



Appeal Decision

Hearing held on 19 March 2009
Site visit made on 19 March 2009

by **Roland Punshon** BSc (Hons) MRTPI

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

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Decision date:
27 April 2009

Appeal Ref: APP/J0215/A/08/2089658

Site of 18 Market Square, Sandy, Bedfordshire SG19 1LA

- 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 Mr Peter Steel of McCann Homes against the decision of Mid-Bedfordshire District Council.
- The application Ref 08/01221/FULL, dated 7 July 2008, was refused by notice dated 17 October 2008.
- The development proposed is erection of a 3 storey block of 6 no. apartments to replace the former Magnolia House including parking, landscaping and associated works.

Application for costs

1. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for erection of a 3 storey block of 6 no. apartments to replace the former Magnolia House including parking, landscaping and associated works at site of 18 Market Square, Sandy, Bedfordshire SG19 1LA in accordance with the terms of the application, Ref 08/01221/FULL, dated 7 July 2008, and the plans submitted with it, subject to the conditions set out in the attached Schedule of Conditions.

Main issue

3. I consider that the main issue in this case is whether, having regard to the siting and location of the building, the proposal would provide a standard of amenities for future residents which would be unacceptably harmful to their living conditions.

Reasons

Living conditions of future residents

4. At the Hearing the Council confirmed that it had no objection to the proposal in terms of the principle of residential development, design or sustainability. It confirmed that all outstanding matters other than that which is set out in the main issue could be adequately addressed through a planning obligation made under Section 106 of the Town and Country Planning Act 1990 as amended (the Act) or by the imposition of planning conditions.
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5. The proposal comprises a 3 storey block containing 6 two-bedroom apartments. Vehicular access would be from the rear to a parking area containing 7 parking spaces and a bin store. The building would be set back about 5 metres (m) from the street behind a garden area.
6. Amongst other things, Policy DPS9 of the adopted Mid Bedfordshire Local Plan First Review states that, in the case of flats, the provision of amenity areas of a sufficient size, shape and position to provide an attractive and secluded sitting out area for residents will be required. In the proposed layout most of the space at the sides and rear of the building would be taken up with car parking areas, pedestrian access ways, a bin store and, possibly, a cycle parking area. The appellant has indicated that a small seating area could be provided at the rear of the building but, having regard to the limited amount of sunlight which would reach this area, the position of the proposed bedroom windows and the location adjoining the bin store, I do not consider that this would be attractive to residents.
7. The proposed front garden area would be set back from the road behind a dwarf wall. Although it was not evident at the time of my site visit, I was informed that the road outside the appeal site is used by large numbers of heavy goods vehicles which, in the Council's view, would make the front garden unattractive for sitting out. However, the footpath is about 4m wide at this point which would diminish the disturbing effect of passing traffic and recently installed traffic-calming measures will reduce the speed of vehicles. I was informed that other restrictions on the use of the road by heavy vehicles are being locally promoted. In my opinion the proximity of passing traffic would not be so intrusive that the space would be wholly unattractive to those residents seeking somewhere to sit outdoors. I accept that, as a sitting out area, the front garden area may not be ideal. It would be open to observation by passing pedestrians and motorists and would not provide a secluded space as is required by Policy DPS9. Nonetheless, I am satisfied that, with careful design and landscaping, some sitting out space could be provided in this location.
8. During my site visit I visited Bedford Road Park which is about 200m from the appeal site. It contains playing fields, a children's play area and a dedicated sitting out area. Access can be gained to the park by way of a traffic-calmed pedestrian crossing immediately outside the appeal site. I am satisfied that those residents of the proposal who did require more space for open-air relaxation would find the park convenient and readily accessible.
9. I accept that some future residents may have children. However, the demand for communal or private amenity space will vary with individual tastes. Some will seek large private gardens whilst others may have little or no requirement for outdoor space. In the final analysis it is a matter of individual preference and choice. Future residents of the proposal would make their decisions on whether the accommodation suited them in the light of the space which is available. During my site visit I saw that there was a range of properties with different standards of open space provision in the area. In my opinion those who seek dwellings with larger outdoor spaces would have the opportunity to find a property which meets their needs. I can see no sound reason why all properties should be required to comply with the narrow terms of Policy DPS9 in these circumstances.

10. At the Hearing I was informed that the Council had some concerns about the impact of traffic noise on living conditions within the apartments but that it considered that this could be adequately addressed by the imposition of a planning condition. I deal with this matter below.
11. In these circumstances I conclude on the main issue that the proposal would provide a standard of amenities for future residents which would not be unacceptably harmful to their living conditions. I accept that the proposal would not comply with the requirement set by Local Plan Policy DPS9 in respect of secluded sitting out areas but I am satisfied that it would comply with the Local Plan as a whole.

Other matters

12. At the Hearing I was informed that Local Plan Policy TCS3 was no longer 'saved'. The main part of the appeal site did not fall within the Policy TCS3 area and had not, at any time, been subject to that policy's provisions. I accept that this may have simply reflected circumstances 'on the ground' that pertained at the time the policy was drawn up. Nonetheless, the policy never had any direct bearing on development of the main part of the appeal site. In any event the policy required an appropriate mix of uses on the Policy TCS3 site 'which may include leisure, retail, offices and/or residential' but specified no particular quantum of each type or that all types should be included. I understand that the Policy TCS3 development now includes residential and office development and the policy has, therefore, been complied with.
13. I have noted concerns raised regarding a perceived lack of opportunities for new office development in the adjacent town centre. During my site visit I visited the town centre. I saw nothing to persuade me that, should a small business be seeking to locate there, it would be faced with insurmountable difficulties in finding space whether in one of the few vacant shop units, at first floor level or by the conversion of residential properties. Had demand for offices been as high as was suggested, I am satisfied that the appellant would have implemented the extant permission for office development on the appeal site.

Unilateral Undertaking and Conditions

14. I have been provided with a signed and dated unilateral undertaking made under Section 106 of the Town and Country Planning Act 1990 as amended which commits the appellant to financial contributions in respect of a number of infrastructure facilities. The payments are in-line with Council's adopted Supplementary Planning Document (SPD) on Planning Obligations and the appellant does not dispute that these contributions should be made. The majority of items arise from the increase in pressure which would be put upon services by increased numbers of dwellings within the District whilst others which deal with matters such as recreational open space and sustainable transport can be more directly linked to the particular circumstances deriving from the appeal proposal. However, I am satisfied that the contributions sought by the Council meet the tests set by national guidance and in these circumstances the provisions of the unilateral undertaking should be taken into account.

15. I have considered the list of conditions suggested by the local planning authority in the light of the advice contained in Circular 11/95: The Use of Conditions in Planning Permissions. I have imposed the standard time limit condition. I agree with the Council that the design of the building would conserve the character and appearance of the Conservation Area. However, I consider that, given this sensitive location, conditions are necessary to control external materials and window designs. Similarly I have imposed conditions requiring the implementation of an approved hard and soft landscaping scheme and boundary treatment in order that the proposal should fit in with its surroundings and to ensure best use of the front garden area. I consider that the first and second floor windows in the side elevations of the building should be fitted with obscure glazing in the interests of privacy. In the interests of highway safety I have imposed a condition requiring the provision of vehicle parking and manoeuvring space both for residents and for workers during the construction phase. In addition I have imposed a condition requiring the approval of details of the bin store and cycle parking as these have not been submitted with the application documents. In the interests of public safety I have imposed a condition in respect of ground contamination. I have made some amendments to the wording of the suggested conditions to improve their clarity and enforceability and to bring them in line with the Circular's advice.
16. At the Hearing I was informed that Local Plan Policy DPS24 dealing with noise issues is no longer saved. However, the Council expressed some concern that the occupiers of the proposed apartments could be affected by traffic noise in both external and internal areas although it conceded that the matter of internal noise could be adequately dealt with by the imposition of a planning condition. I have seen no clear evidence to suggest that internal noise levels are likely to be a problem. So far as I am aware the modern houses on either side of the site were not subject to such a condition and there is no suggestion that the living conditions of their occupants have been harmed by traffic noise even though, as I was informed, traffic levels in the area are increasing. I can see no sound reason for imposing a condition in this regard.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed.

Roland Punshon

INSPECTOR

SCHEDULE OF CONDITIONS:

1. The development hereby approved shall be commenced within three years of the date of this permission.
2. Notwithstanding any details shown on the approved drawings, details of the materials to be used for the external walls, roof, windows, doors and all other external finishes shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development hereby permitted. Development shall be carried out in accordance with the approved details.
3. All windows shall be of sliding sash type and be white painted timber, unless otherwise agreed in writing by the Local Planning Authority.
4. The first and second floor windows in the flank elevations of the development hereby permitted shall be of fixed type and shall be fitted with obscured glazing of a type to substantially restrict vision through it at all times.
5. Before the development hereby permitted is commenced, full details of both hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:-
 - materials to be used for any hard surfacing;
 - planting plans, including schedule of size, species, positions, density and times of planting;
 - cultivation details including operations required to establish new planting.

The hard surfacing shall be carried out prior to first occupation of the development in accordance with the approved details.

6. All planting, seeding or turfing 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. Any trees or plants which within a period of 5 years of 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 unless the Local Planning Authority give written consent to any variation.
7. A scheme indicating the positions, design, materials, and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is commenced. The boundary treatment shall be completed in accordance with the approved scheme before the building is first occupied.
8. Prior to occupation of any of the dwellings hereby permitted, all on site vehicular areas shall be laid out in accordance with the approved site plan and shall be surfaced in accordance with details which have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. Arrangements shall be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway.

9. Details of cycle parking facilities and a bin store shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is commenced and the development shall be completed in accordance with the approved details prior to the first occupation of the permitted building.

10. Development shall not commence until a scheme detailing provision for on site parking for construction workers for the duration of the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented throughout the construction period.

11. Prior to the first occupation of any of the dwellings hereby permitted details of an agreed precautionary proprietary gas membrane to be provided as part of the foundations and details of certificated imported soils for the communal garden areas shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be completed in accordance with the agreed details prior to the first residential occupation of the approved premises.