



Appeal Decision

Site visit made on 1 September 2022

by Mr Cullum Parker BA(Hons) PGCert MA MRTPI MCMI IHBC

an Inspector appointed by the Secretary of State

Decision date: 15th September 2022

Appeal Ref: APP/G3110/W/22/3294099
180-184 Abingdon Road, Oxford, OX1 4RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by The Edge Hotel (Oxford) Ltd against Oxford City Council.
 - The application Ref 21/02513/FUL, is dated 14 September 2021.
 - The development proposed is described as '*Demolish existing hotel and erect new hotel and maisonette*'.
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Decision

1. The appeal is allowed and planning permission is granted to Demolish existing hotel and erect new hotel and maisonette at 180-184 Abingdon Road, Oxford, OX1 4RA in accordance with the terms of the application, Ref 21/02513/FUL, dated 14 September 2021, subject to the conditions set out in Appendix A.

Procedural Matters

2. The planning application was not determined within the typical timeframe. The appellant decided to exercise their right of appeal against non-determination. Nonetheless, the local planning authority resolved at Planning Committee, following consideration of the Officer's report, that had it been able to do so, it would have refused planning permission on these grounds:
 - (i) *Having had regard to the proposals being situated in a high flood risk area and the proposals potentially putting more people at risk, insufficient information has been submitted, in particular the application is deficient in its failure to provide a comprehensive flood warning and evacuation plan in accordance with policy RE3 of the Oxford Local Plan 2036 and paragraphs 167 of the NPPF.*
 - (ii) *Insufficient information has been submitted, in particular the application is deficient in its failure to provide nocturnal bat surveys and therefore the extent to which the species may be impacted cannot be fully assessed on the basis of the submitted information. The application therefore does not conform to the requirements of Policy G2 of the Oxford Local Plan 2036.*
 - (iii) *Insufficient information has been submitted, in particular the application is deficient in its failure to provide a sufficient drainage strategy with consistent calculations and acceptable half drain down times and therefore, the proposal does not conform to the requirements of Policy RE4 of the Oxford Local Plan 2036.*

3. Whilst I am not bound by these suggested reasons for refusal, they form a useful starting point to narrow the areas of dispute between the main parties.
4. On 23 March 2022 numbers 182 & 184 Abingdon Road were nominated and agreed to be added to the Oxford Heritage Asset Register as heritage assets. I have taken this addition into account, and treated these buildings as non-designated heritage assets for planning policy purposes.

Background and Main Issues

5. An earlier planning application was refused by the Council, under reference 20/01156/FUL, for a similar scheme to erect a 43 bedroom hotel and dwelling. The scheme in this case sought to address the concerns of the local planning authority expressed in that refusal. This has helped informed my considerations of what the main issues are in this case.
6. The main issues are:
 - (i) Whether the proposal would accord with planning policies which seek to minimise risk to future occupiers arising from flood risk;
 - (ii) Whether the proposed drainage strategy would comply with planning policies which seek to manage surface water; and
 - (iii) The effect of the proposal on local biodiversity.

Reasons

The site and proposal

7. The site comprises The Victoria Hotel, a two storey property which was originally three separate dwellings, all built in the 1800's. A number of run-down and unused outbuildings and a hard surfaced car park are located to the rear of the site. Vehicular and pedestrian access to the hotel is from Abingdon Road. The appeal scheme seeks to demolish the existing buildings on site and replace them with a part two, part three storey 38 bedroom hotel with 1no. 2 bedroom maisonette as a replacement for the existing proprietor's accommodation.

Flood risk

8. Policy RE3 of the *Oxford Local Plan 2036* (adopted June 2020) (LP) sets out that planning permission will not be granted for development in zone 3b, except if it is for water compatible uses or that it is on previously developed land. The appeal site is located within flood zone 3b and is previously developed land. The policy goes on to set out certain criteria that must be met; including the submission of a Flood Risk Assessment to align with national policy, that flood risk is not increased off site, and that the safety of future occupants will not be put at risk.
9. National policy is expressed within the *National Planning Policy Framework* (the Framework), and in particular Paragraphs 159 to 169. These set out similar requirements to Policy RE3 of the LP, requiring site specific flood-risk assessment and the need to demonstrate various criteria.
10. To that end, the Appellant has submitted a *Flood Warning and Evacuation Plan* dated May 2021. This sets out measures to be taken in the unlikely event that

