



Appeal Decision

Site visit made on 10 December 2008

by **Mrs A L Fairclough MA, BSc(Hons), LLB(Hons) MRTPI, IHBC**

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

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Decision date:
20 May 2009

Appeal Ref: APP/X3215/A/08/2079543 Old Regal Cinema, Leg Street, Oswestry.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Smith and Jones against Oswestry Borough Council.
- The application Ref 08/15520/FUL, is dated 28 March 2008.
- The development proposed is for a change of use from Class A1 (retail) to A Smith and Jones Bar/Restaurant (Class A4).

Decision

1. I allow the appeal, and grant planning permission for a change of use from Class A1 (retail) to a Smith and Jones Bar/Restaurant (Class A4) at the Old Regal Cinema, Leg Street, Oswestry in accordance with the terms of the application, Ref 08/15520/FUL, dated 28 March 2008, and the plans submitted with it subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The use hereby permitted shall not be open to customers outside the following times 0900-2330 hours on any day.
 - 3) Prior to the commencement of development hereby permitted a scheme to address security and crime prevention, including internal and external cameras, shall be submitted to and approved in writing by the local planning authority. The scheme shall be installed prior to the commencement of the use hereby permitted and thereafter maintained in accordance with the approved details.
 - 4) Prior to the commencement of development hereby permitted a scheme to minimise noise, including sound insulation, shall be submitted to and approved in writing by the local planning authority. The scheme shall be installed prior to the commencement of the use hereby permitted and thereafter maintained in accordance with the approved details.
 - 5) Prior to the commencement of development hereby permitted details of the ventilation system and the fume extraction system for the control of cooking odours, shall be submitted to and approved in writing by the local planning authority. The scheme shall be installed prior to the commencement of the use hereby permitted and thereafter maintained in accordance with the approved details.
 - 6) Prior to the commencement of development hereby permitted a sound limiting device shall be installed to any sound system and it shall be

installed in accordance with a scheme submitted and approved in writing by the local planning authority. The device shall be installed prior to the commencement of the use hereby permitted and thereafter maintained in accordance with the approved details.

Preliminary Matters

2. The Council has indicated that, if it had been in a position to do so, it would probably have refused planning permission for the appeal scheme. In summary, the Council states there was insufficient information submitted in line with *Planning Policy Statement 6: Planning for Town Centres* (PPS6) to prove that (i) the proposed bar and restaurant was needed and: (ii) there was no demand for the shop unit. The Council also raised concerns regarding the impact of the proposal on residential amenity in terms of noise and disturbance. Therefore, the Council considered that the appeal proposal would be contrary to PPS6 and Policy SP4 of the *Oswestry Borough Local Plan 1996-2006* (LP). Concerns have also been raised by the West Mercia Constabulary regarding the potential for crime and disorder in the locality as a consequence of the appeal scheme

Main issues

3. I consider the main issues to be :
- (a) Whether the appeal proposal is consistent with policies relating to Oswestry Town Centre;
 - (b) The effect of the appeal proposal on neighbours' living conditions in terms of noise and disturbance.
 - (c) The implications of the appeal proposal regarding crime and disorder in the locality.

Reasons

Whether the appeal proposal is consistent with policies relating to Oswestry Town Centre

4. The appeal building is located within the defined town centre of Oswestry. It is situated within the Oswestry Town Conservation Area ¹and it is currently used as a retail outlet for the sale of clothes. It has a large area of some 567m² of retail floor space over 2 floors. Its main frontages are onto Leg Street and English Walls which fall within the secondary shopping frontages of Oswestry Town Centre as defined by the LP. However, it has an entrance off Cross Street, which is a primary shopping frontage in the town centre. The appeal proposal relates to the change of use from retail (Class A1) to a bar/restaurant (Class A4).
5. LP Policy SP 4 states that planning permission for change of use from retail (Class A1) to non retail will not be permitted within ground floor frontages of existing shops fronting certain specified streets including Cross Street. LP Policy SP 5 indicates that non retail services will be allowed to locate where certain criteria can be met. Paragraph 7.18, which is supporting information

¹ The Council submitted a plan of the conservation area which identified the conservation area with 2 different names. The Plan is titled Oswestry Town Conservation area yet the index refers to it as Oswestry Conservation Area.

² As cited in Table 4 page 3 of the Oswestry 'Retail Centre study' dated January 2008.

relating to LP Policy SP 5 states that whilst the plan would seek to protect prime shopping frontages as retail locations, flexibility exists within the remaining frontages of the retail development area to allow opportunities for non-retail services to secure a central location.

