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## Appeal Decision

Site visit made on 16 May 2016

**by Richard Schofield BA(Hons) MA MRTPI**

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

**Decision date: 24 May 2016**

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**Appeal Ref: APP/Y2430/W/15/3133118**

**Land Adjacent to 2 Thorpe Road, Melton Mowbray, Leicestershire LE13 1SG**

- 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 Nicholas Yool against the decision of Melton Borough Council.
  - The application Ref 15/00194/FUL, dated 9 March 2015, was refused by notice dated 26 June 2015.
  - The development proposed is change of use of existing commercial premises to residential units. Conversion of existing buildings, including partial demolition of some single storey structures, to create 10 no. self contained dwellings plus associated car parking and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of existing commercial premises to residential units, conversion of existing buildings, including partial demolition of some single storey structures, to create 10 no. self-contained dwellings plus associated car parking and landscaping at Land Adjacent to 2 Thorpe Road, Melton Mowbray, Leicestershire LE13 1SG, in accordance with the terms of the application, Ref 15/00194/FUL, dated 9 March 2015, subject to the conditions set out in the Schedule to this decision.

### Application for costs

2. An application for costs was made by Mr Nicholas Yool against Melton Borough Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. My site visit was undertaken between 0915 and 1015 on a Monday morning. As well as visiting the appeal site, and the wider area, it included a reasonable period of time observing the operation of the Saxby Road/A607/A606 junction and that of George Street with Saxby Road.
4. Just prior to the site visit, judgment was received in the case of Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441. Both parties were afforded the opportunity to comment upon its implications and I have taken this into consideration in my determination of planning obligations below.

## **Main Issues**

5. The main issues are the effect of the proposed development on highway safety and whether it is appropriate for the scheme to provide planning obligations towards local infrastructure and affordable housing.

## **Reasons**

### *Highway Safety*

6. The appeal site is a group of vacant buildings in the centre of Melton Mowbray, with vehicular and pedestrian access/egress from/onto George Street and the B676 (Saxby Road). There is currently limited space to park vehicles, none of it defined by parking bays.
7. George Street is a short cul-de-sac, which is also accessed from Saxby Road, dominated by terraced houses with a small commercial unit at the end. At the time of my morning site visit there were a few cars parked on the street, on both sides of the road, but it was still easily accessible, with a relatively spacious turning head at the end (even with vehicles parked within it). Sight lines on exit from the site, of both vehicles and pedestrians, appeared satisfactory and I see no reason why traffic should be moving at any great speed along the street. The exit from George Street onto Saxby Road, even with parked vehicles on Saxby Road, did not appear challenging, with numerous breaks in the traffic to allow an exit.
8. Saxby Road is relatively busy, being a main route into Melton Mowbray from the east. The current access into the site is a short distance from the Saxby Road/A607/A606 traffic light controlled junction, which appeared to be operating effectively. At the time of my site visit, there were numerous breaks in the traffic, some afforded by the pattern of changes of the traffic lights, such that vehicles seeking to enter (or, indeed, exit) the appeal site could have done so safely and efficiently.
9. The appeal scheme would introduce a one-way system to the site, to ensure that vehicles enter it from Saxby Road and exit onto George Street. Based on my observations of the site, and all that I have read, I see no reason why this should not operate effectively.
10. The appeal scheme proposes 18 parking spaces for 10 dwellings, equating to at least one space per dwelling with four visitor spaces. The Council considers this to be too few spaces, which would give rise to on-street parking on George Street to the, undefined, detriment of highway safety and the, undefined, detriment to quality of life of existing residents.
11. However, the Council has no adopted parking standards that define required levels of parking provision and it is difficult to see on what basis it makes these assertions. It is not disputed that the appeal site is in a sustainable location with good access on foot or by bus to local facilities and to the town centre. It is reasonable to consider that this is likely to reduce the need for car ownership by future residents of the appeal site. Even if this was not the case, and there were some overspill, there is no substantive evidence before me to suggest that on-street parking spaces would not be available on the non-parking restricted roads nearby or that use of them would give rise to any safety issues, however they may be manifested.

12. I am mindful that traffic and parking conditions will ebb and flow during the course of a day and that my site visit was only a snapshot in time. However, I must give weight to the fact that Leicestershire County Council as the highways authority has not objected to the proposal and is of the view that any residual cumulative impacts of the development are not considered severe and can be mitigated by conditions. In addition, although I appreciate that a residential development is different from the recent use of the site as a gym, there is no substantive evidence that vehicular access/egress from George Street and Saxby Road, and the currently restricted levels of parking on site, has resulted, in recent or past times, in any significant adverse highway safety or efficiency impacts.
13. It is suggested that tall vehicles may be unable to pass through the archway in the centre of the site. This is not an unreasonable concern but, again, it is supposition with no technical evidence to support it. Nor, again, is there any evidence that this has proved problematic in the past.
14. I conclude, therefore, that on the balance of the evidence before me the appeal proposal would not have an adverse impact upon highway safety. It would not conflict, therefore, with Melton Local Plan policies OS1 or BE1, which seek, among other things, to ensure that new development provides satisfactory access and parking. Nor would it conflict with the advice in the National Planning Policy Framework (the Framework) that decisions should take account of whether safe and suitable access to the site can be achieved for all people.
15. The Council also makes reference to Chapter 4 of the Framework, although it is not clear what aspects of this chapter it considers pertinent to matters of highway safety.

*Local infrastructure and affordable housing*

16. The Council's Statement raised, as an 'Other Consideration', the requirement for planning obligations in relation to waste and libraries and for the provision of affordable housing. These obligations were not requested as part of the original application, the Council following the policy of the Written Ministerial Statement (WMS) by the Minister of State for Housing and Planning, of November 2014, which stated that:  
*Due to the disproportionate burden of developer contributions on small scale developers, for sites of 10-units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought.*
17. That the Council subsequently sought to secure the above obligations appears to be in direct response to a successful High Court challenge to the WMS, which, in effect, negated the above statement.
18. I am mindful, however, of the Court of Appeal's judgment of 11 May 2016, wherein the Secretary of State for Communities and Local Government successfully appealed against the judgment of the High Court of 31 July 2015. Subsequent to the Court of Appeal's judgment the policies in the WMS, as to the specific circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought from small scale development, must once again be treated as a material consideration in development management decisions and, more generally, in the exercise of powers and duties under the Planning Acts.

19. It is evident that the library and waste obligations are tariff-style obligations, and, thus, the degree to which it is appropriate to seek them must be debateable. Indeed, although being afforded the opportunity to do so, the Council has not sought to challenge the appellant's view that these obligations are again inappropriate in the context of the appeal scheme.
20. Turning to affordable housing, although much the same argument applies, I have been presented with a viability assessment by the appellant, which seeks to demonstrate that an affordable housing contribution would render the scheme unviable.
21. Although the assessment is not disputed by the Council, there appears to be little consideration within it of, admittedly limited, grant funding that may be available and I am not entirely persuaded by the scant justification for the view that a residual land value of £250,000 is the minimum that a seller might expect.
22. This is, however, largely moot. On balance, given the significant weight that I attach to the 'restored' WMS as a material consideration, being an expression of Government policy to be read alongside the Framework, I find little justification for the Council's requests and am not persuaded that it is appropriate for the appeal scheme to provide the requested obligations.

### **Other Matters**

23. A number of third parties have expressed concern at the loss of the gym on the site. It was evident from my site visit, however, that it has already stopped operating irrespective of my decision.
24. It was suggested that the new development would result in overlooking of properties on George Street. However, the appeal buildings are some distance from the rear elevations and rear gardens of the houses on George Street and, in my judgment, there would be no adverse impacts upon privacy.
25. Some respondents questioned the need for more housing in Melton Mowbray. It is apparent from evidence cited in the Officer's report, however, that this is not the case, particularly with regard to smaller dwellings.
26. Melton Mowbray & District Civic Society requested that a photographic record of the buildings should be made. However, the buildings do not appear to be listed, nationally or locally, nor are they in a conservation area. While the buildings are attractive and, clearly, part of the town's history, I am not persuaded that requiring the appellant to undertake a photographic survey, by condition, would meet the tests of reasonableness or necessity set out in the Framework.

### **Conditions**

27. A number of conditions were proposed by the Council, which I have considered against the relevant tests, amending and/or conflating them for clarity as necessary. In addition, both parties agreed that conditions in relation to nesting birds were appropriate and, for the sake of completeness, I have also included references to bats within them as appropriate. Given that the appellant's submitted ecology surveys made recommendations in this regard, I do not consider that these conditions prejudice the development in any way.

28. A condition in relation to the approved plans is necessary to provide certainty. That requiring samples is necessary in the interests of character and appearance. Those relating to site access and egress points and to parking provision are necessary in the interests of highway safety and efficiency. The conditions in respect of contamination, the Flood Risk Assessment and that removing permitted development rights for basement conversions are necessary to prevent flooding and to mitigate harm from potential flooding and land contamination. Similarly, that relating to drainage is necessary to ensure that the site is properly drained and serviced. Conditions in relation to birds and bats are necessary in the interests of protecting and enhancing biodiversity.
29. The condition referring to surface water infiltration is not necessary given the presence of a wider condition requiring submission of a surface water drainage scheme.

**Conclusion**

30. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be allowed.

*Richard Schofield*

INSPECTOR

Richborough Estates

## SCHEDULE OF CONDITIONS

1. The development shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: C162 001 A (Site Location Plan); C162 003 F (Site Plan - As Proposed); C162 004 D (Schematic Floor Plans); C1652 100 C (Proposed - Lower Ground Floor); C162 101 D (Proposed - Upper Ground Floor); C162 102 C (Proposed - First Floor); C162 103 C (Proposed - Second Floor); C162 104 C (Proposed - Elevations).
3. No development hereby permitted shall commence until samples of all materials to be used in the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out with the approved materials.
4. No development hereby permitted shall commence until a detailed scheme for the proposed one way system of access to and egress from the site, to include signing and lining, has been submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be implemented before first occupation of any dwelling and shall be so maintained thereafter.
5. No development hereby permitted shall commence until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
  - 1) A preliminary risk assessment which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors
    - potentially unacceptable risks arising from contamination at the site.
  - 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the assessment of the risk to all receptors that may be affected, including those off site.
  - 3) The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

6. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
7. No development hereby permitted shall commence until a scheme for the disposal of surface water and foul sewage, to include details demonstrating that surface water will not drain onto the public highway including private access drives, has been submitted to and approved by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and maintained thereafter.
8. Notwithstanding the approved plans, no development hereby permitted shall commence until details of a scheme for the retention of bird nesting sites, where possible, and the inclusion of appropriate bird nesting boxes and bat boxes in line with the recommendations of the submitted Baseline Ecological Assessment (25 March 2014 by Greenwood Environmental), Daytime Bat Survey (Emec Ecology May 2015) and Bat Emergence Surveys (Emec Ecology 24 July 2015) has been submitted to the local authority and approved by it in writing. Development shall thereafter be carried out in accordance with the approved scheme, which shall be retained thereafter.
9. Before first use of the development hereby permitted, the existing gates to the vehicular access onto Saxby Road shall be removed. Any new vehicular access gates, barriers, bollards, chains or other such obstructions erected shall be set back a minimum distance of 10 metres behind the highway boundary and shall be hung so as not to open outwards.
10. Notwithstanding the details submitted, with the exception of the existing wall or buildings shown abutting any car parking space, a minimum of 0.5 metre clear margins shall be provided to the car parking spaces, in which no planting or new walls or fences shall be erected. These margins once provided shall thereafter be permanently so maintained.
11. The car parking and manoeuvring facilities shown within the site on the approved plans shall be provided, hard surfaced and made available for use before any dwelling is occupied and shall thereafter be maintained for their approved use.

12. No dwelling hereby permitted shall be first occupied until a scheme to reinstate the secondary vehicular crossing serving the site from Saxby Road, to the south of the main access, as footway with full height kerbing has been submitted to and approved in writing by the local planning authority and subsequently implemented as approved.
13. Before first use of the development hereby permitted 1 metre by 1 metre pedestrian visibility splays shall be provided on the highway boundary on both sides of the site access on to George Street, with nothing within those splays higher than 0.6 metres above the level of the adjacent footway, in accordance with the current standards of the Highway Authority, and shall be so maintained thereafter.
14. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) report reference 13543/FRA/Rev B prepared by BSP Consulting in March 2014 notably with regard to the following mitigation measures:
  - 1) The finished floor levels of plots 1\_2 shall be set no lower than 74.05m AOD;
  - 2) The finished floor levels of plots 3, 5, 10 and part of Plot 9 shall be set no lower than 74.10m AOD.
  - 3) The finished floor levels of plot 4 shall be set no lower than 74.25m AOD
  - 4) The finished floor levels of plots 6, 7, 8 and part of plot 9 shall be set no lower than 74.24m AOD

The mitigation measures shall be fully implemented prior to occupation of the dwellings hereby permitted.
15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no basements shall be converted into habitable spaces unless expressly authorised by this permission.
16. In the event that works do not commence before July 2017 an updated bat survey should be completed and submitted to the local planning authority for approval in writing prior to the commencement of development. The development shall thereafter be carried out in accordance with the recommendations of the updated survey.
17. No works shall take place involving the demolition of any existing buildings, or works to the building marked 4B on p21 of the submitted Daytime Bat Survey (EMEC Ecology May 2015), other than outside the bird nesting season (1 March to 31 August), unless those buildings have been first thoroughly checked for any nests and nesting birds by a suitably qualified person who has confirmed in writing to the Local Planning Authority that there are no active nests present.