a flood warning is issued. This includes directions of evacuation to areas outside of the flood zone 3b, and that the hotel would be evacuated and closed when high level warnings are issued, and alternate locations that guests could be moved to. Safe access and egress from the site in the event of a flood can be provided. Furthermore, the Environment Agency does not object to the proposal subject to the imposition of a planning condition. Accordingly, I find that the proposal would accord with Policy RE3 of the LP and Paragraphs 159-169, which seek the aforesaid aims.

Drainage

11. Policy RE4 of the LP sets out that all development proposals will be required to manage surface water through Sustainable Drainage Systems (SuDS) or techniques to limit run-off and reduce the existing rate of run-off on previously developed sites. Developers are encouraged to separate foul and surface water sewers on all brownfield sites delivering new development. The proposal would see the discharge of foul water into the existing foul drainage network running along Abingdon Road and Thames Water have confirmed that there is capacity for this strategy.
12. The Local Lead Flood Authority (LLFA) has objected as there are some inconsistencies in the calculations and drainage plans, in that there are porous paving sections not included in the calculations and the half drain down time exceeds 24 hours which does not meet LLFA requirements.
13. In response, the Appellant's civil engineers have confirmed in their final comments that; the discharge into the sewer system is not ideal but preferable to infiltration and discharge into the nearby rivers; the calculations for the porous paving sections include all three tanks and the total area of permeable paving, and; the half drain outflow could be improved further by increasing the discharge rate to 1.0l/s, but this would be above the greenfield value of 0.5l/s required in the LLFA SuDS guidance.
14. It is clear in general terms that the proposal manages surface water through SuDS and that provision has been made for this to be achieved. In this respect I find that the proposal would accord with Policy RE4 of the LP. There remain questions over specific details – for example the half drain down time - which needs to be addressed to ensure that the drainage scheme is as effective as possible. However, through the use of suitably worded planning conditions, it is possible to approve these and this provides a pragmatic way in which to address this issue.

Local biodiversity

15. Policy G2 of the LP indicates that development that results in a net loss of sites and species of ecological value will not be permitted. Paragraphs 179 to 182 of the Framework set out national policy on biodiversity including adequately mitigating harm to biodiversity. Section 40 of the *Natural Environment and Rural Communities Act 2006*, as amended, sets out the 'Duty to conserve biodiversity' by having regard to the purpose of conserving biodiversity. The *Wildlife and Countryside Act 1981*, as amended, sets out species protected by law, including all species of bats.
16. A preliminary roost assessment was completed in October 2019, during which small numbers of bat droppings were found in three separate lofts across the

building. Additional internal and external inspections were undertaken in June 2021 and February 2022 during which found no evidence of roosting bats. Nonetheless, the preliminary roost assessment found that there has been activity associated with bats, which are a European Protected Species. The Council considered a further survey and report were necessary and could not be dealt with by condition.

17. In July 2022, the Appellant instructed ecologists to undertake a Bat emergence and re-entry study, with the report issued in August 2022. The surveys identified the presence of two Common Pipistrelle day roosts. The report indicates that in the absence of mitigation, the impact on local bat populations would be low. Furthermore it would be possible to control mitigation and compensation measures through the use of planning conditions, in addition to any separate licensing requirements from Natural England.
18. The local planning authority confirmed that they '*consider the proposed mitigation and compensation measures appropriate.*' I see no reason to disagree and find that the proposal would accord with Policy G2 of the LP, and national policy legislation, which seek the aforesaid aims to conserve biodiversity.

Other Matters

19. Other matters have been raised by interested parties. I now consider these before considering suggested conditions and my overall conclusion.
20. With regard to the loss of the Non-Designated Heritage Asset (NDHA) in the form of 182 & 184 Abingdon Road, their significance deriving from their contribution to understanding how this part of Oxford at New Hinksey developed in the mid-19th Century. Given a number of alteration that have occurred to the buildings through their use as part of the former Victoria Hotel, the overall level of local heritage significance they possess is relatively low (as detailed within the Officer's report). Nonetheless, the demolition of these local heritage assets would result in harm to NDHA.
21. Paragraph 203 of the Framework sets out that the affect of an application on the significance of a NDHA should be taken into account and that balanced judgement is required having regard to the scale of any harm or loss. The development proposed would make more efficient use of a sustainable brownfield site with the development of a highly sustainable new building to provide much needed short stay accommodation. It would also provide employment opportunities in this part of Oxford. In undertaking the balancing act set out in Paragraph 203, I find that the benefits arising from the proposal would outweigh the loss of the NDHA buildings in this instance.
22. In terms of the design of the proposed building, I note that the current proposal was designed taking into account an earlier refused scheme. The proposal has also taken into account the potential impacts on neighbouring occupiers in terms of privacy, living conditions and light. It is clear from the submitted block plan (Drawing no. 0050, July 2021) the footprint of the building seeks to respect the building line along Abingdon Road. Furthermore, Drawing no. 0202, July 2021, Proposed Elevations 1, shows how the scale and mass of the building seeks a careful balance between a building having character, but also respecting the wider street scene. Accordingly, I find that the proposed design is acceptable in this instance.

23. With regard to parking provision, the appeal site is located closely to bus routes along Abingdon Road; a main route into and out of Oxford. Parking would be provided on site; reducing from 17 spaces to 13, but this would support the transition to sustainable transport modes. As such the proposal would accord with Policy M3 of the LP which seeks to ensure no net increase in parking where there is a good level of accessibility to a range of facilities.
24. Accordingly, I do not find that these other matters, whether considered individually or cumulatively, provide justification for the dismissal of the appeal.

Conditions

25. The Council have suggested a number of planning conditions. I have considered these in light of comments from the Appellant, and in view of Paragraphs 55 and 56 of the Framework and the national Planning Practice Guidance and the use of planning conditions.
26. Conditions requiring development to commence within three years, in accordance with submitted drawings, and the submission and approval of materials are necessary for the avoidance of doubt and to provide certainty. Conditions requiring a programme of historic building recording and a programme of archaeological works are necessary in order to properly record and/or protect heritage assets. Conditions relating to dust mitigation measures and the use of ultra-low NOx gas fired boilers are necessary to contribute towards air quality improvements within the area.
27. Similarly, a condition requiring electrical vehicles charging points is necessary and reasonable to contribute to improving air quality and promote sustainable transport modes. A condition requiring the proposal to be carried out in accordance with the submitted Energy Statement and reduced levels of water usage is reasonable to help reduce energy usage and promote sustainable development. A risk assessment(s) for land contamination and any remedial actions (if required) secured by condition, is necessary and reasonable in order to minimise the risk to public health.
28. A condition requiring noise attenuation or mitigation arising from the proposed mechanical plant is relevant to planning and reasonable in order to minimise the impact of such equipment to neighbouring occupiers. Similarly, conditions requiring a demolition method statement, a construction management plan, and a Construction Traffic Management Plan are necessary to minimise the impact of such works and associated activities on the living conditions of neighbouring occupiers.
29. The suggested condition setting out levels of external noise audible for occupants at night and daytimes would be onerous in this case given the transient nature of the hotel use proposed.
30. The carrying out of the development in accordance with the submitted Flood Risk Assessment is necessary and reasonable in order to prevent flooding elsewhere and minimise the risk to human life. Likewise, a condition requiring the submission of an updated drainage strategy clarifying specific details raised by the LLFA is necessary for similar reasons and to ensure a SuDS solution is provided on site.

31. A condition requiring the submission of and written approval of a Construction Environmental Management Plan (CEMP) is necessary to minimise the impact on protected species including bats. A condition requiring an update ecological survey if works do not commence within a year has been suggested by the Council. The Appellant suggests this should be a two year period. The *Chartered Institute of Ecology and Environmental Management* (CIEEM) guidance 'On the lifespan of ecological reports and surveys' (April 2019) suggest a period of between 12 and 18 months. Given the survey was carried out recently in July/August 2022 a period of no greater than 18 months is reasonable in order to ensure that no significant changes occur in the intervening period.
32. A condition requiring the provision of bat boxes and bird roosting devices is necessary and reasonable in order to promote biodiversity. Lastly a condition requiring that no demolition works take place until a licence issued by Natural England authorising the works is obtained or written confirmation that no such licence is required, is necessary, reasonable and relevant to planning in order to protect bats, which are a protected species, present on or near to the appeal site.

