



Appeal Decision

Site visit made on 24 July 2017

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15th August 2017

Appeal Ref: APP/V2255/W/17/3173734

Excelsior House, Ufton Lane, Sittingbourne ME10 1JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Wildwood Ltd against the decision of Swale Borough Council.
 - The application Ref 16/505541/FULL, dated 29 June 2016, was refused by notice dated 19 October 2016.
 - The development proposed is conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments.
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Decision

1. The appeal is allowed and planning permission is granted for conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments at Excelsior House, Ufton Lane, Sittingbourne ME10 1JA in accordance with the terms of the application, Ref 16/505541/FULL, dated 29 June 2016, and subject to the conditions set out in the attached schedule.

Procedural Matter

2. The Council have referred me to Policies DM14 and DM7 of the Bearing Fruits 2031: The Swale Borough Local Plan (Proposed Main Modifications June 2016) ('the LP'). Following the site visit the Council confirmed that the plan was adopted on 26 July 2017 and have provided me with copies of the relevant policies. I am required to determine this appeal on the basis of the development plan and national policy which are in place at the time of my decision and accordingly I have determined the appeal on that basis.

Application for costs

3. An application for costs was made by Wildwood Ltd against Swale Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the parking provision is acceptable, with particular regard to the effect on the living conditions of neighbouring occupiers.

Reasons

5. The appeal site is formed by a 2 storey brick building formerly in use as offices. It is located on the corner of Ufton Lane and Addington Road and within close proximity of Sittingbourne Town Centre. It has an existing car park to the side and rear accessed via gates from Ufton Lane, opposite the junction with Epps

Road. On-street parking controls are in force in surrounding streets.

6. The surrounding area is predominantly residential in character with groups of 2 and 3 storey terraced and semi-detached houses sited close to the highway. On the evidence before me there is an extant planning permission¹ for a very similar development, albeit that the parking provision for that scheme was 15 spaces, 9 for the residential units and 6 for the office use.
7. The proposal before me would result in a total of 10 parking spaces, 4 spaces for the A2 ground floor use and 6 for the residential units. Consequently, there would be a shortfall of three parking spaces compared with the maximum adopted parking standards² for the residential use and for the A2 use, there would be a shortfall of 2, giving an overall shortfall of 5 spaces.
8. Nevertheless, on-street parking spaces were available for non-permit holders for up to 2 hours, with no return within 2 hours. This would be sufficient time for users of the A2 use, even if waiting times were to be reduced to 30 minutes for non-permit holders³. Furthermore, the restrictions are from 0800 hours to 1800 hours and therefore it is unlikely there would be a material number of vehicle movements and manoeuvres at times when residents can expect a reasonable level of peace and quiet.
9. Moreover, the site is very close to the town centre and the location amounts to an area where a higher level of accessibility is likely to lead to a demonstrably lower level of average car ownership among occupants of the proposal and not all visitors to the ground floor use and residential properties would arrive by car. I also note that the relevant highway authority considered the location meant maximum parking standards were not seen as vital given the proximity of the site to the town centre⁴.
10. The Council's case appears to be based on the general amenity of residents and specific local circumstances and I have had regard to the parking evidence submitted by the Council in relation to parking demand taken in the morning and evening over a 2 day period. I also acknowledge that a petition submitted earlier this year in which residents reported parking problems caused by non-permit holders does demonstrate there are some concerns with the local parking situation although problems with the enforcement of the restrictions are not matters for me to address as part of this appeal.
11. Nevertheless, in this particular case I am not persuaded that any modest increase that may result in further demand for on-street parking spaces would result in a greater level of noise and general disturbance from people using the footpaths and from engine noise, vibrations and the opening and closing of vehicle doors to warrant dismissal of the appeal. Nor would it, on the evidence before me, lead to local residents being unable to access their properties or cause harm to highway safety.
12. For these reasons, the proposed parking provision would be acceptable and would not cause harm to the living conditions of neighbouring occupiers. The proposal would comply with Policies DM14 and DM7 of the LP which, amongst other things and when read as a whole, require that development proposals do not exacerbate on-street parking to an unacceptable degree and cause no significant harm to amenity.

¹ 16/507575/FULL

² Kent Design Guide Review: Interim Guidance Note 3, November 2008.

³ As proposed to the Swale Joint Transportation Board on 26 June 2017.

⁴ Kent County Council consultation response to SW/16/505541/FULL dated 13 July 2016.