6. Paragraph 2.17 of PPS6 states that in addition to defining the extent of primary shopping centres, local planning authorities may distinguish between primary and secondary frontages. It goes on to say that these frontages must be realistically defined. Furthermore, it states that primary frontages should contain a high proportion of retail uses, while secondary frontages provide greater opportunities for flexibility and a diversity of uses.
7. Given that the main ground floor frontages of the appeal building, including its main entrance, front Leg Street and English Walls, which are secondary shopping frontages, and that part of the site relating to the primary retail frontage of Cross Street is narrow with a passageway which leads to a secondary entrance which is significantly set back from Cross Street, I consider that LP Policy SP 5 is more appropriate in this case. In my view the passageway and the secondary entrance doorway cannot be defined as a ground floor frontage of an existing shop on Cross Street. Thus, to my mind the appeal building and the appeal proposal would not fall within the requirements of LP Policy SP 4. This conclusion accords with the Council's approach in relation to a previous approval at the appeal site for a public house in 1999. The Committee report relating to permission (98/10490/FUL) states that the appeal premises do not occupy a primary frontage position and I acknowledge that there has been no significant change in policy or material circumstances since this previous approval.
8. In terms of the appeal scheme, LP Policy SP 5 requires that it should be assessed in terms of relevant criteria which include (1) its effect on the character and appearance of the area; (2) noise and activity; (3) that the development does not result in a concentration of a particular type of service in one area (4) neighbours' living conditions, and (5) traffic and parking. With the exception of neighbours' living conditions, and noise and activity, which relate to my second and third issues, I will deal with these points in turn.
9. With regard to character and appearance the Appellant states that this appeal relates to a change of use only and that no external changes to the building are proposed. Thus, I am satisfied that the appeal building, which is a former cinema building, can accommodate the proposed use and that it would not detrimentally affect its character or appearance. Moreover, the Appellant's intention is that these large premises would be operated by the Barracuda Group as one of their 'Smith and Jones' brand of bar restaurants. I have been provided with details of other 'Smith and Jones' establishments in the Appellant's submissions and I consider that the standard of management would be an asset to the vitality of the town centre and the mixed character of this part of Oswestry town centre. Thus I do not consider that it would adversely affect the character or appearance of the locality and as such the appeal proposal would accord with LP Policy SP 5(1)
10. I turn now to concentration of bar/restaurant uses in the town centre. The Appellant indicates that there are several public houses within Oswestry Town Centre. The GOAD plan indicates that these are distributed throughout the

town centre with no obvious concentrations. Although I acknowledge that there is a restaurant and a public house close to the appeal site, I do not consider that these when combined with the appeal proposal would amount to a concentration that would detrimentally affect the retail character of the shopping centre of the historic town.

11. I have been referred to *A Retail Study Update* (RSU) dated March 2007 and *A Retail Centre Study of Oswestry* (RCS) dated January 2008. These documents are material considerations. The RCS indicates that the retail centre of Oswestry is thriving and vibrant. Although it states that there has been a decrease in the number of A1 units over the last 7 years (from 206 units in 2001 to 196 units in 2008), it also states that there is a good range of uses within Oswestry and that A1 retail predominates. In terms of A4 uses there has been an increase of one unit in the same period (from 21 units in 2001 to 22 units in 2008). The document goes on to say that Oswestry town centre should be looking to maintain this balance of uses to sustain its current vitality.
12. PPS6 states that consideration should be given to the impact of a proposal on the vitality and viability of existing centres. PPS6 states that Local Planning Authorities should have policies to encourage a range of complementary evening and night time uses so as to appeal to a wide spectrum of patrons. In addition the RCS states that it is recognized that different but complementary uses, during the day and in the evening, can reinforce each other, making town centres more attractive to the local residents, shoppers and visitors. Given that PPS6 states that leisure and entertainment facilities which include restaurants and bars are appropriate use in town centres, I consider that an additional A4 uses within the secondary frontage of Oswestry Town Centre would increase footfall in the locality. It would provide some enhancement of the locality through the high level of investment and in terms of job creation. It would assist in increasing the variety of leisure venues in the town centre and as such I consider it would not undermine the vitality or viability of Oswestry Town Centre. Therefore, I consider that the appeal proposal would accord with LP Policy SP 5 (3).
13. In terms of traffic and parking, the Appellant indicates that the level of servicing would not be materially different to the existing situation. Furthermore, there are no comments from the Highway Authority in relation to any such highway concerns. In my view there would be daily deliveries of food and drink to the appeal premises. However, I do not consider that the number of delivery vehicles would be significantly more than a retail outlet of this size. Therefore, I consider that the appeal proposal would not generate unacceptable levels of traffic. In addition I saw that there was a large public car park nearby. Consequently, I do not consider that the appeal proposal would encourage on-street parking or parking on pedestrian priority areas by patrons or employees. Thus, I consider that the appeal proposal would accord with LP Policy SP 5 (5).
14. The Council has raised concerns regarding the loss of a large scale retail unit within the town centre and that it has not been marketed for retail use. However, the RSU and the RCS do not refer to a demand for large retail units. The RCS indicates that the existing large retail units are occupied by national traders and that because large retail units are limited the likelihood for further national traders entering Oswestry would also be limited. The RCS goes on to

say that this is not necessarily a bad thing as the town centre is dominated by small traders and that Oswestry town centre is vibrant as a consequence. I understand that the appeal building is occupied by a regional shopping chain, which intends to relocate to another unit within Oswestry Town Centre. Furthermore, given the position of the appeal premises on a secondary frontage, I consider that it would not necessarily attract a national retailer if it were to be marketed as such as it has no ground floor display areas on a primary frontage. In any case I saw that there were several retail units which were vacant and one of which was large and on a primary frontage. With regard to marketing, I consider that PPS6 and Policy SP 5 do not require the Appellant to market the appeal premises to demonstrate whether there is a demand for the retail use of it. The Appellant indicates that other large retail premises which have been marketed have not shown a high demand within the town centre. I also note that there are several vacant units which are still unoccupied and available.

