



Appeal Decision

Hearing held on 30 June 2009
Site visit made on the same day

by **David Saul** BSc DMS MSc CEnv FRICS

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

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Decision date:
28 July 2009

Appeal Ref: APP/Y3940/A/09/2095101

1 The Arcade, Amesbury, Salisbury SP4 7LY

- 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 Jaysford Ltd against the decision of Salisbury District Council now replaced by Wiltshire Council.
- The application Ref S/2008/1345, dated 28 July 2008, was refused by notice dated 23 September 2008.
- The development proposed is conversion of existing office space into 5 No 1 bed flats.

Decision

1. I dismiss the appeal.

Procedural matters

2. The amended drawings show additional high level fume extraction equipment which might be perceived as having environmental impacts and would also significantly alter the external appearance of the proposal. Given the lack of formal consultation over the amendments and the local interest in the scheme, I can not be certain that there would be no prejudice to any interest if I were to base my decision upon the amended plans. I have therefore based my decision on the original application plans. Also I have addressed the question of noise emanating from the nearby public house and adjoining shop as, in my view, they are highly material to my decision.
3. A completed obligation under S106 of the Town and Country Planning Act 1990 had been submitted to the Council prior to the Hearing. The Council confirmed that the obligation would properly address the contribution in respect of recreational public open space facilities. I consider that the contribution would be fairly and reasonably related in scale and kind to the development and that the undertaking meets the requirements of Circular 05/2005: Planning Obligations. I therefore see no reason to disagree with the Council's conclusions in this respect and have not addressed this matter any further.

Main issues

4. I consider that the main issues are i) the effect of neighbouring premises on living conditions at the proposed flats with particular regard to noise and odour ii) whether the premises remain viable for an employment generating activity iii) the adequacy of waste storage provision and iv) the effect of the lack of provision of covered cycle parking.

Reasons

5. The appeal site forms the first floor of a two storey building centrally located in Amesbury. The ground floor includes shops and takeaway premises whilst the proposal would convert the first floor from unoccupied offices into flats.

Noise and odour

6. The flats would be positioned close to various sources of noise and above two takeaways emanating food smells. Given the number and nature of the noise sources, their cumulative effect, their proximity to the proposed flats and the late opening of some premises, I consider that occupiers of the flats would be likely to suffer from intrusive and unacceptable noise. Also, in my view, the position of the takeaways underneath the proposal together with the strong spicy nature of the food odours would lead to unacceptable smells in the flats. Nonetheless, it has been suggested that these problems might be overcome by the imposition of a condition requiring a suitable mitigation scheme.
7. The provision of a high level external fume extraction system would be central to the proposed mitigation scheme. This system is shown on the amended drawings but not on the application drawings on which consultation took place and on which my decision is based. I consider that extraction equipment for takeaway cooking would be of interest to other parties in respect of appearance as well as potential noise and smell. Imposing a condition that would require such equipment would, in my view, amount to a substantial change to the proposal and would deprive interested parties of any opportunity for comment.
8. Windows serving the living and sleeping areas of Flat 5 would directly face a number of noisy items of plant situated on the roof of the adjoining shop. These windows would be needed for ventilation as the only other windows serving Flat 5 would be particularly exposed to smells and noise from the takeaways and so would need to be kept closed or, as suggested, sealed shut. I consider therefore that it would be highly likely that the windows facing the plant would be left open so that noise would enter the flat. Nor do I consider that I have compelling evidence that ventilation systems would be so effective as to both exclude smells and also not encourage opening of windows.
9. The substantial barrier of the concrete floor and the opportunity to include measures within the refurbishment scheme would provide considerable scope for reducing the impact of smells and noise using conventional mitigation techniques. However, in my view, the mitigation scheme would not overcome the risk of noise entering Flat 5 nor could a condition be imposed that would require the installation of the suggested extraction system and therefore the effects of noise and smell could not be properly addressed by condition. I consider, for the reasons set out above, that the impact of noise and smell would harm the living conditions of future occupiers contrary to the aims of Policy G2(vii) of the Adopted Salisbury District Local Plan, June 2003. Nor, in my assessment, would any possible tolerance of future occupiers to disturbance in this case justify a proposal which would harm living conditions.

Loss of employment space

10. Policy E16 of the Local Plan seeks to protect land currently used for employment space unless there is clear evidence that premises are no longer

viable for an employment generating use. For a number of years the empty property has been unsuccessfully marketed for letting by the appellants' in-house marketing organisation together with more recent additional promotion including widespread internet advertising.

