



# Appeal Decision

Site Visit made on 13 May 2021

by **JP Sargent BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 7 June 2021**

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**Appeal Ref: APP/G2815/W/21/3269221**

**Land to the rear of 119 High Street, Rushden NN10 0NZ**

- 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 Neil Briggs against the decision of East Northamptonshire Council.
  - The application Ref 20/01654/FUL, dated 10 December 2020, was refused by notice dated 15 February 2021.
  - The development proposed is the conversion and extension of store to the rear of shops to form a single dwelling within Class C3.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues in this case are
  - a) the principle of accommodation of this size in this location and its impact on the viability of the town centre and its character and infrastructure;
  - b) whether it would fail to preserve or enhance the character or appearance of the Rushden Conservation Area;
  - c) whether it would create suitable living conditions for future occupiers and
  - d) whether it would have a likely significant effect, whether alone or in combination with other plans and projects, on the Upper Nene Valley Gravel Pits Special Protection Area (the SPA).

## Reasons

### ***The principle of accommodation & the effect on the viability of the town centre***

3. This appeal is to link a small single storey building (the outbuilding) to an adjacent small toilet block in a yard behind shops in the centre of Rushden, and use the resultant building as a 1-bedroomed flat. I understand that previously both the outbuilding and the toilet block have been used in connection with the retail use on the site.
4. Policy H4 in the *Rushden Neighbourhood Plan* (RNP) says flattened development will only be supported exceptionally in a number of circumstances, one of which is where an existing non-residential building is being converted to residential use. To my mind this scheme does not conflict with the terms of that policy, as the proposed residential use would be delivered primarily by converting a non-

- residential building. While the conversion would also necessitate an extension, nothing in the policy has been brought to my attention that prevents that.
5. Policy 30 in the *North Northamptonshire Joint Core Strategy* (JCS) emphasises the provision of smaller dwellings of 1, 2 or 3 bedrooms, and the scheme is in line with this aim. It also seeks to avoid an over-concentration of a single type of housing where this would adversely affect the character or infrastructure of the area. The Council has said there has been a '*large number*' of purpose-built apartment blocks in the area surrounding the town centre, but it has not defined what is meant by '*large*', whether these other apartment blocks provide units of a similar size to this scheme, or what precisely is the area concerned. Indeed, these purpose-built blocks could well be a response to JCS Policy 30 and its stated emphasis on the provision of such accommodation.
  6. As a result, it has not been shown that the introduction of this small flat would lead to an over-concentration of such units. I understand 4 flats of a similar size to what is proposed have recently been formed on the upper floor of No 119, and the appellant contended that they were lawful by reason of being '*permitted development*'. However, to my mind the concerns in JCS Policy 30 about over-concentration must be considering a larger area than just a single property with 5 units.
  7. Moreover, even if it had been shown there would be an over-concentration of a single housing type as a result of this scheme, it has not been demonstrated that it would conflict with the further requirement of JCS Policy 30 and adversely affect the character or infrastructure of the area.
  8. The only aspect of concern that was highlighted in relation to infrastructure was with regard to parking pressures. Being in the centre of Rushden, the site has good access on foot to public transport and services. It also has no dedicated car parking. As a result, the scheme could well be particularly appealing to those who did not own a car.
  9. However, with no means of ensuring that before me, car ownership by occupiers is a possibility. In such instances parking would have to be on-street or in public car parks. Moreover, parking in the immediate vicinity of the site seemed to be for disabled use, for unloading or for short periods, so any residents would probably have to park further afield. However, assuming due regard was given to parking regulations, there is no basis to consider kerbside parking or the use of car parks would compromise highway safety.
  10. Although parking may occur in conflict with the parking regulations, such as in the disabled bays nearby, it has not been shown why that of itself means highway safety would be harmed. I have no reason to assume cars would be parked where they actively obstructed traffic.
  11. A concern was raised about the lack of parking for the 4 first floor flats. However, assuming those to be lawful, if the appeal were to be dismissed on this ground those flats could continue to operate without parking provision. As such, that does not offer a ground to dismiss the appeal.
  12. Turning to character, residential accommodation amongst the commercial uses is an accepted and encouraged part of this area, and as the development would be in a back yard it would be well concealed. Furthermore, presumably the retail units at the front no longer need the storage area and toilet block subject

of this appeal, as those units have now been occupied without this provision. As such I have no basis to find that converting these rear buildings to a flat would undermine the attractiveness of the shops, or mean they would remain vacant and so detract from the viability of the town centre. Whilst the Council has said it has not been shown how the scheme would make the units '*more viable*', I have no reason to consider that is a test that should be applied to such schemes. Consequently, the character of the area would not be adversely affected.

13. The development would therefore not conflict with JCS Policy 12, which supports the provision of additional residential uses on appropriate sites in the town centre alongside maintaining a vibrant mix of retail, employment, leisure and cultural facilities in such areas. Whilst this policy specifically mentions promoting residential uses in vacant space above shops, mindful the scheme would not lead to the predominance of A1 uses being critically undermined, it does not preclude such uses on the ground floor.
14. Accordingly, I conclude that in principle the development is acceptable in this location. It would not adversely affect the character or infrastructure of the area, and it would not harm the vitality of the units to the front in particular or the town centre in general. As such it would not be in conflict with JCS Policies 8(b)(ii), which seeks to deliver satisfactory parking, JCS Policies 12 and 30 or RNP Policy H4.