Conclusion

33. The proposed development would accord with the relevant adopted local plan when considered as a whole and there are no material considerations which indicate a decision otherwise than in accordance with it.
34. For the reasons given above, I conclude that the appeal should be allowed.

C Parker

INSPECTOR

Appendix A – List of conditions imposed 3294099

- 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:

Drawing no. OX31/P/01 - Existing Site plan, Drawing no. 98-L01 - Site location plan, Drawing no. 98-S100 - Site analysis, Drawing no. OX31-P-01 - Existing site plan, Drawing no. 98-0001A - Proposed site plan, Drawing no. 98-0050 - Proposed block plan, Drawing no. 98-0120A - Proposed ground and first floor plans, Drawing no. 98-0121A - Proposed first floor and roof plans, Drawing no. 98-0202A - Proposed north-east and south-east elevations, Drawing no. 98-0203 - Proposed north-west and south-west elevations, Drawing no. 98-0301 - Proposed section, Drawing no. 98-0204 - Proposed plant room elevations, and Drawing no. 98-S101 - Topographical survey.
- 3) Prior to the commencement of development (excluding demolition and enabling works) a schedule of materials together with samples and sample panels of the exterior materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall be used and retained thereafter.
- 4) No development shall take place until the applicant, or their agents or successors in title, have secured the implementation of a programme of historic building recording in accordance with a written scheme of investigation that has been submitted to and approved in writing by the local planning authority. All works shall be carried out and completed in accordance with the approved written scheme of investigation. The results of the historic building recording shall be provided to the local planning authority.
- 5) No development shall take place until the complete list of site specific dust mitigation measures and recommendations that are identified on Table 7: Mitigation Measures (pages 24-26) of the Air Quality Screening Assessment Revision 01 – 24 August 2021 undertaken by Hoare Lea, are included in the site's Construction Environmental Management Plan (CEMP). The CEMP shall be submitted to and approved in writing by the local planning authority.
- 6) Prior to the occupation of the development, details of the proposed Electric Vehicle charging infrastructure shall be submitted to and approved in writing by the local planning authority. The electric vehicle infrastructure shall be formed, and laid out before the development is first in operation and shall be retained thereafter in working order and available to occupants.
- 7) Prior to the occupation of the development, evidence that demonstrates that all emission gas fired boilers that are going to be installed on-site are ultra-low NO_x (and meet a minimum standard of <40mg/kWh for NO_x) shall be submitted to and approved in writing by the local planning authority. Thereafter any gas fired boilers shall be installed and retained as approved.

- 8) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by to and approved in writing by the local planning authority. (The archaeological investigation should consist of a watching brief and should be undertaken by a suitably qualified archaeologist). All works shall be carried out and completed in accordance with the approved written scheme of investigation.
- 9) Prior to the commencement of the development, a phased risk assessment shall be carried out by a competent person in accordance with relevant British Standards and the Environment Agency's Land Contamination Risk Management (LCRM) procedures for managing land contamination. Each phase (following Phase 1) shall be submitted in writing and approved by the local planning authority and implemented as approved.
 - (i) Phase 1 shall incorporate a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model and preliminary risk assessment. If potential contamination is identified in Phase 1 then a Phase 2 investigation shall be undertaken.
 - (ii) Phase 2 shall include a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals.
 - (iii) Phase 3 requires that a remediation strategy, validation plan, and/or monitoring plan be submitted to and approved in writing by the local planning authority to ensure the site will be suitable for its proposed use.