15. Concerns have been raised by interested parties regarding the demand and need for another bar in the town centre. However, I consider that the relevant policies do not require the need for such a use to be demonstrated.
16. Therefore, taking the above matters into consideration, I conclude that the appeal proposal would be consistent with policies relating to Oswestry Town Centre.

The effect of the appeal proposal on neighbours' living conditions in terms of noise and disturbance

17. I turn now to the issue of neighbours' living conditions. I note that there are 2 penthouses in the immediate vicinity of the appeal premises with others nearby. Given that the proposed opening hours of the appeal proposal would be from 09.00 hours to 0030 hours Sunday to Thursday (and Bank Holidays) and from 09.00 to 01.30 Fridays and Saturdays, I consider that it would create more noise than the existing retail use specifically during the evening and the early hours of the morning. This would not create a significant impact on the commercial neighbours but would affect residents living in the adjacent penthouses and nearby properties. However, in my view people choosing to live in a town centre should accept some degree of evening noise and disturbance. I acknowledge that there are no objections regarding noise from the Environmental Health Officer and from the immediate residential neighbours subject to adequate sound insulation.
18. I also note that the Appellant has submitted a noise report and I am satisfied that the noise breakout from the building can be adequately addressed and secured by conditions through soundproofing and the control of amplified music. Nevertheless, I consider that the noise generated as patrons leave the premises at the suggested closing times of 0030 and 0130 hours would seriously harm nearby residents. Notwithstanding the controls afforded by the licensing regime, in my view a condition relating to the opening hours would address this concern. This would not be significantly different to planning conditions attached to other 'Smith and Jones' premises in the UK. Furthermore, it would follow the recommendations made by the West Mercia Constabulary in that they consider that a bar/restaurant is a different provision to a nightclub or late night bar and they suggest that the opening times should

reflect this. Therefore, subject to a condition restricting the opening hours, I do not consider that the appeal proposal would significantly contribute to existing noise levels within the town centre. In my view the appeal proposal would not conflict with LP Policy SP 5 (2).

The implications of the proposal regarding crime and disorder in the locality

19. In terms of crime and disorder, the West Mercia Constabulary indicate that incidents of violence and aggressive behaviour are greater in bars than restaurants and that alcohol related crime and disorder typically occurs between 2300 hours and 0200hours on Friday and Saturday nights. However, they go on to say that the design of the environment when combined with responsible management procedures will help to reduce incidents in licensed premises and nearby. *Planning Policy Statement 1: Delivering Sustainable Development* (PPS1) indicates that the prevention of crime is a material consideration

20. The Appellant indicates that there is an established management structure at 'Smith and Jones' bar/restaurants and in relation to the appeal proposal this would include supervision in the premises and the provision of CCTV. The Appellant also states that it would implement all the recommendations suggested by the Police. In my view many of the recommendations could be secured by condition. In addition the Appellant indicates that the appeal proposal has been designed to prevent crime. In my view the suggested condition relating to opening hours would reduce potential for disturbance late at night as well as crime and disorder. Thus I consider that the appeal proposal would not significantly change the character of the locality in terms of crime and disorder nor would it conflict with the objectives of LP Policy SP 5 (2) and PPS1 in relation to disturbance and crime and disorder respectively.

Other matters

21. The appeal site is located within the Oswestry Town Centre Conservation Area. Given that the appeal proposal is for a change of use, there would not be any major external alterations to the building if the appeal were to be allowed. Therefore, I consider that it would not harm the character or appearance of the conservation and as such would preserve it.

Conditions

22. Neither the Council nor the Appellant have suggested any specific conditions were I to allow the appeal. However, in addition to the time limit condition, I consider that conditions governing the management of hours of opening, the use of amplified music, the installation of sound insulation and a ventilation and extraction system are relevant, reasonable and necessary to safeguard the living and working conditions at neighbouring properties. I also consider that a condition relating to a scheme of security measures including CCTV cameras is reasonable and necessary to minimise disturbance and in the interests of crime prevention.

Conclusion

23. I conclude that the appeal proposal would be consistent with relevant policies relating to Oswestry town centre specifically LP Policy SP 5. In my view it

would also accord with the objectives of PPS1 and PPS6. Furthermore, I also conclude that the appeal proposal would not have a significantly detrimental effect on neighbours' living conditions in terms of noise and disturbance or on crime and disorder in the town centre. For the reasons given above and having regard for all matters raised, I conclude that the appeal should be allowed.

