



---

## Appeal Decision

Site visit made on 26 October 2010

by **Stephen Amos MA(Cantab) MCD MRTPI**

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

Decision date: 11 November 2010

---

**Appeal Ref: APP/Q3115/A/10/2129182**

**31 High Street, Benson, Oxfordshire OX10 6RP**

- 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 GAP Associates Ltd against the decision of South Oxfordshire District Council.
  - The application Ref P10/W0040, dated 08/01/10, was refused by notice dated 09/03/10.
  - The development proposed is "alteration to PP P08/W0168 to retain existing flat in main building (instead of conversion to three units) and erection of 2 x 2 bed flats in the rear garden with parking".
- 

### Decision

1. I dismiss the appeal.

### Preliminary matters

2. Permission was given in 2008 for a scheme which included an extension to the existing building and the conversion of a flat into 3 flats. The extension was built, but the conversion proved to be unviable. The Council modified the description of the current proposal to the "Erection of 2 x 2 bed flats in rear garden with parking". As a grant of planning permission cannot alter a previous permission, I have considered the appeal on that same basis. A Section 106 obligation has been submitted which seeks to preclude the conversion of the existing flat into 3 units if the appeal scheme is permitted.
3. The relevant policies of the South Oxfordshire Local Plan 2011 (LP) have been saved. Benson is identified in the LP as a larger village outside the Green Belt, and the Council has indicated that additional housing is acceptable in principle.

### Main Issues

4. The main issues are (i) the effect on the character and appearance of the area, including whether the character or appearance of the Benson Conservation Area would be preserved or enhanced; and, (ii) the effect on the living conditions of the occupiers of the existing flats and whether satisfactory living conditions would be created for occupiers of the proposed flats.

### Reasons

#### *Character and appearance*

5. The Council had 2 concerns on this issue. The first related to a Beech tree which lies close to the eastern boundary towards the rear of the site. The

proposed building would be erected on the rear part of the site, such that the trunk of this tree would be within 4m or so of its side elevation.

6. The Council has argued that the tree would cast shade onto the amenity space to the north of the building, but in practice most of the overshadowing of that space would arise from the proposed building. The area shaded by the tree would be a small part of the overall amenity space provision, and the only window that might be overshadowed would be to a kitchen rather than a main habitable room, and so I am not convinced that the proposal would lead to irresistible pressures to lop or fell the Beech tree. In any event this tree is within the backland, and is not such a notable feature within the area that its loss, if that were to happen, would justify dismissal of the appeal. It is not one of the most significant or important trees highlighted in the Character Study for the Conservation Area. Having regard to this tree, the proposal would not conflict with LP policy C9, which seeks to avoid the loss of landscape features which make an important contribution to the local scene.
7. The Council was also concerned about the extent of the proposed parking area. The scheme previously permitted would also have involved the hard surfacing of a substantial area for the parking and turning of vehicles, and in a similar position to the parking area now proposed. Bearing in mind also that there is an adjacent car park in front of College Farm, which forms part of the existing character nearby, the proposed parking area would not cause any material harm to the character and appearance of the area.
8. I have concluded that the character and appearance of the area would not be harmed. There would be no conflict in that respect with LP policies G2, D1 and H4. The latter policy, rather than policy H5 cited in the reasons for refusal, seems to be relevant to Benson as a larger village outside the Green Belt. In any event, criteria (i)-(v) of policy H4 also apply to the settlements which are subject to policy H5. Noting the absence of regularity in the style, design and layout of buildings in the Benson Conservation Area, and the close relationship there would be between the proposed building and the existing terrace at College Farm, the character and appearance of the Conservation Area would be preserved. The proposal would not conflict with LP policy CON7.

#### *Living conditions*

9. The Council's concerns about the parking area also related to the environment this would create for occupiers of the appeal site. However, the visual appearance would be softened by a sizeable area of proposed amenity space alongside the parking area. Noting also that the outlook from the proposed flats over the parking area would not be dissimilar to that which exists from the houses at College Farm across the adjacent car park, the environment created for the occupiers of the proposed and existing flats would not be so detrimental to their living conditions as to justify dismissal of the appeal for that reason.
10. The second reason for refusal referred to overlooking between the rear of the existing building and the front of the proposed building. The plans show the minimum separation of those elevations as about 18m or so. That is much less than the 25m which the South Oxfordshire Design Guide (SODG) advises there should generally be between habitable room windows. It is also less than the distance which separates the existing flats on the appeal site from the houses at College Farm. The SODG is a Supplementary Planning Document which has been adopted after public consultation and so it merits substantial weight. Although the appellant has suggested that it should not apply to this case

which does not involve rear elevations facing each other, the relevant design principles in the SODG refer to the distance between habitable rooms rather than between rear elevations. They also refer to new proposals, and so I have not found the appellant's references to existing situations where lesser distances exist to be matters to which any significant weight should be given.