The development shall not be occupied until any approved remedial works have been carried out and a full validation report has been submitted to and approved in writing by the local planning authority.
- 10) The development hereby approved shall be carried out in accordance with the submitted Energy Statement (Stantec, July 2021) and the water usage of the proposed development shall meet the target of 110l/person/day (as set out within policy RE1 of the Oxford Local Plan 2036).
- 11) Prior to occupation of the proposed development, written details shall be submitted to and approved in writing by the local planning authority, which confirm that the existing background noise level shall not be increased, as a result of proposed mechanical plant, when measured one metre from the nearest noise sensitive elevation. In order to achieve this the plant must be designed / selected or the noise attenuated so that it is 10dB below the existing background level. All works shall be carried out in accordance with the approved details.
- 12) Prior to commencement of the development hereby approved, a demolition method statement and a construction management plan shall be submitted to and approved in writing by the local planning authority. Details shall include control measures for dust, noise, vibration, lighting, delivery locations, restriction of hours of work and all associated activities audible beyond the site boundary to 07:00 – 19:00 Monday to Friday daily, 08:00 – 13:00 Saturdays. No works to be undertaken on Sundays and public/bank holidays, advance notification to neighbours and other interested parties of proposed works and public display of contact details including accessible phone contact to persons responsible for the site works for the duration of

the works. The approved details shall be implemented throughout the project period.

- 13) The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA) [*Flood Risk Assessment and Drainage Statement, The Victoria Hotel, Abingdon Road, Oxford, Document reference: 3682-THVI-SITE-ICS-XX-RP-C-001F, Rev F, by Infrastruct CS Ltd, 2nd February 2022 revision*] and Planning Statement [*Planning Statement, Demolish existing hotel and erect a new hotel, Victoria Hotel, 80 - 184 Abingdon Road, Oxford, OX1 4RA, Mike Gilbert Planning, September 2021*] and the following mitigation measures:

- (i) Finished flood levels are set no lower than 56.65 metres above Ordnance Datum.
- (ii) The proposed hotel building shall have an open undercroft (void) beneath the building floor slab forming a void for flood storage. The void shall be open from existing ground level to the 1% annual exceedance probability (AEP) flood level including an appropriate allowance for climate change, no lower than 56.33 metres above Ordnance Datum.
- (iii) There shall be no raising of existing ground levels on the site.
- (iv) New boundary walls and fences should be permeable to flood water.
- (v) There shall be no storage of any materials including soil within the 1% annual probability (1 in 100) flood extent with an appropriate allowance for climate change.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme.

- 14) A Construction Traffic Management Plan shall be submitted to the Local Planning Authority and agreed in writing prior to commencement of works. This should identify:
- (i) The routing of construction vehicles,
 - (ii) Access arrangements for construction vehicles,
 - (iii) Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours (to minimise the impact on the surrounding highway network)
- 15) Prior to the commencement of development, an updated Drainage Strategy, calculations and drawing shall be submitted to and approved in writing by the local planning authority. The updated strategy shall include the following:
- (i) Calculations of the storage tank details to match the drainage strategy drawing.
 - (ii) Calculations to include all porous car parking spaces.
 - (iii) Sections to include all permeable paving details. Increased half drain down time to meet LLFA requirements.

- 16) No works to the roof structure of the existing building shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
- a) Risk assessment of potentially damaging construction activities affecting bats.
 - b) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on bats during construction (may be provided as a set of method statements).
 - c) The times during construction when specialist ecologists need to be present onsite to oversee works.
 - d) Responsible persons and lines of communication.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 17) If the development hereby approved does not commence within 18 months from the date of the planning permission, further ecological surveys shall be commissioned to establish if there have been any changes in the presence and/or abundance of roosting bats, and identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development.

Works should be carried out in accordance with the proposed new approved ecological measures and timetable.

- 18) Prior to occupation of the development, details of ecological enhancement measures including at least two bat roosting devices and five bird nesting devices (suitable for building-dependent species such as swift, house sparrow, house martin) shall be submitted to and approved in writing by the local planning authority. Details must include the proposed specifications, locations, and arrangements for any required maintenance. The approved devices shall be fully constructed/installed prior to occupation of the approved development and retained as such thereafter.
- 19) No demolition works, including all works affecting the roof and/or associated features, shall be undertaken unless the local planning authority has been provided in writing with either:
- a) A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified development to go ahead (or any Regulations, Orders, or other subsequent replacement standard), or;
 - b) A statement from the relevant licensing body to the effect that it does not consider that the specified development will require a licence.

*****END OF CONDITIONS*****