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Report

Report Subject: Planning application S/2008/1744 at 24 North Street, Wilton for conversion of store area at rear into a one bedroom flat, with a single storey extension

Report to: Western Area Committee

Date: 19th March 2009

Author: Oliver Marigold, Senior Planning Officer

1. Report Summary:

1.1 To establish members' response to a letter from the applicant making clear that they do not intend to enter into a legal agreement, following the resolution at Western Area Committee on 19th February 2009

2. Considerations:

2.1 Members may recall that at Western Area Committee on 19th February 2009 they resolved to grant planning permission for the above application, but only subject to a legal agreement under s106 of the Town and Country Planning Act 1990.

2.2 Members considered that a legal agreement was necessary to ensure that the new residential accommodation on the ground floor could only be occupied in association with the existing shop unit. This was considered necessary in the interests of the viability and vitality of Wilton, and to prevent a conflict of uses ie between the existing shop and the residential use.

2.3 Following the resolution, officers have contacted the applicant to establish whether they would be willing to enter into the agreement. The applicant's response is attached, but it is clear that they are unwilling to enter into s106 agreement.

3. Options for consideration:

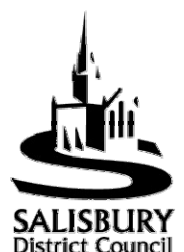
3.1 Members have a number of options, which are set out below:

Option 1 – to refuse permission

3.2 The legal agreement, limiting occupation, was considered necessary by members as being in the interests of the vitality and viability of Wilton and to prevent a conflict of uses.



Awarded in: 1
Housing Services
Waste and Recycling Services



- 3.3 Therefore on that basis, in the absence of an agreement, permission would be refused on the grounds that the loss of the storage area would affect the viability of the shop, and that the shop's loss would harm the vitality of Wilton. Permission would also presumably be refused because of concerns that a non-tied residential use would have a poor level of amenity given the proximity of the shop use.
- 3.4 However, officers do not recommend this course of action. In the event of an appeal, the likelihood of the Council being successful is considered very limited.
- 3.5 The applicants would be able to argue that consent has already been given that would result in the loss of the shop unit in its entirety (reference S/2004/1671). Furthermore, consent has also been granted to convert the storage area into residential accommodation, without restriction.
- 3.6 Therefore this proposal is preferable to the 2004 consent in that it does at least seek to retain the shop unit. Furthermore, it would be very difficult to argue that an increase in only 1m to the rear (and not resulting in any additional bedrooms) would create a level of conflict that would be any greater than might result under the extant consents.
- 3.7 Even if it were not for the extant consents, refusing permission on the grounds of vitality/viability and conflict of uses would be difficult to defend.
- 3.8 In relation to the loss of the shop unit, the Council has previously tried to resist the loss of individual units in Wilton but has been unsuccessful at appeal on a number of occasions, with appeal Inspectors finding it difficult to accept that the loss of one unit individually would harm the overall vitality and viability of Wilton (the test of policy G1). This is despite arguments being made about the cumulative effect of the loss of individual units. Meanwhile trying to refuse permission on the grounds of PS3 would be frustrated by the fact that this policy applies only to 'smaller settlements' (and Wilton is defined as a 'larger settlement' under policy H22).
- 3.9 Furthermore, the proposal is only to convert the storage area to the rear of the shop, which the applicant says has been unused since 2004, rather than actually proposing loss of the shop. It is not necessarily the case that loss of what appears to be an under-used storage area would result in the loss of the retail unit as a whole.
- 3.10 In relation to the conflict of uses, as the applicant points out, there are already existing flats above the retail unit (at first and second floors), and the retail unit and the proposed residential unit would have different points of access.
- 3.11 Overall, members are advised that refusing permission on the grounds of harm to vitality and viability of Wilton, and because of a potential conflict between uses, would be very difficult to successfully defend at appeal.

Option 2 – impose a condition

- 3.12 At the meeting of Western Area Committee, there was some discussion regarding whether a condition could be imposed restricting occupation of the flat, so that it could only be occupied in association with the retail unit.
- 3.13 Government Circular 11/95 (the use of planning conditions) says that:

“Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission” (paragraph 92)

and

“conditions tying the occupation of dwellings to that of separate buildings (eg requiring a house to be occupied only by a person employed by a nearby garage) should be avoided” (paragraph 101).

