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## Appeal Decision

Hearing held on 27 June 2023

Site visit made on 27 June 2023

**by Luke Simpson BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8<sup>th</sup> August 2023**

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### **Appeal Ref: APP/F3545/W/23/3315881**

### **All Saints Hotel, Fornham St. Genevieve, Bury St. Edmunds IP28 6JQ**

- 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 M & D Developments Ltd against the decision of West Suffolk Council.
  - The application Ref DC/21/1426/FUL, dated 7 July 2021, was refused by notice dated 12 October 2022.
  - The development proposed is reconfiguration of second floor roof to existing bedroom wing and four storey linked extension creating 37 bedrooms and three residential dwellings on the second floor.
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### **Decision**

1. The appeal is allowed and planning permission is granted for reconfiguration of second floor roof to existing bedroom wing and four storey linked extension creating 37 bedrooms and three residential dwellings on the second floor at All Saints Hotel, Fornham St. Genevieve, Bury St. Edmunds IP28 6JQ in accordance with the terms of the application, Ref DC/21/1426/FUL, dated 7 July 2021, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. I have taken the description of development from the Council's decision notice as this more accurately reflects the proposed development.
3. During the Hearing the appellant provided me with a signed and dated planning obligation. I have addressed this later in this decision letter.

### **Background and Main Issue**

4. The appeal site has a relatively extensive planning history. Three existing planning permissions are of particular relevance to the current proposal. Planning permission was granted under Council reference DC/18/1372/FUL for a 42-bedroom extension to the existing hotel in July 2019.
5. In June 2022, a subsequent planning permission was granted under Council reference DC/22/0483/FUL for reconfiguration of the second floor roof to the existing bedroom wing and a four storey linked extension creating 46 bedrooms. Most recently, in January 2023 the Council granted permission under reference DC/22/1831/FUL, for reconfiguration of second floor roof to existing bedroom wing and a four-storey linked extension creating 43 bedrooms (hereafter referred to as 'the Previous Permission').

6. There are also two relevant appeal decisions. Planning permission was granted at appeal<sup>1</sup> in November 2022 for 15 holiday lodges. In addition, an appeal<sup>2</sup> relating to a proposal to provide 9 dwellings was dismissed in December 2022 (the Previous Appeal).
7. The evidence indicates that development has commenced on the Previous Permission and during my site visit I noted that construction is ongoing. The evidence before me indicates that the main difference between the appeal proposal and the development subject of the Previous Permission is the reduction in the number of hotel rooms by six and the inclusion of three new dwellings (flats) on the second floor. The evidence also indicates that it is the alleged harm resulting from the three proposed dwellings which resulted in the Council refusing planning permission. The existing permission represents a fallback position. It has a realistic prospect of being completed (given that construction is underway). I have considered this appeal on that basis and my consideration of the appeal is primarily focussed on the three dwellings proposed.
8. The main issue is whether the principle of development is acceptable and in particular, whether the three proposed dwellings would accord with the Council's strategy for the location of development.

## Reasons

9. The appeal site comprises a hotel and leisure complex known as All Saints Hotel and Country Club. It is located outside of the development plan defined settlement boundary for Fornham St. Martin and Fornham St. Genevieve and is therefore located in the countryside for planning purposes.
10. Local Plan<sup>3</sup> Policy DM5 outlines that new buildings in the countryside will be permitted if they fall within certain categories. Part 'f' allows for small scale residential development of a small undeveloped plot subject to compliance with Local Plan Policy DM27. The appeal site does not comprise a small undeveloped plot. As such, the proposal (which includes three dwellings) would conflict with Local Plan Policy DM5, regardless of whether it complies with Policy DM27. None of the other types of development in the countryside listed under Policy DM5 are applicable to the three proposed dwellings.
11. Policy DM27 relates to housing in the countryside and sets out two distinct circumstances where development will be permitted in such locations. The second – part 'b)' – directly relates to part 'f' of Policy DM5, as it refers to development consisting of a small undeveloped plot. I have already established that the proposal would not fall within this category. Part 'a)' of Policy DM27 relates to development within a closely knit cluster of 10 or more existing dwellings adjacent to or fronting the highway. The three proposed dwellings do not fall within this category as they are not within any such cluster. As such, the proposal, insofar as it comprises three dwellings, would conflict with Policy DM27.
12. The appellant contends that the appeal proposal should be considered as a whole and that the three proposed dwellings are part of a wider development which falls to be considered under a different part of Policy DM5. A section of

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<sup>1</sup> PINS Reference: APP/F3545/W/22/3301432

<sup>2</sup> PINS Reference: APP/F3545/W/21/3276550

<sup>3</sup> Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document February 2015

Policy DM5 states the circumstances within which development proposals for economic growth and expansion of all types of business will be permitted. Whether the residential component of the proposal should be considered within this context is a matter which was generally considered by the Inspector in considering the Previous Appeal pertaining to a proposal for nine dwellings. He concluded that the proposed dwellings comprised private and serviced dwellings and not the expansion of a business within the terms expressed under Policy DM5.

