



Appeal Decisions

Site visits made on 25 January and 2 February 2023

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal A Ref: APP/X1545/W/22/3302504

The Kings Head Centre, 38 High Street, Maldon CM9 5PN

- 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 James Mann against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/01268, dated 7 December 2021, was refused by notice dated 1 February 2022.
 - The development proposed is described on the application form as change of use from suite of treatment rooms to a 1 bedroom residential flat at part first floor level fronting White Horse Lane.
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Appeal B Ref: APP/X1545/W/22/3302466

The Kings Head Centre, 38 High Street, Maldon CM9 5PN

- 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 James Mann against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/01266, dated 6 December 2021, was refused by notice dated 1 February 2022.
 - The development proposed is described on the application form as change of use from 2 no offices and existing additional kitchen to adjoining flat into a 1 bedroom flat at part first floor level fronting the High Street.
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Appeal C Ref: APP/X1545/Y/22/3302475

The Kings Head Centre, 38 High Street, Maldon CM9 5PN

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr James Mann against the decision of Maldon District Council.
 - The application Ref LBC/MAL/21/01267, dated 6 December 2021, was refused by notice dated 1 February 2022.
 - The works proposed are the same as Appeal B.
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Decisions

1. The three appeals are dismissed.

Preliminary Matters

2. The Appeal A site was visited on 25 January 2023. I was unable to fully access the Appeal B/C site on this date, so a second visit took place on 2 February 2023.
3. At my Appeal A site visit, I noted that the first floor space has been converted into a one-bedroom flat and is already occupied. There are some differences between the proposed plan (drawing 49B) and what exists on site. For example, the hall is not L-shaped as shown on the plans but has a cupboard door next to the door to the dining area, while the lounge and dining area are

more open plan than separate rooms. For the avoidance of doubt, I have dealt with the Appeal A scheme as a proposed development.

4. The Appeal B/C is described by the Council as a Section 73A application for the completion of the conversion of two offices to a one-bedroom flat incorporating the kitchen from the adjoining flat as its bedroom as well as sound proofing works. At my site visit, I observed that the room layout shown on the proposed floor/block plan (drawing 50A) is already broadly in place. No secondary glazing has been installed to any window although the canted bay window in the bedroom has plantation shutters fixed to the cill and frame. There was no obvious sign of any mechanical ventilation heating recovery (MVHR) system or acoustic wall lining. Therefore, the sound proofing works have yet to be implemented. I have assessed the Appeal B/C scheme as part implemented and part proposed.
5. The second reason for refusal in Appeal A and the third reason for refusal in Appeal B refer to the lack of a completed Section 106 (S106) legal agreement to address the mitigation of impact on protected European habitat sites along the Essex coast. Two completed S106 agreements in the form of unilateral undertakings dated 9 November 2022 were provided by the appellant following the submission of the appeals. However, the Council identified that the agreements needed to be signed by representatives of the company who own the land and the bank who has a charge/mortgage on the property. Therefore, I have been unable to take into account these completed S106 agreements as they have not been lawfully executed. While the appellant was afforded the opportunity to provide correctly executed S106 agreements, they were unable to do so in the time available. However, given my conclusions on the appeals, this matter has not made a difference to the overall outcome on this occasion.

Main Issues

6. The main issue common to Appeals A and B is the effect of the development on the provision of employment uses and community facilities.
7. The main issue common to Appeals B and C is the effect of the development and works on the special interest of the Grade II listed building known as Kings Head Hotel.
8. The main issue for Appeal B only is the effect of the development on the living conditions of future occupants of the development.

Reasons

Employment uses and community facilities

9. The Kings Head Centre comprises a group of buildings between the High Street and White Horse Lane in Maldon Town Centre. On the ground floor, there is a café and a series of smaller shop units. At first and second floor, there is a mixture of offices, treatment rooms and apartments.
10. The Appeal A site is located within a modern detached building next to White Horse Lane. The existing first floor layout plan (drawing 49B) shows a reception and office/treatment rooms within the eastern side of the building. However, the osteopath business that occupied this space has moved to new premises on the opposite side of the High Street. The current room layout does not reflect what is shown on the proposed first floor layout plan (drawing 49B).