Mrs A. Fairclough

Inspector



Appeal Decision

Site visit made on 31 March 2009

by **Clive Sproule** BSc(Hons) MSc MIEEnvSc
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Decision date:
11 May 2009

Appeal Ref: APP/L3245/A/09/2093649

Land adjacent to Thornfield, Twmpath Lane, Gobowen, Oswestry, Shropshire SY10 7AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Paul Walker against the decision of the Council of the Borough of Oswestry now replaced by Shropshire Council.
- The application Ref 08/15618/OUT, dated 1 June 2008, was refused by notice dated 25 July 2008.
- The development proposed is a dwelling and garage on land adjacent to Thornfield, including alterations to existing access, to provide access to proposed site and retain existing access serving Thornfield.

Decision

1. I dismiss the appeal.

Main issues

2. Whether the proposed development would be within the open countryside and if so, the effect of the proposed development on the character and appearance of the countryside.

Reasons

3. Policy H 19 of the Oswestry Borough Local Plan 1996-2006 (LP) indicates that all areas outside the development boundaries of a group of named settlements are considered to be open countryside. Gobowen is one of these settlements. The appeal site is in close proximity to residential development, a hospital and associated car parking. Nonetheless, it is outside the development boundaries of Gobowen and the other named settlements and therefore lies within the open countryside.
4. LP Policy H 16 is permissive of new housing within development boundaries if certain criteria are met. However, the policy does not address housing proposals in the open countryside. Such proposals are the subject of LP Policy H 19 and therefore, Policy H 19 is the most relevant LP policy to this case.
5. National policy within Planning Policy Statement 7 – *Sustainable Development in Rural Areas* (PPS7) seeks to protect the intrinsic character of the countryside. It states that new buildings in the open countryside outside areas allocated for development in development plans should be strictly controlled. LP Policy H 19 seeks to protect the character and appearance of the countryside by limiting new homes to replacement dwellings and those required

for essential agricultural and forestry workers and affordable housing "rural exception schemes".

6. It has neither been suggested that the proposed house would be for an essential agricultural or forestry worker, nor that it would provide affordable housing to meet the objectives of local policy. The proposal would not replace or convert an existing building and the Council has highlighted that development of the appeal site would not be required to meet the Borough's housing needs.
7. The hospital site is a substantial area of development on the north side of Twmpath Lane. It is for the most part opposite the dwellings to the east of the appeal site that extend along the southern side of the highway in a broken ribbon of development. Although there is development along this section of Twmpath Lane, the street scene also includes fields, hedgerows and open spaces. These provide a visual link to the undeveloped open countryside that clearly separates the buildings on Twmpath Lane from Gobowen and other development in the locality.
8. Whilst the appeal site may have had buildings on it in the past, it is now an open plot with mature vegetation. I consider that the appeal site and the other undeveloped parts of the road frontage in this location provide important breaks in the development along Twmpath Lane. These gaps reinforce local character by maintaining a significant degree of openness within the street scene.
9. The block plan submitted with the application includes the site access and indicates that the plot is of sufficient size to provide a significant area of amenity space around the house and its garage. The illustrative house designs supplied would produce a building that would be sympathetic to those around it. Nevertheless, the proposal would consolidate the built development along the highway, which would notably erode the rural character of the area and would not be mitigated by the retention of the existing boundary hedges. I find therefore that the proposed development would be unacceptably harmful to the character and appearance of the open countryside in this location and would conflict with LP Policy H 19 and PPS7.
10. I note that it is proposed to incorporate sustainable design features into the dwelling and that the appeal site is accessible by public transport. However, neither these matters nor the suggested conditions outweigh the harm that I have identified.

Conclusion

11. For the reasons above and having considered all other matters raised, I conclude that the appeal should be dismissed.

C Sproule

INSPECTOR



Appeal Decision

Site visit made on 8 April 2009

by **Gary Deane BSc(Hons) DipTP MRTPI**

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Decision date:
19 May 2009

Appeal Ref: APP/L3245/A/09/2094554 52 Oaklands Road, Chirk Bank, Wrexham LL14 5DS

- 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 and Mrs RN and J Conde against the decision of Oswestry Borough Council now replaced by Shropshire Council.
- The application Ref 08/15771/OUT, dated 25 September 2008, was refused by notice dated 9 December 2008.
- The development proposed is the erection of a dwelling and formation of a new dual access.

Decision

1. I dismiss the appeal.

Procedural Matters

2. The application was submitted in outline with only access to be determined at this stage.

Main issues

3. The main issues are the effect of the proposal on the character and appearance of the local area and on the living conditions of the occupiers of 52 Oaklands Road and future occupiers of the proposed dwelling with regard to outlook and privacy.

Reasons

Character and Appearance

4. The appeal site is the southern part of the rear garden of 52 Oaklands Road, a substantial bungalow set back from the highway. Access to No 52 is substandard. This is primarily due to the oak tree located to the east of the access that severely limits the visibility of both traffic emerging from the existing access, and road users approaching from the east.
 5. The proposed access would be outside the settlement boundary and would involve the removal of a substantial length of the mature hedgerow and the development of part of the adjacent field, both of which front the southern side of Oaklands Road, to the west of No 52. Along this stretch of Oaklands Road, the mature hedgerow is a dominant visual feature in the local street scene. Taken together, with the relatively narrow width of the road, the absence of footways and the glimpsed views of the open countryside to the west and south of No 52, the hedgerow contributes to the distinct and attractive semi-rural
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character of the local area. These characteristics are an important element of local distinctiveness.

