Local Flood Authority's (LLFA) comments at the planning application stage. These, the appellant contends, would address the issues identified by the LLFA in their consultation response to the planning application. It is stated by the appellant in submissions that these were previously submitted to the Council for consideration at the application stage, but no further comments were forthcoming.
30. Despite the clearly signposted inclusion of this evidence within the appellant's appeal submissions, both the Council and LLFA have maintained their respective positions regarding the absence of information required to address previously stated concerns. It seems to me however, that the evidence is clearly signposted within the appellant's submissions and seeks to address the comments previously raised. Notwithstanding the positions of the Council and LLFA regarding this matter, it seems to me that such matters of a technical nature could be reasonably and suitably addressed by way of a pre-commencement condition which may, or

⁴ Appendix 9 Planning Appeal Statement (May 2024) - VJS Projects Ltd 'Flood Risk Assessment' (Ref VJS/2027/FRA) dated Oct 2022

⁵ Appendix 17 Planning Appeal Statement (May 2024) – Drwg No: 2012 – 006 Revision A (Drainage Layout & Construction Details)

⁶ Appendix 16 Planning Appeal Statement (May 2024) – Noonan Engineering Limited (13/10/2023)

⁷ Appendix 18-v Planning Appeal Statement (May 2024) – email dated 17 October 2023

may not, be based upon the additional information submitted by the appellant to this appeal. Thus, should the appeal succeed, I am satisfied that such matters could be adequately dealt with in this manner and there would be no conflict with JCS Policy 5 which sets out the Council's approach to reducing the risk of flooding and to the protection and improvement of the quality of the water environment.

Other Matters

31. The appellant has sought to address further comments from the local highway authority, albeit noting that these did not constitute any part of the reasons for refusal. As the Council have indicated in the list of suggested conditions, such matters could be controlled by way of planning condition. In the event that the appeal had succeeded, I agree that that could have been the case.

Conclusion

32. The appeal scheme would preserve the character or appearance of the Rushden Conservation Area and would not cause harm to the character or appearance of the appeal site or the surrounding area. The benefits that would arise from the redevelopment of a fire-damaged site in a prominent location on High Street is a matter to which I give substantial weight. I am also satisfied that matters relating to the provision of adequate surface water drainage is a matter that could be satisfactorily dealt with by way of a suitably worded planning condition. However, these matters should not be achieved at the expense of adequate living conditions for future occupiers, without making adequate provision for affordable housing provision or sufficiently mitigating pressure from increased recreational disturbance to the SPD.
33. Thus, for the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR