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## Appeal Decision

Site visit made on 12 March 2019

**by Kevin Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> April 2019

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**Appeal Ref: APP/E2530/W/18/3211984**

**Land at rear of 31 North Street, Bourne PE10 9AE**

- 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 Jason Murray against the decision of South Kesteven District Council.
  - The application Ref S18/0645, dated 15 June 2018, was refused by notice dated 3 August 2018.
  - The development proposed is demolition of existing buildings and erection of 12 no. apartments.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. On 19 February 2019, the Government published a revised National Planning Policy Framework (the Framework) and the Housing Delivery Test (HDT) results. The revised Framework does not materially alter the national policy approach in respect of the issues raised in this appeal and therefore the main parties have not been prejudiced by its publication.

### Background and Main Issue

3. The Council, through its planning committee, refused permission on the basis that the proposal would be an overdevelopment of the site, resulting in a lack of parking provision and insufficient private external space. On my reading of the evidence, the Council's case relates to the effects of the site coverage of the buildings on the ability to provide on-site parking and external space necessary to ensure an acceptable standard of design and living conditions.
4. Therefore, I consider the **main issue** to be whether the proposal would provide an acceptable standard of development, with particular regard to the absence of parking and the amount and quality of external amenity space to be provided and the effect of these factors on future occupants, the wider environment and the highway network.

### Reasons

5. The appeal site is a long, narrow area of land to the rear of properties on North Street which contains a disused former cinema building and a long row of single storey lock-up garages. Vehicular access is possible from Burghley Street. The existing buildings would be demolished and three blocks each with four flats would be constructed in a linear form to the centre of the site.

### *Parking*

6. Policy EN1 of the Local Development Framework for South Kesteven Core Strategy (July 2010) (the CS) states that development must be appropriate to the character and significant natural, historic and cultural attributes and features of the landscape within which it is situated, and contribute to its conservation, enhancement or restoration. Amongst the criteria against which all development will be assessed is the layout and scale of buildings and designed spaces.
7. The buildings would occupy large footprints which would cover much of the site area. The scheme is specifically designed as a car-free development. The present access would be used as a pedestrian entrance, with no on-site parking proposed. The Council states that the information provided by the appellant is insufficient to demonstrate that the lack of car parking would not result in an unacceptable impact on the surrounding highway network.
8. The Council accepts that neither it nor Lincolnshire County Council (LCC) as the Local Highway Authority has adopted car parking standards and LCC did not sustain an objection to the proposal. The Council, however, points to restricted parking provisions on North Street and Burghley Street and to an extant permission<sup>1</sup> that would provide parking at a ratio of one space per unit.
9. The Framework states that development proposals should identify and pursue opportunities to promote walking, cycling and public transport use, and that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. The site is located in the centre of Bourne with convenient access to town centre services, facilities and employment as well as bus services. Consequently, future occupants of the flats could rely on a range of alternative modes of transport to the private car including walking, cycling and public transport for most of their day-to-day needs. In turn, this would reduce reliance on the private car and promote healthy and safe travel.
10. However, it is realistic to expect that a development of 12 flats would generate some demand for parking, whether that be from residents, visitors, deliveries, maintenance or emergency vehicles. Given the parking restrictions on Burghley Street, prospective residents or visitors would be required to park further away or risk parking illegally close to the site for shorter visits such as deliveries, which would pose a risk to highway safety, particularly given the poor visibility at the Burghley Street entrance. Increased on-street parking would erode the quality of the environment. Accordingly, it would not be unreasonable to expect the proposal to make some form of provision for future occupants who wish to have access to a car.
11. The proposed layout shows a pedestrian path in place of the existing vehicular access. This could be laid out to retain sufficient width for a vehicle to access the site and the appellant indicates that vehicular access could be achieved by means of a removable bollard. However, the proposed site coverage of the buildings is such that no suitable turning area for vehicles could be made available. Therefore, vehicles entering the site would have to either reverse in or out. Given the poor visibility at the entrance to the site, such manoeuvres, particularly by larger vehicles, would be slow and hazardous to occupants

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<sup>1</sup> Council Ref S17/0703

seeking to enter or leave the development and to other highway users by blocking the access and the road. The alternative of vehicles parking at the entrance and unloading would be no less hazardous given the restricted space and visibility, whilst the long distance into the flats would prolong the length of time vehicles would occupy the area around the entrance and increase the hazard and inconvenience to other highway users and future occupants.

12. Concerns were also raised by the Council's planning committee in respect of access for emergency services. The standards for emergency vehicle access are set out in the Building Regulations. However, it seems to me that the appeal scheme as laid out would not permit convenient access for emergency vehicles and would present a potential danger to the safety of occupants in an emergency.
13. Overall, therefore, I am of the view that the lack of parking provision and the unsuitability of alternative arrangements would increase the risk to highway safety would have a significant and harmful effect on the living conditions of future occupants, which would detract from the quality of the development.

#### *External Space*

14. The Council's second concern relates to the proposed external space for prospective residents. There would be 12 flats in total, 6 at ground floor and 6 at first floor. The plans do not indicate whether the ground floor units would have dedicated space immediately to the rear, although this appears likely, as the appellant's design and access statement suggests the larger area to the side of the buildings would be a communal space, which would be for the use of the upper floor flats.
15. To the rear, the depth of the external space between the rear walls of the building and the boundary wall would be as little as 1.8 metres and at most 3.8 metres. Set between the two storey buildings and the tall boundary wall, these areas would be confined, enclosed spaces suitable only for limited activities such as drying clothes or external storage. As they would be located to the north of the buildings where sunlight would not penetrate for the majority of the day, these areas would not be attractive spaces for sitting out or for children to play.
16. The larger area to the side would afford a more functional space given its size; however, the combination of its communal nature and detached position relative to the upper floor units, the pedestrian route crossing through it and potential views from surrounding properties would limit its potential use by occupants of the flats.
17. At my site visit, I noted that there are a number of outdoor recreation areas within walking distance of the site, including Wellhead Park, Abbey Lawns and the grounds at Recreation Road. Future residents would have a number of options for outdoor recreation beyond the proposed on-site external space.
18. However, the plans show the front elevation of the easternmost flat at ground floor level would be within 1.7 metres of the relatively tall boundary wall of the site. The rear boundary wall would be as close as 1.2 metres from the rear windows of this flat. Such a cramped layout would result in an unacceptably restricted outlook and a demonstrable feeling of enclosure for occupants. Given the lack of suitable external space, I find that the proposal

would result in poor living conditions for future occupants. The availability of public open space nearby would not compensate for these harmful shortcomings in the quality of the development.

### *Conclusions on main issue*

19. For the foregoing reasons, I find that the proposal would result in a poor quality built environment and unacceptable living conditions for future residents. In coming to this view, I recognise that the Council does not argue against the proposal in terms of its effect on character and appearance. However, that the site may accommodate the buildings in spatial and visual terms does not, in my view, mitigate for the site not accommodating the requirements of the development as a whole.
20. Accordingly, I find conflict with Policy EN1 of the CS which requires the protection and enhancement of the character of the district, including through the layout and scale of buildings and designed spaces.
21. The Council also refers to the requirements for well-designed places in Paragraph 58 of the 2012 Framework, the substance of which is now contained in Paragraph 127 of the 2019 Framework. Criterion b) states that development should be attractive as a result of good architecture, layout and appropriate and effective landscaping; criterion e) states that development should optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks and criterion f) states that development should create places that are safe, inclusive and accessible and which promote health and well-being with a high standard of amenity for existing and future users. In light of my findings, the proposal would conflict with the Framework in these respects.

### **Other Matters**

22. The appellant has submitted a unilateral undertaking intended to secure the provision of affordable housing as part of the development. However, the undertaking is set out in an unclear manner, with two copies of a nomination agreement included which require the signatures of both the appellant and the Council. One is signed by the appellant and neither by the Council, and parts requiring dates are not completed. Moreover, the undertaking itself contains an erroneous page for the Council's seal. Given these inconsistencies, I am not satisfied that the undertaking before me is complete, and therefore I do not afford it weight in the determination of the appeal. The Planning Practice Guidance advises that a positively worded condition should not be used to require an applicant to enter into a planning obligation and that a negatively worded condition is unlikely to be appropriate in the majority of cases. I do not find that exceptional circumstances have been demonstrated in this particular case to warrant use of such a condition.
23. The Council concluded that the proposal would not have an adverse effect on either the character and appearance of the Bourne Conservation Area or the setting of adjacent listed buildings at Nos 25-29 and No 39 North Street. I have had regard to the statutory duties<sup>2</sup>. Based on all I have seen and read, I have no reason to reach different conclusions to the Council.

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<sup>2</sup> Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

24. Interested parties have raised concerns in respect of the effect of the proposal on their living conditions. The windows of the proposed dwellings would face onto a car parking area to the north and a pub beer garden to the south. The nearest residential properties would be to the side of the proposed buildings fronting North Street or Burghley Street, and from my observations would be sufficiently distant so as not to be subject to direct overlooking from the proposed flats. Accordingly, I am not led to find harm in this respect.
25. An interested party has raised concern that the pedestrian route through the site, as it is not shown to be gated, could be used by the public as a short cut to North Street, causing a '*clear infringement of the Human Rights Act, Section 8.*' From my observations on site, there is presently nothing preventing access into the site from Burghley Street, but the North Street access is gated and not a public right of way. I am not provided with evidence that this situation would change. Moreover, contrary to the interested party, the plans of the approved scheme appear to show access from Burghley Street would not be gated. Given these factors, I am satisfied that the proposal would not lead to an infringement of the Human Rights Act in this case.

### **Planning Balance**

26. The proposal would provide modest economic benefits, notably short-term jobs in the construction sector, and in terms of future occupants contributing to maintaining and enhancing the vitality of town centre services and facilities and supporting local employment. The contribution to the supply of housing would be a social benefit which should be afforded moderate weight, having regard to its scale. The provision of affordable housing would represent a potential benefit; however, in the absence of a completed planning obligation to secure its delivery, I do not give weight to this as a benefit of the scheme.
27. There would also be modest environmental benefits arising from the re-use of previously developed land, and from the proposal being a car-free development. However, the proposal would not entirely fulfil the social or environmental roles of sustainable development, as the failure to make provision for any form of parking, and the poor quality of the external space, would not create a high quality built environment.
28. The Housing Delivery Test outcome for the Council indicates that the delivery has been below the requirement over the last three years (at 81%). However, the implementation arrangements contained within Annex 1 of the Framework mean that at the current time the tilted balance in Paragraph 11(d) would not be engaged. Even if it were, the identified harms would significantly and demonstrably outweigh the benefits of the development and the proposal would not represent sustainable development in the terms of the Framework.

### **Conclusion**

29. For the reasons given above the proposal would not accord with the development plan and would be inconsistent with the Framework. Therefore, I conclude that the appeal should be dismissed.

*Kevin Savage*

INSPECTOR