6. The potential benefits of removing the existing hedgerow and planting a new hedgerow 3m back from the road edge for about 50m in a westerly direction could be significant in terms of highway safety, and, to a lesser extent, nature conservation in the medium to long term. However, it may take several years for such a hedgerow to have the character of the existing hedgerow. Moreover, the visual impact of the new access road outside the settlement boundary would be considerable. It would appear as an incongruous feature in an otherwise rural landscape of which the adjacent field forms an integral part.
7. Although located within a sensitive location that is adjacent to the open countryside, the visual impact of the new building on the character and appearance of the local area would be modest given the opportunity for the appropriate siting, and design of the proposed dwelling and sensitive boundary treatment. I also note that existing dwellings to the east of the site similarly back onto the open countryside.
8. Notwithstanding this latter matter, in view of the other points detailed above, I conclude that the proposal would harmfully erode the semi-rural character and appearance of the local area. It would be contrary to policies NE2, H4 (criterion 3) and H16 (criterion 6) of the Oswestry Borough Local Plan (LP). These policies seek, amongst other matters, to protect the visual quality and character of the countryside and ensure that development proposals are compatible with the character of the local area.

Living Conditions

9. Although there are no elevations submitted with the application, the illustrative layout (Plan Oak/2) shows the proposed dwelling centrally sited within the southern part of the rear garden of No 52. The design and access statement accompanying the application describes the proposal as a (dormer) bungalow.
10. Whilst it would be readily noticeable in the outlook to the rear of No 52, I consider that the proposed dwelling would be sufficiently distant and modest in scale and height not to harm living conditions within the existing house and its rear garden.
11. There would be no significant loss of privacy to the occupiers of No 52 given that a condition could be imposed to ensure that there would be no windows in the northern elevation of the proposal. There would be some overlooking between the gardens of the existing and proposed dwellings but I consider that this would not be unreasonable or harmful given that the boundary treatment between the 2 properties would help reduce this impact. Similarly, the treatment of the proposal's eastern boundary would ensure that any overlooking to the adjacent property, Wrens Nest, would not be unduly harmful.
12. The new building and its northern boundary would be a dominant visual feature of the rear garden of No 52 which would detract from its existing ambience. However, these features would not undermine its amenity value so as to materially harm the living conditions of the occupiers of No 52, who would still

have a relatively generous garden, which would have an open aspect to the front of the property. Although restricted in length, the garden space around the proposed dwelling would also be sufficient to meet relevant design standards.

13. Depending on its height, position, scale and mass, the new building could well interrupt the sunlight to the rear garden of No 52. However, the distance between No 52 and the proposed dwelling and the difference in levels would help militate against any undue overshadowing to the rear of No 52.
14. I therefore conclude that whilst the proposal would affect the outlook and privacy of the occupants of No 52 and the future occupants of the proposed dwelling, this would not be sufficiently harmful in itself to warrant dismissing the appeal. There would be no conflict with policies H4 (criteria 1 and 2) and H16 (criteria 2 and 7) of the LP in that the shape, size and orientation of the site would be sufficient to enable its development without significantly prejudicing the residential amenity of existing and future occupiers.

Other Matters

15. The Highway Authority advised that the visibility splay requirements of the proposal would be 2.4m by 33m in both directions along Oaklands Road. Based on the submitted plans, I am not convinced that this requirement can be met in an easterly direction from the proposed access point. This is primarily because the oak tree would still significantly restrict the visibility of both traffic emerging from the existing access, and road users approaching from the east, along Oaklands Road.
16. Whilst the proposed closure of the existing access would significantly improve highway safety for users of Oaklands Road, there would be a conflict with policies H4 (criterion 12) and H16 (criterion 3) of the LP that require a safe and satisfactory highway access to the site.
17. Removal of the oak tree or repositioning the proposed access point further to the west to allow this requirement to be achieved would exacerbate the visual impact of the new access. This would cause greater harm to the character and appearance of the local area not least because an increased length of access road would run across the field adjacent to No 52.
18. I have had regard to all other matters raised, including the benefits of retaining the oak tree, the improvements to highway safety for users of Oaklands Road and the additional planting proposed to the front of No 52. However, these matters are not sufficient to outweigh the considerations that have led me to my conclusion. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR



Appeal Decision

Site visit made on 20 April 2009

by **Leslie Coop** BA(Hons) DipTP MRTPI

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Decision date:
12 May 2009

Appeal Ref: APP/X3215/A/09/2094455

Public Conveniences, Station Road, Llanymynech, nr Oswestry, Powys SY22 6EE

- 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 Morris Holdings Limited against the decision of Oswestry Borough Council now known as Shropshire Council.
- The application Ref 08/15791/FUL, dated 6 October 2008, was refused by notice dated 1 December 2008.
- The development proposed is alterations and change of use of existing public convenience into hot food takeaway and erection of bollards around lay-by.