11. The proposal would result in habitable room windows in the front of the proposed flats on the ground and first floors facing living room windows of flats in the existing building at a proximity which would result in a significant degree of overlooking. As a consequence, there would be inadequate levels of privacy for the occupiers of the proposed flats and for the present and future occupiers of the existing flats. The potential for overlooking from the existing flats would be increased by the existence of an outdoor balcony at first floor level.
12. The overlooking of the existing flats from the proposed flats would be more significant than that which arises from the facing elevations of the houses at College Farm. Not only is there a slightly greater separation to the front of those houses, but any overlooking is less direct. While the proposed and existing flats would face each other almost square on, there is a significant angle to the inter-visibility between the houses at College Farm and the existing flats on the appeal site. In so far as it has been suggested that the fact that there is less than 25m between the existing flats and the houses at College Farm might set a precedent for the appeal scheme, it is also relevant that there is no evidence before me which establishes that the now current policy background and design guidance also applied at the date of approval of those houses. Therefore, the existence of the houses at College Farm does not provide a consideration to which significant weight can be given.
13. I have concluded that, due to the potential for overlooking and consequent limitations on privacy, the proposal would be harmful to the living conditions in the existing flats on the appeal site, and would not create satisfactory living conditions for occupiers of the proposed flats. That would be contrary to LP policy D4, which seeks to secure a reasonable degree of privacy for the occupiers of new dwellings and to avoid loss of privacy to neighbouring properties. As this matter provides an overriding amenity objection to the proposal, there would also be conflict with LP policy H4.

*Other considerations*

14. The Council has confirmed its agreement to the wording of the Section 106 obligation by unilateral undertaking which has been provided. It would have wished to see a copy of the title to the land and the inclusion of the full company name, registered address and company number. Had I been minded to allow the appeal, those points could have been addressed by seeking amendment of the obligation and proof of title. As a result, the concerns referred to in the fourth reason for refusal about the adequacy of parking and amenity space are not matters that would justify dismissal of the appeal.
15. It is not entirely clear whether this site as the curtilage of a building in mixed retail and residential use constitutes private residential gardens in the terms of the revised definition of previously-developed land in PPS3<sup>1</sup>. Be that as it may, I have not found the recent amendments to PPS3 to be of determining significance in this case.

---

<sup>1</sup> Planning Policy Statement 3: Housing

16. The site access has limited visibility to the right for exiting drivers. However, there would be no increase in the number of residential units compared to those in the scheme previously approved, and so the limitations on visibility do not provide a reason to dismiss the appeal.
17. The proposed building would be only about 3m or so from the boundary with the garden of 6 College Farm. It would be clearly seen from that garden, and would be likely to partially overshadow it during some seasons and times of day. However, not all of that relatively large garden would be affected, and the impact would be mitigated by the trees near the boundary, by the lower eaves level at the rear of the proposed building and by the slope of its roof up away from the boundary. Some of the proposed parking spaces would lie close to 6 College Farm, but the consequent relationship would not be dissimilar to that which exists in many housing areas where driveways are close to adjacent houses. The effects the proposal would have on the living conditions of the occupiers of 6 College Farm do not provide a reason to dismiss the appeal.
18. The proposal would contribute to housing supply, but the officer's report indicated that there was no current requirement to increase that supply except in Didcot. In the absence of detailed evidence to show that there is an urgent need for more land for housing in Benson, the contribution the proposal would make to housing supply is not of determining significance in this case.

*Overall conclusion*

19. I have taken account of all of the other matters raised, but I have found nothing of overriding significance. The proposal would not materially harm the character and appearance of the area, and the character and appearance of the Benson Conservation Area would be preserved. Notwithstanding that I have identified no material harm in other respects, I have found the determining considerations to be the harm the proposal would cause to the living conditions of the occupiers of the existing flats on the site, and the failure to provide satisfactory living conditions for occupiers of the proposed flats, due to overlooking and inadequate levels of privacy. That consideration outweighs all others, and I have concluded that the appeal should be dismissed.

*Stephen Amos*

Inspector