11. The Appeal B site is located at the front of the main historic building next to the High Street. The existing site layout plan (drawing 40E) shows two office rooms and a kitchen occupying the first floor space at the front of building. The office rooms are shown as a self-contained unit while the kitchen is accessed from 'Apartment 3' that forms the middle part of the first floor. The offices were formerly occupied by a marine electronics company who have now moved elsewhere in the district. The proposed room layout is now in situ.
12. Policy E1 of the Maldon District Local Development Plan 2017 (LDP) seeks to encourage employment generating developments. The loss of existing employment uses, whether the sites are designated or undesignated, will only be considered if one of three criteria apply. The first relates to the present use or activity on site significantly harming the character and amenity of the area; the second refers to the site having a greater benefit to the local community if an alternative use were permitted; and the third refers to effective marketing at a rate comparable to local market value for its existing use, or as a redevelopment opportunity other Class B or sui generis uses of an employment nature, and it can be demonstrated that the continuous use of the site for employment purposes is no longer viable, taking into account the site's existing and potential long-term market demand for an employment use.
13. Policy E3 seeks to retain and enhance the provision of community services and facilities within the district, with two criteria that need to be demonstrated where a proposal would result in the loss of such provision. The first is that the existing business/service is not and cannot be made viable; and the second is that effective marketing has been undertaken to demonstrate that there is no viable or appropriate alternative community service based use. The supporting text requires evidence of a marketing strategy to show reasonable and appropriate marketing of the site for community use over a sustained period along with the level of interest in the site.
14. While LDP Policy E1 contains references to uses within Class B (as was) of the Use Classes Order 1987 (UCO), the supporting text notes that non-traditional employment can be found in sectors such as education, health, retail and tourism. Amendments to the UCO in 2020 merged the previous use classes A1 (shops), A2 (financial and professional services), B1 (business) and elements of D1 (non-residential institutions) including medical or health services into a new Class E (commercial, business and service) along with other previous use classes. Therefore, I consider that LDP Policy E1 is relevant to both the Appeal A and B schemes as they involve employment facilities, while LDP Policy E3 is also relevant to the Appeal A scheme as it also concerns community facilities in the form of healthcare provision.
15. While the former occupants of the two appeal sites have relocated within the district with no apparent reduction of jobs, both appeal schemes if approved would result in a loss of employment floorspace as well as community floorspace in the case of the Appeal A scheme. Therefore, it is necessary to consider the criteria in LDP Policies E1 and E3.
16. There is no evidence to show that the present use or activity at the two appeal sites significantly harms the local area, either in their vacant form or most recent use as offices and treatment rooms. While conversion to residential provides additional accommodation, it has not been demonstrated that this would present a greater benefit to the local community than offices and

treatment rooms. Therefore, neither the Appeal A nor the Appeal B scheme would meet the first two criteria of LDP Policy E1.

17. Turning to the third criterion of this policy, evidence provided by the appellant in the form of one page letters from a local estate agent state that the Appeal A site has been marketed since November 2020 and the Appeal B site has been marketed since July 2020. The letters say the marketing has taken place online with very little interest received. Both letters are accompanied by screenshots showing the advertised annual rental prices and the performance records.
18. However, I have little information that the marketing rates were comparable to the local market value for the existing use, or that they were marketed as a redevelopment opportunity for other uses of an employment nature. I am aware that other High Street properties have been on the market for long periods, but I have insufficient detail that the continuous use of either site for employment purposes is no longer viable. Therefore, neither appeal scheme would meet the third criterion of LDP Policy E1.
19. With regard to LDP Policy E3 for the Appeal A scheme, the existing osteopath business has relocated nearby, which indicates that it was not an unviable business or service. As with LDP Policy E1, the marketing information is insufficient to show that it was reasonable and appropriate and so it has not been demonstrated that there is no viable and appropriate alternative community based service. Therefore, the Appeal A scheme would not meet the criteria in LDP Policy E3 either.
20. The appellant notes that under Class MA of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) that it is permitted development to change the use of a building or any land within its curtilage from Class E (commercial, business and service) of the UCO to Class C3 (dwellinghouse). However, Class MA has a number of limitations and conditions including those related to listed buildings as well as a prior approval process. It has not been demonstrated that the development in either Appeal A or B would benefit from permitted development rights. Therefore, this consideration does not weigh in favour of either appeal.
21. Paragraphs 82(d) and 86(a) and (f) of the National Planning Policy Framework (NPPF) seek flexible working practices and rapid responses to changes in economic circumstances and the retail and leisure industries, with housing considered to play an important role in ensuring the vitality of town centres. NPPF paragraphs 119 and 120 promote an effective use of land including underutilised land and buildings to meet the need for homes. However, it has not been demonstrated that loss of employment use and community facilities in Appeals A and B would be acceptable due to the deficiencies in the marketing information provided. As it stands, the loss would be contrary to the development plan and diminish the provision of employment uses and community facilities within the district.
22. Concluding on this main issue, the development in Appeals A and B would have an unacceptable effect on the provision of employment uses and community facilities. Therefore, the development in both appeals would conflict with LDP Policy E1, while the Appeal A scheme would also conflict with LDP Policy E3.