#### ***The effect on the conservation area***

15. The Rushden Conservation Area is focussed on the town centre. Its significance lies, to a great extent, in the way this central area still displays the origins of the town and this is reflected in the character and appearance of its streets and buildings.
16. The outbuilding is an older structure and so contributes positively to the area's Victorian heritage and its significance. However, it is visually enclosed behind No 119 with its modern additions, and a recent extension on the adjacent property to the south.
17. Residential uses are found throughout the town centre and so are not at odds with its historic character, and this scheme would not compromise the traditional retail base of High Street. Moreover, the design and scale of proposed addition mean it would relate suitably to the existing outbuilding.
18. Therefore, I conclude that the proposal would not fail to preserve the character or appearance of the conservation area, and would not harm its significance. As such, it would not conflict with JCS Policy 2, which seeks to protect and preserve the historic environment, RNP Policy EN1 that seeks high quality design or guidance in the *National Planning Policy Framework* (the Framework).

#### ***Living conditions***

19. The proposal, once extended, would comply with the *National Space Standards*, for a 1-bedroomed flat and so it would be of an adequate size.
20. The bedroom window would have an acceptable outlook as it would be beyond the rearmost extent of the extension to the south, and with the yard area at the appeal property falling away there would be a sense of openness provided by the lower level of the boundary fence and the open retail yard beyond. The

kitchen would have a window and a glazed door on the west elevation and the east. The open outlook on the west side would certainly mean this room did not feel oppressive or suffer from poor light.

21. The lounge window would be more constrained as it would look onto a small area bounded by the proposed kitchen addition, the extension on the property to the south and the tall rear wall of No 119. Moreover, this area would be further reduced if the wooden cabinet on the rear wall of No 119, which is not shown on the plans, remained. However, as the extensions to the south is only a single storey high, I consider this room would still have a sufficient sense of openness to provide an acceptable level of living conditions for residents. Moreover, I have no grounds to consider light levels would be insufficient, especially as light would also be forthcoming from the kitchen. Therefore, the living area would not be unduly gloomy or oppressive.
22. Although the yard area in front of that lounge window may be darker and have a feeling of enclosure, I anticipate that the main outdoor recreation space would be the more open, lighter area in front of the bedroom.
23. The Officer Report said that

*'the first floor section above the proposed flat has an ancillary storage use associated with the retail units at the front of the site'.*

However, the outbuilding in question is now only a single storey high with a pitched roof that is open internally, and so has no floor space above it at present. Elsewhere in that report it said

*'Application number 19/00967/FUL [which I have assumed is an erroneous reference to application 19/00697/FUL] was permitted in October 2019 which allowed for a first floor extension above the single storey element subject to this application which the applicant stated was required to provide additional storage for the retail units below'*

That decision though did not authorise a first floor extension above the outbuilding, but rather over a single storey wing on No 119. As is apparent from the plans accompanying that application, the height of the outbuilding was not affected by those works. Consequently, while the Council has said there would be retail storage above this residential use giving rise to issues of noise, I have no basis to consider that would in fact be so.

24. In the interests of safety, lighting could be improved along the passageway that provides access to this proposal. If the first floor flats are indeed lawful then storage space for their refuse needs to be secured to ensure it does not encroach into the outside areas serving this scheme. Such matters though could be addressed by condition.
25. Accordingly, I conclude the development would not result in unacceptable living conditions for future residents, and so would not conflict with JCS Policy 8(e)(i) & (ii), which requires new developments to have suitable living conditions for future residents, or RNP Policy H4 concerning market housing type and mix.

### ***The effect on the SPA***

26. The need to protect and safeguard Special Protection Areas means development proposals are considered in the light of the *Conservation of Habitats and Species*

*Regulations 2017* (the Regulations), with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species. The Regulations require the decision-maker, before granting consent for a plan or project, to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in combination with other plans or projects. If the appropriate assessment shows that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest and compensatory measures will be provided.

27. The site lies within the zone of influence around the SPA. This SPA comprises a number of wetland sites with habitats that accommodate bird populations for which the SPA has been notified. Mindful of the advice from Natural England in connection with the proposal, the conservation objectives of the SPA relate to the protection of these bird populations, to ensure the site's integrity is maintained in a favourable condition. One of the threats to the maintenance of a favourable condition is increased visitor access causing damage to the SPA as it is a popular place to walk, and the majority of visitors have been found to originate from within 3km.
28. On the evidence before me there is not enough information to rule out the introduction of this further residential unit providing a likely pathway for an impact on the SPA, by resulting in increased recreational activity by visitors at the SPA through walking, fishing and so on. Therefore, although its impact, of itself, may be small, when considered in combination with other plans and projects, the proposal could well have a likely significant effect on the integrity of the SPA as a result of further visitor pressure.
29. Having found the integrity of the SPA could be affected, I note the appellant has expressed a willingness to make a financial contribution to secure appropriate mitigation through the measures outlined in the mitigation strategy. However, there is no mechanism in the submissions to deliver that contribution, and so I cannot afford it significant weight. Otherwise, no mitigation to address this has been put forward. I also find that none of the circumstances apply where consent can be granted in the face of an effect on the integrity of the SPA, and no other material considerations outweigh this concern.
30. I therefore conclude that, when considered in combination with other plans and projects, the development could have a likely significant effect on the integrity of the SPA and there is no mitigation before me to address this effect. It would therefore be in conflict with Policy 4(d) in the JCS that requires the protection of the SPA, along with the Regulations and the Framework.

## **Conclusion**

31. Accordingly, because of its likely significant effect on the SPA, I conclude the appeal should be dismissed.

*JP Sargent*

INSPECTOR