13. The appellant has provided a planning obligation which is aimed at ensuring that the proceeds from the sale of the residential units are re-invested in the hotel element of the proposal. The appellant also gave evidence at the hearing which indicated that this proposal is vital to the successful completion of the hotel extension. Whilst this could be a material consideration, I do not consider that it means that the type of development proposed is altered for the purposes of applying the development plan policies. Indeed, there is no substantive evidence before me to warrant a different approach to that taken by the Previous Inspector. As such, the provisions of Policy DM25 and other policies pertaining to expansion of businesses are not applicable to the three residential units proposed.
14. In summary, the proposed development would conflict with Local Plan Policies DM5 and DM25 given that it would comprise three dwellings in the countryside, contrary to the Council's strategy for the location of residential development.
15. The reasons for refusal also include an assertion that the proposal would conflict with Core Strategy<sup>4</sup> Policy CS1 and Local Plan Policy DM22. With regard to the latter, the Council has not elaborated on how the proposal would conflict with this policy and it is not directly relevant to this main issue. Core Strategy Policy CS1 is a broad strategic policy which sets out how and (broadly) where new housing will be delivered. Despite this it does not specifically preclude development in the countryside. The conflict with this policy would only arise insofar as there would be a conflict with Local Plan policies DM5 and DM25, given that the Council's development plan strategy for the location of new development should be taken as a whole.

## **Other Matters**

### *Special Protection Area*

16. The appeal site is approximately 4.5 kilometres from the Breckland Special Protection Area (SPA). Under The Conservation of Habitats and Species Regulations 2017 (as amended) there is a statutory requirement that, as the competent authority, I consider whether likely significant effects would arise on this designated European Site as a result of the proposed development.
17. The Council, appellant and Natural England are all of the view that the proposed development would not be likely to result in significant effects on the SPA. Typically, development which might generate additional recreational visits to the SPA might be considered to have likely significant effects. However, in this case, guests staying at the hotel are likely to be doing so in order (primarily) to use the on-site facilities, including the golf course and health club. As a result, it is unlikely that there would be increased recreational

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<sup>4</sup> St Edmundsbury Core Strategy (December 2010)

pressures on the SPA. In addition, three dwellings are proposed. However, the appeal site is uniquely positioned to benefit from an extensive network of existing public rights of way. Indeed, there are public rights of way within walking distance of the appeal site which link up with wider footpath networks. I consider that future occupiers of the dwellings would be far more likely to use these areas for recreation than the would to travel to the SPA. As such, the residential component of the proposal would not lead to likely significant effects on the SPA.

18. Taken as a whole, the proposed development would not be likely to result in significant effects on the SPA, either alone or in combination with other development. As such, the development can be 'screened out' and it is not necessary to undertake an Appropriate Assessment. Neither is it necessary to secure a financial payment or other mitigation.

### *Interested Parties*

19. Mr Jones, an interested party, made representations during the Hearing with regard to the risk to occupants and users of the development resulting from the close proximity of the site to the adjacent golf course (in particular the risk from golf balls). Various references were also made to legal judgements and appeal decisions on similar subjects. I have taken these representations into account in considering this appeal.
20. However, the Previous Permission, issued by the Council, represents a fallback position which I afford considerable weight as a material consideration. The development proposed under this appeal involves three dwellings whereas the development approved under the Previous Permission does not include any dwellings. However, there would also be a reduction in the number of hotel rooms when compared to the Previous Permission. As such, the development would almost certainly result in less people using the development than would otherwise be the case under the Previous Permission, particularly given that hotel guests are more likely to remain on site (for reasons already given).
21. As a result, even if I were to accept that there were a risk of harm to living conditions/health arising and that there is an associated conflict with Local Plan Policy DM2 (which is a purely hypothetical stance for the purposes of illustrating my reasoning), the appeal proposal would be materially less harmful than the Existing Permission. As such this material consideration would outweigh any potential conflict with DM2 and harm to the living conditions of future occupiers/users of the proposal.
22. Concerns have also been raised by interested parties in respect of the effect of the proposal on the character and appearance of the area. Again, the Existing Permission is of relevance as it is almost identical in terms of appearance to the development currently proposed. Furthermore, I consider that the development would assimilate well with the existing hotel and whilst visible from nearby public rights of way, would not result in any harm to the character of the area. As such, the proposal would comply with Local Plan Policy DM2 insofar as it seeks to ensure that development recognises local distinctiveness and preserves local character and appearance.