Listed building

23. NPPF paragraph 197 sets out the desirability of sustaining and enhancing the significance of heritage assets amongst other things. NPPF paragraph 199 states that great weight should be given the conservation of a designated heritage asset when considering the impact of a proposal on the significance of such an asset. NPPF paragraph 200 seeks clear and convincing justification for any harm.
24. The Kings Head Centre is listed Grade II (under the name Kings Head Hotel) as a timber framed, part rendered, part brick and part weatherboarded building dating back to the 15th century with many historic alterations and additions. The listed building has considerable architectural and historic interest due to its age and evolution, along with the survival of historic fabric. This informs its overall special interest as well as its significance.
25. The building has a complex plan form with a historic range at the front and extensions to the rear. The front elevation includes a two storey canted bay window. At the first floor, the bay has a 20-pane sash window in the central section flanked by narrow 5-pane sashes either side, along with 10-pane sashes on the return sections. Further along this elevation at first floor are four 12-pane sash windows. Internally, there are sections of timber framing visible in the first floor rooms. The internal sills for the bay window are much shallower than the sills for the four 12-pane sash windows, and the bay has no reveal. Much of the plasterwork and skirting boards appear to be modern, although the flank wall in the bedroom is wattle and daub with timber panelling on the lower section.
26. The development and works in the Appeal B/C scheme alters the internal layout to the front rooms on the first floor. The removal of the doorway through to Apartment 3 and the reinstatement of a doorway from the new bedroom to the hallway do not appear to affect historic fabric or layout. The studwork partition between the new kitchen and dining room is a reversible feature that does not detract from the internal character.
27. In order to improve sound proofing levels for future occupants of the new flat, secondary glazing is proposed for the canted bay window and the four sash windows at first floor. The appellant has only provided general information on this glazing, with no detailed drawings on how they would be fitted to the windows. The Council raises no objection to the effect on the four sash windows. Having seen the depth of the sills and the straightforward size and arrangement of these windows, I have no reason to disagree. However, the Council has concerns regarding the canted bay window.
28. Given the narrow windowsills and lack of reveals on the canted bay, and the complex arrangement of sash windows, it may be difficult to install secondary glazing without compromising the appearance and appreciation of the bay from inside. While the appellant considers secondary glazing details could be addressed via condition, it is a key part of the sound proofing measures and has the potential to affect a key element of the listed building. Therefore, the details are required before approval is granted to ensure that they are appropriate.
29. Guidance from Historic England on secondary glazing indicates that this can be an effective and sympathetic measure to improve energy efficiency without

harming the significance of heritage assets. Such glazing can improve living conditions for occupants and benefit the building and wider environment. However, it has not been demonstrated that the proposed secondary glazing to the canted bay window could be installed without harming the significance of the listed building.

30. An MVHR system is proposed as part of the sound proofing measures. However, there is little information on where this system might be installed and how it would affect the historic fabric of the listed building. Again, since it forms a key part of the sound proofing measures and has the potential to affect key parts of the listed building, it would be inappropriate to simply request details of the system by condition.
31. The appellant has also noted that internal acoustic lining of the external walls would be a necessary sound proofing measure. The Council has indicated details of this measure could be provided via condition. However, the lining could be applied to the flank wattle and daub wall as well as around the very narrow windowsill and frame of the canted bay. Therefore, in the absence of any details, it is not possible to be confident that the lining would avoid harming the significance of the listed building.
32. Without further details of the various soundproofing measures, it is not possible to conclude that the Appeal B/C scheme would preserve the special interest of the listed building and avoid harm to its significance. Without certainty on the extent of harm that might be caused, it is not possible to consider any public benefits that could outweigh that harm. Therefore, the Appeal B/C scheme would not accord with LDP Policy D3 which, amongst other things, seeks to preserve or enhance the special character and appearance of heritage assets. It would also fail to adhere to NPPF paragraphs 197, 199 and 200.