11. Whilst there has been no real market interest in the office use there is some possibility that the premises might be occupied as a gymnasium and planning consent has recently been obtained for that purpose. But, in my view, an exceptionally long period of some three years has passed since the prospective occupier first made an approach regarding the property and yet no formal agreement has been reached. Nor is there an established business to demonstrate the viability of the gymnasium proposal. So that despite the recently obtained planning consent I consider that there is considerable uncertainty as to whether the proposal would actually go ahead and then be sustainable. Nor would the very limited employment created by the gymnasium equate to the current employment generating use. For these reasons, I have only attributed limited weight to the possible gymnasium use in reaching my decision.
12. The more recent internet based element of the marketing campaign would on its own have been too short-lived to provide a conclusive test of the viability of the property given the current economic situation. However, there has also been a large letting board at this central and particularly visible site for a number of years and this marketing has been supported by sporadic advertising. The appellants have demonstrated the effectiveness of their marketing approach by successfully letting a number of shops within the block without using local agents. So despite the lack of local agents and the limited internet advertising, I consider that the marketing campaign as a whole has provided convincing evidence that there is minimal demand for the offices.
13. In addition, the lack of parking, low ceiling heights, lack of trunking and the limited access would limit the suitability of the premises for modern office use. Also, there appears to be a plentiful supply of unoccupied commercial premises in the area and little evidence of demand for this type of central secondary office premises. Moreover seeking the previously established rental and only offering a leasehold interest in these first floor commercial premises, in my view, constituted a reasonable approach which would not fundamentally undermine the conclusion that there is a minimal demand for the offices.
14. Notwithstanding the limited possibility of a gymnasium use, I consider that there is compelling evidence that the premises are no longer viable for an employment generating use and that the proposal would therefore not conflict with the aims of Policy E16. In my view, my conclusion would not conflict with the views expressed by Inspectors in Appeal Ref: APP/F3925/A/08/2085132 and Appeal Ref: APP/T3915/A/07/2036476 as the viability of the employment uses in those appeals does not appear to have been tested by the type of sustained marketing campaign demonstrated in the current appeal.

Waste

15. I understand that recent policy changes would now permit the use of bulk storage bins for residential waste at the site and it seems to me that suitable bins could be safely and conveniently accommodated on site with small

individual recycling bins accommodated in each flat. I therefore consider that the proposal would not conflict with the aims of Policy G2(viii) of the Local Plan in this respect.

Cycle Storage

16. There is no space for covered cycle storage at the site. Appendix VI of the Local Plan sets out cycle storage standards but acknowledges that in some change of use applications the appropriate standard for cycle storage will not be achievable and such cases are to be considered on their merits. It seems to me that future occupiers of these modest and centrally located flats would be likely to walk to the nearby facilities, shops, supermarket or bus station and this would amount to a viable alternative to car use. Notwithstanding the limited car parking, the lack of a local railway station and the limitations of the shopping centre, I therefore consider that the absence of cycle storage facilities would not be harmful and, in this respect, would not conflict with the aims of Policy G2(i) and Appendix VI of the Local Plan.

Overall conclusion in respect of main issues

17. I consider that there is compelling evidence that the site is no longer viable for an employment use, that the absence of cycle storage at this relatively central site would not amount to harm and that waste storage facilities could be accommodated on site. However, in my view, the problems of noise and smell would result in unacceptable living conditions for future occupiers contrary to the aims of the Local Plan and this harm could not be overcome by a condition.

Other matters

18. The relatively minor changes to the external appearance of the building would not, in my view, adversely affect the nearby Conservation Area or its setting. I see no reason to disagree with the conclusion of the Highways Authority that the proposal would be unlikely to increase demand for parking compared with the existing office use. The small flats would be unlikely to be used for family occupation and there would be a contribution towards public open space so that the lack of amenity space would not be an issue. I consider that the scale and layout of the development would be appropriate for the site and, given the existing window openings, any prejudice to the development of adjacent premises would not be so great as to amount to harm. I have no compelling evidence that proper arrangements could not be made for escape from fire or for the lighting of communal areas. However, none of this overcomes my fundamental concerns over harm to living conditions.

Conclusion

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Saul

INSPECTOR

DOCUMENTS

- 1 Local Plan appendices
- 2 E-mails regarding revised waste storage proposals
- 3 Overview of marketing
- 4 Local letting particulars
- 5 Conservation Area Map
- 6 Office space recommendations
- 7 Web site letting advertisements
- 8 Letting Agent letter re Fairways Court
- 9 Local Plan Policy E16