The Planning Inspectorate

Appeal Decision

Site visit made on 10 September 2019

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal Ref: APP/K0235/W/19/3224388
The Old Maltings, Bedford Road, Milton Ernest MK44 1RJ

- 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 Maltings Land Bedford Limited against the decision of Bedford Borough Council.
- The application Ref 18/01178/FUL, dated 8 May 2018, was refused by notice dated 7 January 2019.
- The development proposed is demolition of existing building and erection of 5 No. residential units with associated parking and ancillary works.

Decision

1. The appeal is dismissed.

Procedural Matter

2. An application for costs was made by Maltings Land Bedford Limited against Bedford Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
   - whether the proposal would result in overdevelopment of the site;
   - whether the proposal would provide adequate living conditions for future occupiers, with regard to outlook, natural light and amenity space; and
   - the effect on the living conditions of neighbouring residents, with regard to outlook, privacy, and noise and disturbance.

Reasons

4. The appeal site is located on the east side of Bedford Road, near to the southern village boundary of Milton Ernest. It includes a now derelict 19th century building of two and three storeys, originally built as a Malthouse and subsequently used for commercial storage. Residential properties are located either side of the site with open land to the rear and the boundary wall of Milton Ernest Hall on the opposite side of the road. The access from Bedford Road is shared with the dwelling, No 3a, immediately neighbouring the site.

5. The site has been the subject of a number of proposals for residential development. These include two unsuccessful proposals for the erection of 10

residential units[1], the first of which was also the subject of an unsuccessful appeal[2]. The most recent is a proposal for six residential units, which was approved by the Council and which, apparently, is an extant permission[3]. While I have considered the current proposal on its individual merits, I have had regard to these earlier proposals insofar as relevant matters are raised by the parties in the context of the main issues in this appeal.

Whether the Proposal would Result in Overdevelopment

6. The existing building is linear in form and positioned on the southern half of the site with a frontage directly next to the Bedford Road boundary. The proposed building would follow largely the same footprint as the existing building, although it would be slightly further back from the frontage and would extend further to the rear. It would be of similar height to the building currently on site, with some articulation between the residential units provided by the roof terraces, which would help to break up the bulk and massing of the overall built form. As such, the size and form of the proposed building, both in comparison to the existing building on site and in its own right, would not be seen in terms of its character and appearance as disproportionate to the site size or as a form of overdevelopment. While the approved building would occupy a smaller footprint than that proposed here, this fact does not alter these findings which are based on the individual merits of the appeal proposal.

7. As well as the size of the proposed building, the Council also raises concerns under this issue with regard to the amount of obscured glazing, the extent of overshadowing by trees on the boundaries and the amount of amenity space to be provided. These are all matters which are addressed under the second main issue, concerning the effect of the proposal on the living conditions of future occupiers. However, with regard to the visual effects of the building in this setting and having regard to the above finding about the size of the building, none of these matters would be so incongruous or unusual to result in material harm.

8. Therefore, taking these findings as a whole and for the reasons given, I conclude that the proposal would not result in overdevelopment of the site. Consequently, it is not contrary to the following policies of the Bedford Borough Local Plan 2002: BE30(i), which concerns matters that will be taken into account in considering new development, including its visual impact and relationship with its context; and BE37, which states that proposals which would result in a cramped form of development or overdevelopment will not be permitted. It is also not contrary to Policy CP21(ii) of the Core Strategy and Rural Issues Plan 2008, which as a whole requires development to have regard to a number of criteria, including good practice in urban design. These policies are consistent with the National Planning Policy Framework (the Framework), particularly section 12 concerning well-designed places.

Living Conditions – Future Occupiers

9. Units three and four have a different first floor layout to the other three units. The configuration and glazing of windows is the Council's principal concern with

[1] 08/00521/MAF, refused 21 May 2008; and 09/01946/MAF, refused 8 December 2009.
[2] APP/W0205/A/08/2084835 dated 19 January 2009.
[3] 16/01397/FUL, approved 9 March 2017.

regard to the outlook and natural light that would be available to future occupiers. The second bedroom in each case would have a single rear-facing, half-obscured window serving it. This is not an unusual arrangement for this type of habitable room, which enables some outlook, albeit of trees and skyline, from a space which is principally intended for sleeping. As such, the type of window proposed would not be harmful.

10. The first floor living room for units three and four would occupy the building's full depth and would be the main habitable room in each dwelling. The small rear-facing window would include obscured glass, while to the front the angled bay would have narrow windows to both sides and a small skylight above. I acknowledge that the window configuration for these rooms is in large part a response to avoid overlooking of neighbouring properties. However, it would result in a large habitable room, in the context of the overall size of each dwelling, with very limited outlook. External views would be partial and only possible close to the front windows.

11. Due to the size of the windows relative to the living space and the orientation of the dwellings, this would also mean that natural light would be restricted. In terms of both outlook and available light, therefore, the proposed arrangement of windows would result in the majority of the living space being unduly enclosed and oppressive. Consequently, this would result in material harm to the living conditions in this room, which is intended to be a central habitable space in each dwelling.

12. The second floor bedroom for units three and four would have a window with obscured glass to the front elevation and a glazed door to enable access to the roof terrace. Despite the limited sunlight that would be available to each room, the natural light would be sufficient for a habitable room of this type and size. For these reasons, there would be no harmful effect on living conditions with regard to use of these rooms.

13. The configuration of the ground floor kitchen and dining area would be the same for each of the five units, with a room running the full depth of each dwelling. Each room would have a small window at the rear serving the kitchen area, and a larger window to the front serving the dining area (unit one would have an additional window in the side elevation). The Council draws attention to the earlier appeal decision in which it was found that windows to the rear of the building proposed in that case, in a similar position to those serving the kitchen area, would be close to mature protected horse chestnut trees positioned just across the boundary. The Inspector concluded that the size and proximity of the trees, and the orientation of the building, would result in harmful overshadowing of the rear windows to two units on the ground floor, which would not be compensated for by the light from windows in the opposite elevation.

14. The two units affected in that case are broadly in the same positon as units four and five in the current proposal. I note, however, that for at least one of the flats in the earlier appeal the window affected would be a self-contained bedroom, which would appear to rely solely on the rear window for light. In the current proposal, each room has a dual aspect with a large window to the front serving the dining area as well as the rear-facing window. Despite the orientation of the building and taking account of the use of the affected area

and the size of the window to the front, on balance I do not consider that the appeal proposal would have the same harmful effects as the previous proposal for flats.

15. The proposed layout includes an area of amenity space to the north-east corner of the site and each dwelling has a roof terrace. I note the Council's comment that dwellings such as this should have rear gardens that are at least nine metres long; and the appellant's that the extant permission for two bedroom units did not include any amenity space.

16. I discount any direct comparison with the permitted scheme as, while the units in both include two bedrooms, the current proposal is in the form of dwellinghouses rather than flats, with a greater overall amount of habitable space. As such, it is possible that the proposed dwellings in this case could be occupied by families comprising three or four people, which is less likely with the smaller flats in the approved scheme. In these circumstances, it is appropriate that suitable external amenity space should be provided, although I am not aware that the Council has pointed to any published space standards against which the size of the proposed spaces should be assessed.

17. The communal area to the north-east corner is limited in size, overhung by a mature protected tree and would be directly adjacent to car parking spaces. As such, it provides space of limited quantitative or qualitative value either for children's play or simply sitting outside. The roof terraces provide more opportunity for enjoyment of sitting outside but would not be as suitable for outdoor play space. Furthermore, I note that the submitted drawings[4] show metal railings to the front of each terrace, providing an open view. However, as this would enable overlooking of neighbouring properties, most notably No 3a, the appellant indicates that the railings would be replaced by 1.7 metre high metal screens with obscured glazing, which could be secured by condition.

18. This means that the roof terraces would be enclosed on four sides by walls, fencing or screens of at least 1.7 metres height, with no external outlook from the space. This would result in an overly-enclosed area which would reduce the quality and purpose of the amenity space provided. Consequently, the overall lack of amenity space of sufficient quantity or quality to serve these small family dwellings would result in material harm to future occupiers' living conditions.

19. Accordingly, for the above reasons, I conclude that the proposed development would not provide adequate living conditions for future occupiers, with regard to outlook and natural light for the living rooms of units three and four; and with regard to external amenity space. However, there would be no such harm with regard to the other matters considered under this main issue. I am not aware that any of the specific development plan policies referred to by the Council in its reason for refusal concern the effects of development on future occupiers. Nonetheless, I have found that the proposal would result in material harm and it is, therefore, contrary to the Framework's requirement that developments should have a high standard of amenity for existing and future users[5].

[4] Reference 17902/101C.
[5] Paragraph 127f.

Living Conditions – Neighbouring Residents

20. I am not aware that the Council raises any specific concerns about the effects of the proposal on the living conditions of neighbouring residents. I have, therefore, had regard to the matters raised in this context by interested parties.

21. The screening to the front and rear of the proposed roof terraces would prevent overlooking and loss of privacy to residents either side of the appeal site. With regard to the possible effects on No 3a, units three and four would be closest to the side elevation of this neighbouring property, but would include obscured glass to all the upper floor windows, thereby avoiding mutual overlooking. Unit five would include obscured glass in only one of four upper floor windows, but the separation from the boundary opposite would mitigate the potential for harmful overlooking to the rear of No 3a and No 3 next to it.

22. Units one and two would be closer to the front garden and driveway of No 3a and No 3, but I agree in this respect with the Inspector in the earlier appeal that these areas are less likely to be used for recreational activity. Moreover, views of front gardens are typically available from neighbouring properties on the same or opposite side of a street. The ground floor windows would look towards the side boundary of No 3a and would not result in any overlooking. The outlook from No 3a would be of largely the same built form as now. While I acknowledge that the building would extend further forward than would be the case for the approved scheme, from views from the front and side windows of No 3a the proposed dwellings would not be sufficiently close to appear dominant or overbearing.