Living conditions

33. A noise survey and assessment submitted by the appellant notes that the Kings Head Centre is affected by noise from people attending the centre as well as from road traffic. Mitigation measures in the form of secondary glazing, an MVHR systems, and internal acoustic lining of external walls are recommended to achieve internal noise levels for the Appeal B development that accord with established noise guidelines.
34. The Council raises concerns about the relaxation of internal noise levels by 5dB where the development is considered necessary and desirable. However, the noise assessment only makes this point in relation to the noise emission from MVHR units. In any case, the assessment shows that internal noise levels would be within the relevant guidelines.
35. However, these internal noise levels are based on the above mitigation measures. I have already expressed concerns about the lack of information regarding the MVHR system and the potential impact of secondary glazing on the canted bay window. As for the internal acoustic lining, while no details have been provided, it is possible that this could have an impact on internal features such as joinery around the window reveals. Therefore, it is not certain that the mitigation measures can be secured to achieve the necessary noise levels.
36. The noise assessment is also informed by cross-section drawings for the external walls, with the front elevation shown as a brick cavity wall and the

flank elevation shown as wattle and daub. The Council has queried the accuracy of the drawings in terms of whether a cavity wall would exist behind an historic brick façade and whether the oak framing on the flank wall is as thick as suggested. While the Council has not presented its own noise evidence, should the walls be thinner than shown this would reduce the effectiveness of any noise mitigation measures.

37. Concluding on this main issue, based on the above uncertainties, it is not possible to conclude that the development in Appeal B would have an acceptable effect on the living conditions of future occupants in relation to noise levels. Therefore, the development would conflict with LDP Policies D1 and D2 which, amongst other things, seek to protect amenity and minimise pollution including from noise. It would also not adhere to NPPF paragraph 130(f) which seeks a high standard of amenity for existing and future users of places.

Planning Balance

38. The Council is unable to demonstrate a five year supply of deliverable housing sites, with the current supply standing at 3.66 years. NPPF paragraph 11(d) states that where the policies which are most important for determining the development are out of date, including where the Council cannot demonstrate a five year housing land supply, planning permission should be granted unless one of two exceptions applies.
39. For Appeal A, the first exception in NPPF paragraph 11(d)(i) is not applicable as there are no policies in the NPPF that protect areas or assets of particular importance that provide a clear reason for refusing the development proposed. Turning to the second exception in NPPF paragraph 11(d)(ii), the development would have an unacceptable effect on the provision of employment uses and community facilities and would conflict with LDP Policies E1 and E3. Given the importance of maintaining employment and community space within the district and the requirement to demonstrate effective marketing, I afford this adverse impact significant weight.
40. The delivery of a one-bedroom flat would boost housing supply but only in a minor way given the size of the development. The economic benefits from creating a single flat and the ongoing investment in the local economy from future occupants, and the social benefits from easy access to a range of services and facilities would also be minor for the same reason. Therefore, the adverse impacts of the Appeal A development would significantly and demonstrably outweigh the benefits. This indicates that planning permission should not be granted for this appeal.
41. For Appeals B/C, policies in the NPPF that protect designated heritage assets provide a clear reason for refusing the development proposed. This indicates that approval should not be given for these appeals. Therefore, it is not necessary for me to consider the second exception in NPPF paragraph 11(d)(ii). Even if I did, the social, economic and housing supply benefits of a new flat would be minor like the Appeal A scheme, while the adverse impacts in terms of the loss of employment use and the uncertain listed building and living conditions effects would significantly and demonstrably outweigh the benefits. This indicates that planning permission and listed building consent should not be granted for these appeals.

Other Matters

42. The site is within the zone of influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy. There are several protected European habitats sites along the Essex coast which are designed to safeguard breeding and non-breeding birds as well as coastal habitats. Potential adverse effects on these protected sites can be caused by recreational disturbance arising from visitors to the coast. The proposed additional residential flats in the Appeal A and B schemes could result in likely significant effects on the integrity of these protected sites in combination with other plans and projects.
43. On this basis, it would be necessary to carry out an appropriate assessment (AA) as part of my decision were I minded to allow the appeals. However, given my findings on the main issues and the overall planning balance, there is no need for me to carry out an AA as there is no prospect of planning permission being granted. Therefore, it is not necessary for me to consider this matter any further.

Conclusions

44. For the above reasons, and having had regard to all other matters raised, I conclude that the three appeals should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR