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## Appeal Decision

Site visit made on 31 March 2015

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 14 April 2015**

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**Appeal Ref: APP/K0425/A/14/2226866**

**84 Station Road, Marlow, Buckinghamshire SL7 1NX**

- 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 Nicholas King Homes PLC against the decision of Wycombe District Council.
  - The application Ref 14/05981/FUL, dated 14 April 2014, was refused by notice dated 20 August 2014.
  - The development proposed is the demolition of existing buildings and redevelopment to provide 6no. residential units (Use Class C3) and associated highways and landscape improvements.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and redevelopment to provide 6no. residential units (Use Class C3) and associated highways and landscape improvements at 84 Station Road, Marlow, Buckinghamshire SL7 1NX in accordance with the terms of the application, Ref 14/05981/FUL, dated 14 April 2014, subject to the conditions set out at the end of my decision.

### Main Issue

2. The main issue in this case is the effect of the proposal on the supply and distribution of employment sites in the Council area, having regard to the fallback position and the character and appearance of the area, including the setting of the adjacent Conservation Area.

### Reasons

3. No 84 Station Road, or Willowbank House, lies on the eastern side of Marlow within an area of largely dense, tightly knit residential housing. The appeal property is a reasonably large two-storey office building, set in a 'L' shape, with the long branch of the 'L' facing, but set back from, the frontage of Station Road. The building appeared to be in use at the time of my site visit and is covered in white render, with a pitched roof covering most of the front elevation. Car parking is located to the front and side of the property.
4. Policy CS11 of the Wycombe District Council Adopted Core Strategy, July 2008 (the Core Strategy) states that the needs of business in the District will be met through the regeneration and intensification of existing business areas, including scattered business sites. Policy DM5 of the Wycombe District Council

Adopted Delivery and Site Allocations Plan, July 2013 (the Site Allocations Plan) concerns scattered business sites and states that planning permission for residential uses will only be granted if it has been clearly demonstrated that the re-use of the site for uses falling within use classes B1, B2 and B8 or for other uses that deliver economic development is no longer practicable. The policy also states that, to demonstrate that a site is no longer practicable for employment generating uses the site must be marketed for a sufficient period of time and at a reasonable price.

5. At my site visit the appeal building appeared to be in use for offices and so is not redundant. Nor is there any evidence that the continuing, or future, use of the site for employment uses is not practicable. The appellant acknowledges that the proposal does not meet all of the criteria contained within policy DM5 of the Site Allocations Plan. The proposal is therefore contrary to this Policy and to Policy CS11 of the Core Strategy. The demolition of the appeal site and redevelopment for residential purposes would have an adverse effect on the supply and distribution of employment sites in the Council area.
6. In September 2013 the Council confirmed that permitted development rights exist at the appeal site for the change of use from Class B1 (a) offices to Class C3 dwellinghouses. The decision confirmed that prior approval was not required under Class J of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended (the GPDO). This scheme allows for the change of use of the building to 9 houses/apartments.
7. The Council are of the view that the appeal site does not divide easily in terms of residential units and that, as the appellant has applied for a separate planning permission for residential use, that the permitted development scheme is not being pursued. They also note that the press release accompanying the introduction of Class J into the GPDO specifically referred to the measures ensuring that empty and underused offices could be converted into residential uses, whereas the appeal site remains at least partially in use.
8. However, from the evidence before me it appears that the appellant intends to carry out the development allowed under Class J of the GPDO should the appeal be dismissed. The GPDO requires at Paragraph J.1 (c) that such developments shall be completed on or before 30<sup>th</sup> May 2016 and it appears from the evidence that the appellant intends to meet this deadline if required. Willowbank House is not particularly old nor subject to protection and would not therefore I consider be particularly difficult to convert to residential use. Whilst I note the contents of the press release referred to by the Council, this does not change the fact that the permitted development rights exist and have been confirmed to apply to the appeal site. I therefore consider the fallback position advanced to be realistic.
9. Willowbank House is not particularly unattractive; it is of its time and does not, I consider, constitute an eyesore. However, it is out of character with the majority of the surrounding area. The appeal site lies adjacent to the Marlow Conservation Area (the MCA) on its western and southern sides, and the houses to the east, west and opposite the appeal site are all attractive terraced properties set quite close to the road edge. Whilst there are design differences between the blocks on all three sides, there is continuity in the street scene in terms of building lines, and design details such as bay windows and soldier courses feature regularly. The appeal site at present stands apart from this

- street scene and appears incongruous within its surroundings, an effect heightened by the parking spaces located at the front and side of the building.
10. The proposal seeks to construct 4 terraced properties and 2 semi-detached dwellings. An access road to a rear parking area would split the two blocks of houses. The proposed houses would have box bay windows on their façades and soldier courses above first floor windows. Whilst the ridgeline of the proposed houses would be slightly higher than the properties to the east and west, eaves lines would be similar and the building line of the front of the houses would match the dwellings to the east. Parking for the properties would be largely hidden to the rear of the scheme. Materials could be conditioned to ensure that they are in keeping with the character and appearance of the area.
  11. As I have noted above, I am satisfied that if the appeal proposal were not erected, there is every likelihood that the fallback position advanced would be built. I judge that the permitted development scheme would have a significantly greater impact on the character and appearance of the surrounding area and the setting of the adjacent Conservation Area by virtue of its retention of Willowbank House than the appeal proposal. In effect, the permitted development scheme would remove the scattered employment site but retain Willowbank House and its surrounding parking areas, whilst the proposal would largely be in keeping with the existing surrounding terraced housing and the character of the adjacent MCA.
  12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of planning applications must be carried out in accordance with the development plan unless material considerations indicate otherwise. I accord significant weight in this case to the fallback position and regard the likely erection of such a fallback as a material consideration which would, in this case, justify making a decision which is not in accordance with the development plan.
  13. I therefore conclude that, whilst the proposal would have an adverse effect on the supply and distribution of employment sites in the Council area, having regard to the fallback position the proposal would have a positive effect on the character and appearance of the area, and would enhance the setting of the adjacent Conservation Area.

#### *Other matters*

14. A local resident raises concern over the effect of the proposed Plot 6 on the adjacent existing property on daylight and sunlight. Concerns are also raised from the residents of a house set opposite in a similar vein. However, whilst the proposal would create development closer to the adjacent property than currently exists, the proposed siting of Plot 6, on a similar building line to No 2 Dedmere Road on both front and back elevations would ensure that the proposal would not have a significant adverse effect in terms of daylight and sunlight to this property. Whilst the siting of the proposed houses would be closer to the houses set opposite than Willowbank House is currently, this would not be a dissimilar distance to many houses set across the street from each other, and would be further apart than the houses set opposite each other on Station Road just to the west of the site.
15. Concerns are raised over the parking provision for the proposed houses and the setting of the access to the rear parking areas. However, the plans indicate a

total of 12 parking spaces for the 6 proposed houses. Given that the houses are 3 bedroom dwellings, I consider this to be a reasonable number. The proposed dwellings would also likely generate less traffic than the existing office accommodation would do. I also note that the County Highway's Officer has no objections to the proposal, subject to conditions being imposed on any consent granted. I therefore consider that the proposal would not have an adverse impact on highway safety.

16. A local resident raises issues concerning a group of Whitebeam trees located to the rear of the site. I note that these trees are protected and that those two trees that are within the site would be retained within the proposed scheme. An arboricultural impact assessment submitted with the application concludes that the proposal, with the imposition of a suitable condition, would protect the trees from construction work.

### **Conditions and Conclusion**

17. I have imposed the standard conditions relating to time for implementation and compliance with plans, in the interests of the proper planning of the area and for the avoidance of doubt. As referred to above, I have also imposed a condition requiring materials samples for all materials to be used in the construction of the development to be submitted to and approved by the Council prior to development commencing, although I have merged the two suggested conditions to make them more precise. I have not imposed a separate boundary treatment condition as these are shown on the approved plans, and so consequently such a condition is not necessary. As mentioned above, I have however included a condition requiring a method statement and tree protection to be installed on site.
18. Given the previous uses of the appeal site and in the interests of the protection of the environment, I have imposed a condition to ensure that a site investigation is carried out prior to development taking place. I have also imposed a condition requiring details of the disposal of surface water from the proposal, including the proposed private access way, in the interests of the protection of the water environment and highway safety. I have merged the Council's two suggested conditions in this respect. The Council have also suggested a condition is imposed protecting future residents from noise from Station Road. Given the proximity of this road to the development, and the busy nature of the road which I witnessed on my site visit I agree with such a condition.
19. Four conditions are proposed by the Council concerning highway safety; to ensure that visibility splays are maintained, that the access is provided prior to development commencing, and that all other existing access points to the site are stopped up. I agree that such conditions are necessary in the interests of highway safety and have imposed them all accordingly, except for the suggested condition No 14 which appears to relate to a different development, and the provisions of which would in any event be covered by the proposed condition No 13.
20. I have also imposed a condition concerning carbon reduction and water efficiency, as suggested by the Council and in the interests of the environment, and a condition to ensure that the proposed windows in the flank walls of Units 2 and 3 are obscure glazed and non opening, in the interests of the living conditions of the future residents. Conditions are also imposed to ensure that

the landscaping and ecological mitigation measures are carried out as proposed, in the interests of the environment. I have further imposed a condition to the effect of that proposed by the Council concerning the provision of storage facilities for waste and recycling for the proposed houses to be detailed and sited at the rear of the dwellings in the interests of the environment, and the character and appearance of the area and the setting of the adjacent MCA.