Other Matters

13. The Council's committee report makes reference to the appeal site being within 3.5km of the Swale Special Protection Area and Ramsar site and within 5.5km of the Medway Estuary and Marshes Special Protection Area and Ramsar. The Council duly considered the Habitat Regulations but for the reasons set out in that report screened the proposal out of the need to progress to an Appropriate Assessment. On the evidence before me, I see no reason to take a different view.

Conditions

14. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. A condition is required to ensure compliance with the approved plans as this provides certainty. In the interests of sustainability and national policy it is also reasonable to include a condition relating to energy efficiency measures.
15. A condition requiring details of the external materials to be agreed is necessary, in order to protect the character and appearance of the area. To protect the living conditions of neighbouring occupiers it is necessary for details of the obscure glazing proposed in the northern elevation to be submitted and agreed. A condition requiring details of the soft and hard landscaping of the site is necessary to protect and enhance the character and appearance of the area and that such works are retained and replaced, where necessary.
16. To ensure the proposed parking and turning facilities are satisfactorily provided and thereafter permanently retained, a condition is required for these to be provided and laid out prior to occupation of the dwellings and first use in accordance with the approved plan. A condition is necessary restricting the hours of construction in the interests of highway safety and the living conditions of neighbouring occupiers. A condition is also required restricting the use of the ground floor to A2 Financial and Professional Services and its hours of operation in the interests of the living conditions of neighbouring occupiers. The provision of refuse and cycle storage prior to occupation is necessary in the interests of character and appearance and in order to promote sustainable forms of transport.
17. Conditions 3, 4 and 6 are conditions precedent and I am satisfied that such conditions are fundamental to the development to ensure that development does not occur until such matters are resolved, in the interests of sustainability and the character and appearance of the area.

Conclusion

18. For the reasons set out above, the proposal would comply with the development plan, when read as a whole. Material considerations do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be allowed.

Richard Aston

INSPECTOR

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: 1363/P2, 1363/P1, 1363/P3 and 1363/P4 Rev B.
- 3) No development shall take place until full details have been submitted to and approved in writing by the local planning authority which set out measures to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the materials (including colour) 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. Development shall be carried out in accordance with the approved details.
- 5) The residential units hereby permitted shall not be occupied until the windows at first floor in the northern elevation have been fitted with obscured glazing. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
- 6) No development shall take place until details of the soft and hard landscaping of the site and the provision of boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) All planting, seeding, turfing and other details comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) The development hereby permitted shall not be occupied or first used until the areas shown on approved plan 1363/P3 for the parking and turning of vehicles have been provided, surfaced and drained in accordance with details that have been previously submitted and approved in writing by the local planning authority. Subsequently, the parking and turning areas shall not be used for any purpose other than the parking and turning of vehicles.

- 9) Demolition or construction works shall take place only between the hours of 0730 to 1900 Monday to Friday, 0730 to 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays, unless in association with an emergency or with the prior written agreement of the local planning authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the part of the building shown as 'Office 1' and 'Office 2' shown on approved plan 1363/P4B shall be used for A2 'Financial and Professional Services' and for no other use or purpose.
- 11) The A2 uses shall only be open for customers between the following hours: 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays, Sundays, Bank or Public Holidays.
- 12) The development hereby permitted shall not be occupied or the A2 use first used until the secure cycle parking and refuse storage areas as shown on approved plan 1363/P3 have been provided. The secure cycle parking and refuse storage areas shall thereafter be kept available for such purposes.



Costs Decision

Site visit made on 24 July 2017

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15th August 2017

**Costs application in relation to Appeal Ref:
APP/V2255/W/17/3173734 Excelsior House, Ufton Lane,
Sittingbourne ME10 1JA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wildwood Ltd for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Council's reason for refusal set out in the decision notice is complete, specific and relevant to the application. It also clearly states the policies of the development plan that the proposal would conflict with, albeit that they have been superseded during the course of the appeal¹.
4. Whilst I appreciate that the appellant does not agree with the Council's consideration of the development or opinions relating to the effect of the proposal, the issues at the heart of the appeal inevitably involve matters of planning judgement. The Council is not bound by the view of Kent County Council as highway authority and notwithstanding the original positive officer recommendation, the Planning Committee was not bound to accept the advice of officers and their concerns are based on specific local circumstances. Although I have reached a different view, given their conclusions, which I am satisfied were properly reached, an appeal was inevitable.
5. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason an award for costs is not justified.

Richard Aston

INSPECTOR

¹ Adoption of Bearing Fruits 2031: The Swale Borough Local Plan on 26 July 2017.