- 3.13 In officer’s view, the effect of imposing a condition would be the same as refusing the application – the applicant would simply appeal against the condition rather than against refusal. The considerations of option one would therefore apply equally to the imposition of a condition.
- 3.14 Furthermore, if such a condition were imposed, it would have to be precise about who could occupy the flat. In limiting occupation in association with the retail use, does this ‘association’ mean a person employed (or last employed) in the retail unit, or just someone who owns both, but who is not necessarily employed in the retail unit (ie so it could be let to anyone as long as the owner of both is the same).
- 3.15 If the former is intended (ie just those employed in the shop) then this would severely limit occupation of the flat and could result in the shop unit being much less attractive to the existing or to potential retail enterprises (see attached letter from the applicant).
- 3.16 Meanwhile if the latter is intended (ie shared ownership) this could only be restricted by legal agreement rather than condition. Even if such an agreement could be entered into, it would give the Authority very little realistic control (anyone could own the block and therefore let the flat to anyone else) and therefore there is little planning justification for such control. A potential occupier of the new residential accommodation would in any case be aware of the location of the flat in relation to the shop.
- 3.17 Therefore simply imposing a condition is not an option recommended by officers either.

Option 3 – grant permission in accordance with officer’s original recommendation

- 3.18 It is perhaps unsurprising that officers consider that their original recommendation should be followed – ie that consent should be granted without trying to limit who occupies the flat. Members’ concerns regarding the loss of retail units in Wilton are fully understood and appreciated. However, the fact remains that with the Local Plan policies as they are currently adopted, there is little scope to prevent to loss of individual units, despite the cumulative harm this causes.
- 3.19 Unlike in Salisbury or Amesbury there are no ‘shopping frontage’ policies (such as policy S1), while Local Plan policy PS3 only applies to facilities in smaller settlements (and Wilton is defined as a ‘larger settlement’).
- 3.20 Furthermore, even if members do want to try and resist the loss of shop units in Wilton, despite the current policy position, this application is not a particularly good proposal on which to mount such a stance, given the history of extant consent and the fact that the loss of the unit itself is not proposed, only the change of use of the storage area.
- 3.21 It is hoped that the Local Development Framework process will provide a long term solution to the problem of the loss of shop units in Wilton, but at present the LDF process is not at a stage which has sufficient weight to be determinative in development control decisions.

4. Recommendation:

- 4.1 It is recommended that option 3 is followed by members – ie that planning permission is granted without a legal agreement or condition trying to limit occupation of the flat proposed.

5. Background Papers:

Report to Western Area Committee on 19th February 2009 (attached)

- The applicant’s response (dated 23rd February 2009) to WAC’s resolution that a legal agreement be entered into (attached)
- The minutes of WAC of 19th February 2009 (these are included elsewhere in the agenda for approval)

Application Number:	S/2008/1744		
Applicant/ Agent:	NEP PROPERTIES LTD		
Location:	24 NORTH STREET WILTON SALISBURY SP2 0HE		
Proposal:	CONVERSION OF STORE AREA AT REAR TO ONE BEDROOM FLAT AND SINGLE STOREY EXTENSION		
Parish/ Ward	WILTON		
Conservation Area:	WILTON	LB Grade:	
Date Valid:	15 October 2008	Expiry Date	10 December 2008
Case Officer:	Mr O Marigold	Contact Number:	01722 434293

REASON FOR REPORT TO MEMBERS

Councillor Edge has asked that the application be heard at Western Area committee on the grounds of the importance of the site.

SITE AND ITS SURROUNDINGS

The site consists of a three storey building in North Street, Wilton. At present its use consists of a ground floor shop unit, together with three residential units at first/second floor.

In planning terms the site lies within the Wilton Conservation Area, the Area of Archaeological Significance, Flood Zones 2 and 3, and within Wilton's Housing Policy Boundary. The site immediately adjoins a channel of the River Wylye.

THE PROPOSAL

The application proposes the conversion of the rear storage area of the shop into a one bedroom residential dwelling. A flat roof single storey extension is proposed to the rear of the building to accommodate a living area. The shop unit itself would remain, as would the other flats at first and second floors.