Decision

1. I allow the appeal and grant planning permission for alterations and change of use of existing public convenience into hot food takeaway and erection of bollards around lay-by at public conveniences, Station Road, Llanymynech, nr Oswestry, Powys SY22 6EE in accordance with the terms of the application Ref 08/15791/FUL, dated 6 October 2008, and the plans submitted therewith, subject to the conditions set out in the schedule.

Main issues

2. I consider there are two main issues in this case. The first is the effect of the proposed development on highway safety. The second is whether the proposal would preserve or enhance the character or appearance of the Llanymynech Conservation Area (CA).

Reasons

Highway safety

3. The appeal site is situated on the south side of Station Road (B4398) to the east of its traffic light controlled junction with the A483. There are footways on both sides of Station Road, leading from the junction but they are narrow and they are not continuous and their use requires pedestrians to cross over the road.
4. However, the lengths of road where there are no footways are quite short and the footways already serve a significant developed area to the east of the site including two new residential developments. The footways are also used by pedestrians walking in the opposite direction to access the village facilities along and on the opposite side of the A483. In addition, vehicles are likely to be moving relatively slowly along Station Road as they approach or leave the traffic lights. The former public convenience building is relatively small and I do

not consider the numbers of customers it is likely to generate would significantly change the prevailing road safety conditions in terms of pedestrian use, either during the day or in the evening.

5. The Council is also concerned that there would only be one parking space associated with the proposal and that there would be no guarantee that the lay-by in front of the building would be available for customers. The Council considers that the public car parks would be too far away from the takeaway and this would lead to indiscriminate parking on the highway in contravention of the existing double yellow lines.
6. I am not convinced by this argument, particularly as the whole purpose of the double yellow lines is to prevent such occurrences. Planning Policy Guidance Note 13: *Transport* (PPG13) says that local authorities should not require developers to provide more spaces than they themselves wish, other than in exceptional circumstances where there are significant implications for road safety that cannot be resolved through the introduction or enforcement of on-street parking controls. In addition, the public parking facilities are within walking distance.
7. I accept that the proposed off-street parking space would have limited visibility in an easterly direction and would require vehicles to either enter or leave the site in reverse gear. Given the size of the site, this is likely to be the case for any proposed development. Subject to the parking space being restricted to the staff parking as proposed by the appellant, I do not consider its infrequent use would create a major road safety hazard.
8. I conclude on this issue that the proposed hot food takeaway would not be materially harmful to highway safety. In reaching this conclusion, I have taken into account the concerns of local residents regarding the volumes of traffic using the local highways and congestion, particularly at peak periods. However, I have no detailed figures regarding traffic flows on Station Road which was lightly trafficked at the time of my visit. I also note that whilst the Highway authority has objected to the proposal on highway safety grounds, the objections do not appear to relate to traffic flows.

Character and appearance

9. The area around the appeal site is characterised by a mix of stone and brick buildings and a number of stone walls of varying heights. The existing building is utilitarian in appearance and the site itself appears neglected and overgrown but is largely screened from public view by a high stone wall. Whilst the proposal involves the lowering of the wall, this would probably be the case for many other forms of development on this site. In any event, I understand the wall was built as part of the public convenience development. I am satisfied that the proposed improvements to the elevations and the pitched slate roof would improve the appearance of the building, sufficient to preserve the appearance of the CA. It is not unusual to find such premises in conservation areas and I am satisfied that the design of any signage and flue systems could be appropriately controlled to prevent the building having a cluttered appearance, as could the design of the proposed bollards.

10. I accept that the takeaway would be in a quieter part of the CA but in my judgement, because of the size of the enterprise, the activities associated with it, subject to a condition regarding opening hours would preserve the character of the CA and not lead to any harmful levels of noise or disturbance. I have no detailed evidence to suggest that anti-social behaviour is a major problem in the area and I am not convinced that the proposal would create such a problem.

11. I consider, therefore that the proposed hot food takeaway would preserve the character and appearance of the CA and would not be contrary to Policy HE5 of the Oswestry Borough Local Plan.

Conditions

12. Conditions relating to materials to be used on the building are necessary to ensure that the external appearance of the building is satisfactory. As the building is in the CA, I consider the details required by the Council to be appropriate in this case, particularly as the takeaway will be open to public view. A condition is needed for the design and location of the bollards and any fume extraction system in order to preserve the appearance of the CA. The bollard condition is also necessary in the interest of public safety. For the same reason, I also consider it would be appropriate to impose a condition restricting the use of the off-street parking space to staff. The fume extraction condition is also needed to protect the amenities of nearby residents as is a condition controlling the opening hours of the takeaway. Details of the sewerage and waste disposal systems are necessary to prevent contamination of the drainage system.

13. There are concerns regarding litter but in any event, if such a problem should arise it would be capable of being dealt with through other legislation, as would any problems relating to the storage facilities in the yard of the adjoining public house.

Schedule of conditions

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) No development shall take place until details and samples of materials to be used on the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 3) No development shall commence until a sample panel of walling at least one metre square showing the proposed colour, bonding, method of pointing and mix and colour of mortar has been erected on the site and subsequently approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The panel shall be retained on site until the completion of the walling.
- 4) Before the use hereby permitted is first brought into use, all doors and windows shall be painted timber in a colour to be approved in writing by

the Local Planning Authority and shall thereafter be retained in the approved colour unless an alternative is first approved in writing by the Local Planning Authority.

- 5) No development shall take place until the design and joinery details of the doors and windows have been submitted to and approved in writing by the Local Planning Authority. The design and details shall be accompanied by drawings to a minimum scale of 1:5 with full size moulding cross section profiles, elevations and sections. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of the fume extraction system have been submitted to and approved in writing by the Local Planning Authority. The extraction system shall thereafter be permanently retained in accordance with the approved details, unless any changes are previously agreed in writing by the Local Planning Authority.
- 7) The use hereby permitted shall only operate between 10.00 and 23.30 hours.
- 8) The takeaway shall not be opened for business until details of the foul sewerage and waste disposal systems, including grease and oil interceptors, have been submitted to and approved in writing by the Local Planning Authority.
- 9) Before the hot food takeaway is first brought into use, the off street parking space shall be laid out in accordance with the submitted plans and shall be retained thereafter. It shall be only used for staff parking and not for the use of customers.

Leslie Coop

INSPECTOR



Appeal Decision

Site visit made on 31 March 2009

by **Clive Sproule** BSc(Hons) MSc MIEnvSc
MRTPI CEnv

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

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Decision date:
21 May 2009

Appeal Ref: APP/L3245/A/08/2092888 Autocare, 4 King Street, Oswestry SY11 1QX

- 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 Autocare against the decision of the Council of the Borough of Oswestry now replaced by Shropshire Council.
- The application Ref 08/15635/FUL, dated 17 June 2008, was refused by notice dated 8 October 2008.
- The development proposed is the demolition of the existing garage and construction of a three storey block of flats providing seven number one bedroom apartments.

Decision

1. I dismiss the appeal.

Procedural matter

2. The application form notes the proposed development to include the demolition of an existing garage. However, the appeal site lies within the Oswestry Town Conservation Area where the substantial demolition of a building requires conservation area consent under the Planning (Listed Buildings and Conservation Areas) Act 1990. This appeal has been made under section 78 of the Town and Country Planning Act 1990 and consequently my decision is only in respect of the construction of the three storey block of flats proposed.

Main issues

3. These are: (a) whether the proposed development would preserve or enhance the character or appearance of the Oswestry Town Conservation Area; and (b) the effect of the proposed development on the living conditions of neighbours in relation to visual impact.

Reasons

Oswestry Town Conservation Area

4. No.4 lies within the Oswestry Town Conservation Area. The locality typically includes two and three storey houses set amongst commercial and retail buildings of differing height and design. This characteristic variety within the street scene often features the use of brick and slate in groups of buildings with common architectural themes and features in their designs. Development on and around the appeal site reflects the characteristic development patterns and architectural styles within the conservation area.
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5. The proposed building would have three storey front and rear elevations and accommodation in the roof space. My attention has been drawn to a previous Inspector's decisions regarding a similar proposal for this site (Ref: APP/X3215/A/08/2087289 & APP/X3215/E/08/2089999). Although full details regarding that scheme are not before me, the appellant states that the current proposal would be lower in height to the preceding appeal scheme. The previous Inspector noted that neighbouring buildings in the area generally differ in height by no more than one storey and that is what is proposed in this case.
6. Some of the former business premises in the vicinity of the appeal site have been converted into flats. This includes Eden Court which is a five storey building that stands on the south east side of the junction with Eden Street. The proposed block of flats would by its form and materials reflect the development around it and by its scale and design provide an effective visual transition between Eden Court and the neighbouring terraces.
7. Other commercial premises are evident within the locality and consequently the proposed residential use of the appeal site would maintain the mixed character of the area. I therefore conclude on the first main issue that the proposed development would preserve both the character and appearance of the Oswestry Town Conservation Area and would comply with Policy HE 8 of the Oswestry Borough Local Plan (LP) and in this respect LP Policy H 4.

Living conditions

8. LP Policy H 4 seeks all new housing developments to be of a design that would prevent it being significantly detrimental to the living conditions of the occupiers of neighbouring properties.
9. This is an urban area where buildings in excess of two storeys are commonplace. I consider that within the context of the location, the separation distances to dwellings on the opposite side of the roads around No.4 would be sufficient to prevent the proposed building being unacceptably visually intrusive to the occupiers of these properties.
10. However, the recent Inspector's decisions referred to above found that the previous appeal scheme would have resulted in an overbearing visual impact on the occupiers of adjacent dwellings. In contrast to Eden Court and other converted large buildings in the locality, the appeal site is immediately next to residential houses. These terraces are already within compact forms of development. The relative heights, designs and layout of these dwellings ensure that the occupiers of the houses currently have adequate aspects from their rear windows and amenity spaces.
11. Whilst the footprint of the proposed building would be less than that of the existing garage, it would nevertheless occupy a considerable proportion of the appeal site and would be in close proximity to the houses at 6 King Street and 1 Eden Street. Although the application drawings effectively communicate the relationship between the proposed and existing front elevations in the street scene, this is not so for the rear elevations and the associated fenestration at neighbouring houses.