23. The roof terraces would be elevated above the usual level of gardens and in the absence of other private external space are likely to be well-used in warm weather when neighbours are also likely to be in their gardens or have windows open. While I accept that there is no reason to suggest that the terraces would not be used for normal domestic purposes, their elevated, open position means that sound would carry to a greater extent than would be the case with the more usual location of amenity space. Moreover, the cumulative effects of the use of five terraces at once would be likely to result in some harmful effects on the occupiers of No 3a and Chestnut Cottage, the immediately neighbouring properties. The use of the terraces is not comparable to the former commercial use of the site as noise would reasonably be expected to be generated from the former use during normal working hours and not in the evening or at weekends.

24. There would no overlooking of Chestnut Cottage from the rear of the proposed building as the upper floor windows include obscured glass and views from the ground floor windows would largely be screened by trees. Moreover, the side elevation of Chestnut Cottage facing the appeal site does not contain any windows.

25. Therefore, for the reasons given, I conclude that the proposed development would have an unacceptably harmful effect on the living conditions of neighbouring residents, with regard to noise and disturbance, although there would be no such harm with regard to the other matters raised. Nonetheless, the proposal is contrary to Policy BE37 of the Local Plan, insofar as it requires development to respect the standard of amenity presently enjoyed by adjoining occupiers. It is also contrary to the Framework's requirement, already referred

to, that developments should have a high standard of amenity for existing and future users.

Other Matters

26. I have had regard to other matters raised by interested parties. With regard to vehicular use of the site, concern is expressed about the ability of vehicles to manoeuvre safely within the site, and particularly whether they would need to use No 3a's driveway to do so. However, a turning area is provided to the rear of the site, which would also enable a vehicle leaving the site to reverse to allow an incoming vehicle to gain access, despite the single vehicle width carriageway. I acknowledge that the space for access to the garages, particularly at the narrowest point of the site near Bedford Road, is limited. However, based on the site inspection and submitted drawings it appears that such manoeuvres would be possible without the need to impinge on the driveway of No 3a. I note also that the Highway Authority did not object on the basis of access matters or highway safety. Matters concerning covenants related to rights of way are properly outside the scope of this appeal, which is only concerned with the planning merits of the proposal.

27. With regard to pedestrian safety, the plans include a footpath running adjacent to the front of the proposed dwellings. This could safely be used by occupiers of No 3a by crossing the road from their driveway where there is good visibility in either direction. There is no evidence to suggest that the garages will not be used for their intended purpose or would lead to displaced parking elsewhere in the village.

28. The Council confirms that the bin collection point adjacent to the side boundary of No 3a is a temporary location for bins when they are due to be collected, which could be required as such by condition. The plans show bins being stored for daily use to the rear of each dwelling's garage. As such, the concerns raised about the long-term effects of the bins next to No 3a would not be realised.

29. Concerns are also raised about the likely pressure to prune trees due to their proximity to the new development. However, the majority of protected trees surrounding the site are outside its boundaries and there is no evidence on the basis of the site inspection to suggest that changes to the trees would be necessary to accommodate the development proposed. With regard to concerns about the accuracy of the submitted plans, I was able to assess the effects of the proposal fully from the site inspection as well as all the other appeal submissions.

30. I acknowledge that the appellant engaged in detailed pre-application discussions and that this led to a number of changes to the scheme. However, this cannot have a direct bearing on determination of this appeal, which I have considered on its merits based on the appeal submissions and my site inspection. Furthermore, Council members are not bound to accept officers' advice and in this case particular reasons for refusal of the application were given.

31. It is common ground between the main parties that the Council cannot identify a supply of specific deliverable sites sufficient to provide a minimum of 5-years'

worth of housing land, as advised by the Framework[6]. The parties concur that the current provision is 3.7 years. Consequently, footnote 7 to paragraph 11d) of the Framework requires that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

32. The scheme would provide five additional dwellings in an accessible location, thereby making a modest contribution to meeting the substantive shortfall from the requisite housing supply. It would also make use of a previously developed site, would support the local economy through its construction and, longer term, would support local services and facilities.

33. However, it would also provide particularly poor living conditions for future occupiers and would result in material harm to the living conditions of the nearest neighbouring residents. It would thus be contrary to Policy BE37 of the adopted Local Plan and it would fail to provide the high standard of amenity for existing and future users sought by the Framework. I consider that such adverse impacts would significantly and demonstrably outweigh the benefits of this scheme, as assessed against the Framework as a whole. Hence the presumption in favour of sustainable development, as advocated at paragraph 11 of the Framework, does not apply.

34. I acknowledge that the appellant considers that the current scheme has advantages over the extant permitted scheme. As this could still be implemented, it represents a fallback position that is material to my consideration of the appeal proposal. However, I have considered the current proposal on its merits and found that it would result in material harm with regard to the living conditions of future and neighbouring occupiers. I am not aware that the same or similar harm would occur with regard to the permitted scheme and, therefore, the fallback scheme does not outweigh the above findings or lead me to reach a different overall conclusion.

Conclusion

35. The proposal is contrary to development plan policy and to the Framework as it would cause unacceptable harm with regard to the effect on living conditions. Despite the shortfall in housing provision, the presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed and planning permission refused.

J Bell-Williamson

INSPECTOR

[6] Paragraph 73.