PLANNING HISTORY

83/533	Change of Use to Chinese Takeaway	WD	29/04/83
04/1169	Change of Use ground floor from retail to residential ground floor extension and alterations to fenestration including balconies and erection of pitched roof over flat roof	WD	29/07/04
04/1671	Change of Use ground floor retail to residential. New pitched roof ground floor extension various alterations to fenestration	AC	30/09/04
05/330	change of use from a1 to a3	R	13/04/05
05/1198	change of use from retail (a1) to take-away (a5)	R	03/08/05
05/1611	Convert store area on ground floor to a one bedroom flat. Convert on 1 st and 2 nd floors into two on bedroom flats	R	25/11/05
06/0073	Conversion of store area at rear to one bedroom flat and single storey extension	AC	09/03/06
06/2424	Convert ground floor store area at rear to one bedroom flat with rear extension	R	19/01/07 Appeal dismissed

CONSULTATIONS

Conservation No comments

WCC Archaeology No comments to make.

Environment Agency The Environment Agency initially objected on the grounds that the site is within Flood Zone 3. Government guidance in Planning Policy Statement 25 requires that development vulnerable to flooding (including new residential uses) should only take place in high risk zones where the development could not take place in a lower flood zone (this is known as the 'sequential test'). As development could take place elsewhere (ie they could convert other buildings instead) the EA expressed concerns that the proposal would be contrary to Government advice.

The Agency also expressed concern at the applicant's Flood Risk Assessment, which they said was inaccurate both in its classification of the development and its allowance for climate change.

Subsequently, it has been pointed out that there are already extant consents for the conversion and extension of the building which could be implemented, although they both expire in 2009. The Agency have now said that they do not object on 'sequential test' grounds but that the FRA is still insufficient. A revised FRA has been submitted and the EA's comments on this are awaited.

REPRESENTATIONS

Advertisement	yes – expired 13/11/08
Site Notice displayed	yes – expired 17/11/08
Departure	no
Neighbour notification	yes – expired 06/11/08
Third Party responses	no
Parish Council	yes - support

MAIN ISSUES

Impact on character and appearance of the Conservation Area
Impact on flooding and flood risk
Other factors

POLICY CONTEXT

G1, G2	General Development Criteria
R2	Recreational Open Space
H16	Housing Policy Boundaries
CN8	Development in Conservation Areas
D3	Extensions

Government guidance in PPG15 (Conservation) and PPS25 (flooding)

PLANNING CONSIDERATIONS

Impact on character and appearance of the Conservation Area

The proposed development would differ little from the extant 2006 scheme (S/2006/0073) which already grants permission for the conversion of the rear storage area to a one bedroom flat, and a single storey rear flat-roofed extension. The only difference is that the rear extension would be 3.7m in length rather than the approved 2.7m.

It is recognised that a further application was made in 2006 (S/2006/2424) for the conversion of the rear storage area, including a three storey extension. This was refused on the grounds of the impact on the Conservation Area and this stance was upheld at appeal. The Inspector considered that that proposal was not appropriate to its context, did not take the opportunity to improve the building's appearance, and that the 2004 scheme (which did include improvements to the building as a whole, and also remains extant until September 2009) was preferable.

However, while it is accepted that the 2004 scheme remains preferable and implementable, the fact remains that the earlier 2006 scheme is also implementable (and steps are being taken by the applicant to commence development of this scheme, so that the permission does not expire). The differences between the scheme now being proposed, and the earlier 2006, are minimal and would not harm the character or appearance of the Conservation Area in any meaningful way.

It is noted that the Conservation Officer has not commented, and it is considered that the proposal would be acceptable in terms of its impact on the character and appearance of the Conservation Area.

Impact on flooding and flood risk

The site is immediately adjacent to a Channel of a Main River, and lies in Flood Zone 3. The application proposes the creation of a one-bedroom unit of accommodation at ground floor (in the store area for the shop). However the additional accommodation now proposed in the lengthier extension is a larger dining room.

As has been identified above, the Environment Agency initially expressed concerns regarding the potential impact of the development on flooding and flood risk. While it appears that the Agency now accept that permission could not be refused on the 'sequential test' (given the permissions already in place) their objection remains in relation to the Flood Risk Assessment (FRA).

It is anticipated that the Agency's comments on a revised FRA will be available in time for this committee. Assuming that the Agency removes their objection, it is not considered that permission should be refused on the grounds of flood risk.

Other factors

There would be no additional bedrooms over and above those already approved in the earlier 2006 scheme as a result of the proposal, and so no additional R2 money is required (the earlier amount can be 'carried over'). The proposal would have no materially greater impact in terms of highway safety, archaeology, the impact on nearby properties, the retention of the existing shop unit or protected species than the extant scheme.