21. The Council have in effect suggested 3 conditions restricting permitted development rights for the proposed development. These suggested conditions restrict any additions or alterations to the roofs of the proposed dwellings, the enlargement of the houses, the provision of any gates on the access road within 5 metres of the public highway, and the prevention of any future apertures being inserted in the flanks of units 2 and 3. Planning Practice Guidance makes it clear that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. Other than the removal of permitted development rights for a gate on the access road, which is necessary to ensure traffic does not back up and have an adverse effect on highway safety, and the restriction of any future windows on the rear roofs of the houses which would have an adverse effect on the privacy of nearby residents, I do not consider that the proposed conditions pass this test of necessity.
22. I have concluded that the existence of the fallback position and the positive effect of the proposal on the character and appearance of the surrounding area justify in this case making a decision which is not in accordance with the development plan. For the reasons given above therefore, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jon Hockley*

INSPECTOR

#### SCHEDULE OF 17 CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; M110 010 L; M110 020 G; M110 030 G.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Details to be submitted shall include surfacing materials. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority the following details:

- a) A method statement detailing a proposed site investigation.
  - b) The results and conclusions of the agreed detailed site investigation to establish if the site is contaminated, the degree and nature of any contamination present and to determine the potential risks to human health, the water environment, the natural and historical environment, and buildings and other property by contaminants.
  - b) A scheme detailing appropriate measures to prevent the pollution of the water environment, to safeguard the health of intended site users, and to ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The scheme shall be implemented in accordance with the approved details.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme to protect the proposed development from traffic noise from Station Road. The scheme shall ensure that the indoor ambient noise levels in living rooms and bedrooms meet the good standard in BS 8233:1999 of 30db LAeq for the appropriate time period. Unless otherwise agreed in writing with the Local Planning Authority it shall be assumed that the existing noise levels at the façade of the proposed development is 72 db LAeq 16hr and 66db LAeq 8hr. The scheme shall include mechanical ventilation to meet the requirements of the Noise Insulation (Amended) Regulations 1998. The scheme shall be carried out in accordance with the approved details.
  - 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the roof planes of the northern elevations of the dwellings hereby permitted.
  - 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no gates shall be erected on the site's vehicular access within 5 metres of the edge of the carriageway.
  - 8) No development shall take place until there has been submitted to and approved in writing by the local planning authority details of the disposal of surface water from the proposed development, including the private access way. The scheme shall be carried out in accordance with the approved details.
  - 9) No other part of the development shall take place until the new means of access has been sited and laid out in accordance with the approved plan and constructed in accordance with the Buckinghamshire County Council's guide note "Commercial Vehicular Access within Highway Limits" 2013.
  - 10) Within one month of the access being brought into use all other existing access points not incorporated in the development hereby permitted shall be stopped up by raising the existing dropped kerb and reinstating the

footway and highway boundary to the same line, level and details as the adjoining footway and highway boundary.

- 11) No part of the development shall be occupied until the visibility splays shown on the approved drawings have been provided on both sides of the access and the area contained within the splays shall be kept free of any obstruction exceeding 0.6metres in height above the nearside channel level of the carriageway.
- 12) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme for carbon reduction and water efficiency of the proposed development. The scheme shall include details for delivering a 15% reduction in carbon emissions on site through the use of decentralised renewable and/or low carbon sources, from the baseline of the 2006 Building Regulations, measures for adaptation to climate change, and to achieve a water efficiency standard of 105 litres per head per day. The scheme shall be carried out in accordance with the approved details.
- 13) The windows in the flank elevations of units 2 and 3 shall, up to a minimum height of 1.7 metres above finished floor level, be fixed shut (without any opening mechanism) and glazed in obscure glass, and shall be retained as such.
- 14) All planting, seeding or turfing comprised in the submitted details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 3 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 15) The development hereby approved shall be carried out in accordance with the mitigation recommended in the Ecological Appraisal prepared by ACD Ecology reference NKH191572Eco as detailed in paragraph 5.8. The measures shall be provided prior to the first occupation of the dwellings hereby approved and shall be retained as such.
- 16) Notwithstanding any details shown on the approved plans, no development shall take place until there has been submitted to and approved in writing by the local planning authority details for the storage of waste and recycling containers in the rear gardens of each dwelling. The storage shall be provided prior to the first occupation of the dwellings hereby approved and shall be retained for their intended purpose.
- 17) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme for the protection of the two Whitebeam trees on the site, including details of fencing proposed for protection and details of any ground works within the root protection areas of the trees. The scheme shall be carried out in accordance with the approved details.