12. The proposed block of flats would be present in views from windows and the private amenity space at neighbouring dwellings. It would be a much taller structure than the garage that it would replace and it would significantly increase the massing of the built form on the appeal site. It is my view that although the height of the proposed building has been reduced from that of the previous scheme, it would be of sufficient size to be overbearing and visually intrusive at adjoining properties.
13. The garage at the appeal site is an existing commercial operation in an area of mixed land uses where such activities can reasonably be expected to occur. Although the proposed use would remove the potential noise, disturbance and odours associated with the garage activity, this would not offset the visual impact of the proposed development at neighbouring properties. I find therefore that the proposed development would be unacceptably harmful to the living conditions of the occupants of adjoining properties and in this respect would be contrary to LP Policies H 4 and H 16.

Other issues

14. I note that the proposal would remove the vehicle parking associated with the garage use and the existing vehicular accesses to No.4. In addition, the light received by dwellings in the locality is to a certain extent already affected by buildings in the area. I also note that the proposal received Council officer support and that the appellant received planning advice that was independent of the Council. However, neither these matters, the scope of the suggested conditions, nor the proposed development's preservation of both the character and appearance of the conservation area outweigh the harm that I have identified.

Conclusion

15. For the reasons given above and having considered all other matters raised, I conclude the appeal should fail.

C Sproule

INSPECTOR



Appeal Decision

Site visit made on 6 May 2009

by **Richard H Duggan** BSc(Hons) DipTP
MRTPI

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

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Decision date:
8 June 2009

Appeal Ref: APP/X3215/A/09/2096984

1 Police Houses, Fox Lane, West Felton, Oswestry SY11 4JU

- 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 Barry Yeoman against the decision of The Council of the Borough of Oswestry.
- The application, Ref 08/15817/FUL, dated 12 November 2008, was refused by notice dated 5 January 2009.
- The development proposed is erection of one dwelling and alteration to existing access.

Decision

1. I dismiss the appeal.

Procedural Matter

2. The appellant has submitted an alternative scheme with his grounds of appeal, however, as this was not part of the original planning application and has not been formally considered by the Council I have not considered it as part of this appeal.

Main issues

3. I consider the main issues to be the effect of the proposed development on: first, the character and appearance of the locality; and second, the living conditions of the residents living at 1 Police Houses arising from loss of private amenity space.

Reasons

Character and appearance

4. Fox Lane is predominantly residential in character containing a mix of dwellings of varying scale, design and plot layout, and I noted during my site visit that there is a variation in the depth of the plots and the width of spaces that exist between the houses situated along the street. The appeal proposal seeks to erect a new dwelling on land forming part of the side garden of the appeal property.
 5. Policies H4 and H16 of the adopted Oswestry Borough Local Plan (LP) (1999), amongst other things, require that new developments complement the character and appearance of their surroundings. The introduction of the proposed dwelling adjacent to the host property would close this gap within the street frontage and would increase the density of development in this location. However, in my view this would not significantly disrupt the established pattern
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of development along Fox Lane and would not, therefore, harm the character of the street scene.

6. On the first main issue, I conclude that the appeal proposal would not harm the character and appearance of the locality and would accord with Policies H4 and H16 of the LP in this respect.

Living conditions

7. The layout of the appeal site means that the existing dwelling has a very small rear garden but this is made up for by the area of garden space to the side. Much of the existing side garden currently available to 1 Police Houses would be taken up by the proposed development leaving a small amount of garden space to the front, side and rear of the property. This, in my view, would seriously diminish the amount of usable garden space available for the host dwelling, unacceptably harming the living conditions of the future, if not the current, occupiers. The cramped nature of the site, allied to the need to provide a shared access to the site and satisfactory standards of car parking spaces, would not allow space to be set aside for a sufficient area of usable private garden for the occupiers of the host dwelling.
8. I have noted the appellant's reference to the modern dwellings fronting Fox Lane, but these dwellings are set within deeper plots and, therefore, have larger front and rear gardens than would be the case at the appeal site. I have also noted the appellant's statement that refers to the need to increase densities of residential development especially at locations with good public transport accessibility. However, Government guidance in PPS3, paragraphs 13 and 19, also emphasises the importance of providing high quality housing with appropriate amenity space. The appeal scheme would fail to meet this objective.
9. On the second main issue, I conclude that the development would result in an unacceptable level of harm to the living conditions of residents living at 1 Police Houses arising from the loss of private amenity space. The development would, therefore, conflict with Policy H4 and H16 of the LP, which amongst other things seeks to ensure that development avoids unacceptable impact on the amenity of adjoining occupiers and the occupiers of the development being proposed.

Conclusions

10. Notwithstanding my conclusion that the proposal would be acceptable in terms of its effect on the character of the locality, I consider that the harmful effects the development would have upon the living conditions of occupiers of 1 Police Houses constitute convincing reasons why permission should be withheld. For these reasons, and having taken into account all other matters raised, I dismiss the appeal.

Richard H Duggan

INSPECTOR