RECOMMENDATION

Subject to the submission of an acceptable Flood Risk Assessment, it is recommended that planning permission is granted, subject to conditions

RECOMMENDATION: APPROVE

REASON FOR APPROVAL:

The proposed development would not harm the character or appearance of the Conservation Area, highway safety, the amenities of nearby properties or any other material planning consideration, or result in flood risk. It would therefore comply with the relevant saved policies of the Adopted Salisbury District Local Plan.

Subject to the following conditions:

- (1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission. (A07B)

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by section 51(1) of the Planning and Compulsory Purchase Act 2004

- (2) Before development is commenced, a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. (D04A)

Reason: in the interests of the character and appearance of the area

- (3) Development shall be undertaken in accordance with the Flood Risk Assessment dated 23rd January 2008.

Reason: in the interests of preventing flood risk

- (4) Prior to the commencement of development, details of the means of encouraging energy and water efficiency in the proposed development shall be submitted to and approved, in writing, by the Local Planning Authority. Development shall be undertaken in accordance with the details thereby approved.

Reason: in the interests of sustainable development.

INFORMATIVE:

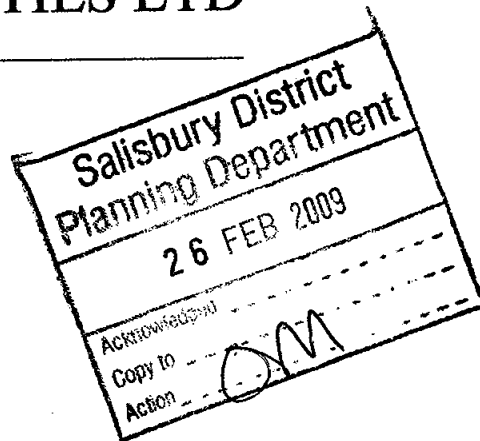
This decision has been taken in accordance with the following saved policies of the Adopted Salisbury District Local Plan:

G1, G2	General Development Criteria
R2	Recreational Open Space
H16	Housing Policy Boundaries
CN8	Development in Conservation Areas
D3	Extensions

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Mr Marigold
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Planning Office
61 Wyndham Road
Salisbury
SP1 3AH



23 February 2009

Dear Mr Marigold,

REF: S/2006/1744 - 24 NORTH STREET, WILTON SP2 0HE.

Thank you for your letter dated 20th February informing me of the outcome to the Western Area Committee meeting on the above planning application.

I can see that the Committee members are strongly opposed to the conversion of the shop unit at the front into residential but applying a restriction on the above application would surely leave the shop unit and newly created flat empty. I do not know of many businesses placed in secondary positions that would rent a shop and a flat at market rent apart from a food associated business, so in effect the Committee could be restricting the use to this shop and the viability of this unit, which I am sure is not their intension.

The storage area to be converted has been empty now since 2004 and has been offered to rent along with the shop unit to the current operators of the shop who have declined this offer. The common sense long-term viability of this shop is surely down to finding a suitable tenant who will pay a market rent as it stands as a lock up unit and not imposing restrictions which might or might not work.

The shop unit and the flat have different access points with any noise between the units being broken up with the communal entranceway. There has been no conflict between the current occupiers of the shop and any of the other tenants in the flats so we would only foresee a problem if the occupiers changed in the shop, which would effect the whole block not just one flat.

Your Committee members may not be fully aware that currently the shop unit at No 24 is occupied by The Burnbake Trust on a monthly agreement with the rent received below market value, I have spoken to them in relation to renting the flat on the condition of occupying the shop and they have expressed that this is something they could not afford, so if imposed the shop unit would become vacant.

We would like to make it clear to the committee that it is not our intensions to convert the Shop unit into residential as we believe this would harm the already fragile retail structure of Wilton and I am sure that a business could be found eventually who would pay the market rent for this shop. Also the Committee must be aware that if it was the intension to convert the shop unit into residential we would of preceded with this under the application which has already been granted (application S/2004/1671) or we would have amended this application to suit.

I would also like to mention that the previous application S/2006/73 which has been passed is for exactly the same application, apart from it extends at the rear an extra 1 metre creating a further 5 sq/m. This current application could not be dealt with as an amendment so it had to be submitted as a full application. The reason for extending the extra 1 metre is solely down to the costs of the piling of the foundations for the extension.

We therefore would not commit ourselves into entering into an agreement to join the residential unit to the shop as this could jeopardise the rentability of the shop / flat and would place the viability of gaining a market rent for shop and flat to a limited market.

Yours sincerely



Nicholas Pratt

Salisbury District
Planning Department
23 FEB 2008
Acknowledged
Copy to
Action