### **Planning Balance**

23. The Council's development plan policies on the location of new residential development have two main purposes - as evidenced by previous appeal decisions referred to in Mr Ground's Closing Statement. These are to protect the character and appearance of the countryside and to ensure that development is located in sustainable locations (with good access to services and facilities).
24. In this case, the Council does not allege any harm to the character and appearance of the area and neither does it contend that the site would have inadequate access to services and facilities. Indeed, the Council's Officer Report (paragraph 52) states that the proposal would enable residents to access some local services without undue reliance on the private car. The report also concludes that the proposal would accord with the Framework's (paragraph 80) policies on avoiding isolated homes in the countryside.
25. I concur with this assessment. There are bus stops within a reasonable walking distance of the appeal site which facilitate access to a wide range of services and facilities including within Bury St Edmunds.
26. In terms of character and appearance the proposal would have no greater impact than that already approved under the Previous Permission, and it would assimilate visually with the existing hotel, without any adverse impact on the character of the wider countryside.
27. These conclusions are important because they are the opposite of those reached by the Inspector in relation to the Previous Appeal, where a proposal of a different design comprising a greater quantum of residential development was dismissed. Unlike that case, the conflict with the development plan would be of the most technical nature, with no substantive harm occurring.
28. The Council has cited an appeal decision<sup>5</sup> where, in dismissing a proposed development comprising of a single dwelling, an Inspector found that the proposal would harmfully undermine the adopted spatial strategy. However, in that case the Inspector also found harm in terms of the effect of the proposal on character and appearance.
29. Whilst there may be circumstances where a conflict with the plan-led system is sufficient alone to warrant refusal of planning permission, in this case the harm associated with this technical conflict would be outweighed by benefits of the proposal. In particular, when compared to the fallback position, the addition of three dwellings to the housing stock would provide social and economic benefits. These benefits are only of moderate weight because the Council can demonstrate a housing land supply position of 5.4 years (uncontested at this appeal). Even so, given that the purposes of the development plan policies are not conflicted with, the moderate benefits are of sufficient weight to indicate that a decision should be made other than in accordance with the development plan.
30. There are six less hotel rooms proposed than were granted under the Previous Permission, but I attribute greater weight to the benefits associated with the provision of three dwellings. Indeed, the Framework emphasises the importance of significantly boosting the supply of housing.

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<sup>5</sup> PINS reference: APP/H3510/W/19/3222167

31. The appellant has suggested that certain development plan policies are inconsistent with the policies contained within the Framework. However, I have found that the benefits of the scheme outweigh the conflict with those policies. As such, it is not necessary for me to consider whether those policies are out-of-date. This is because if they were, then this would only re-enforce my conclusions and I have already concluded that the proposal complies with Framework paragraph 80.

### **Planning Obligation**

32. The appellant presented me with a signed and dated (27 June 2023) unilateral undertaking (UU) during the Hearing. The effect of the UU would be to ensure that the dwellings would not be leased or let prior to completion of the rest of the development. The aim of the UU is to ensure that the financial benefit of the residential component of the scheme is directly re-invested in the hotel element of the proposal. However, given my findings in relation to the main issue, such an obligation is not necessary in order to make the development acceptable in planning terms. As such, the obligations within the Unilateral Undertaking are neither necessary nor reasonable and they would not meet the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. Therefore, I have not taken any of the obligations contained within the UU into account.

### **Conditions**

33. The main parties have provided a list of agreed planning conditions which I have considered with regard to the advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other respects. However, none of these amendments have materially changed the overall purpose of the conditions.
34. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty. Conditions on biodiversity enhancement [3] tree protection measures [4] and requiring the submission of a lighting plan [5] are necessary in the interest of biodiversity. In the interest of highway safety and sustainable transport I have imposed conditions requiring implementation of parking provision [6], the delivery management plan [7] and electric vehicle charging points [8]. Conditions controlling materials [9] and requiring implementation of landscaping [10] are required in order to preserve the character and appearance of the area. Various conditions [11-16] are necessary to ensure that the living conditions of future and existing neighbouring occupiers are satisfactory, given the possibility of music being played during events and the proximity of the hotel rooms to the dwellings. A condition [17] is required on water consumption in the interest of the environment.

### **Conclusion**

35. The proposed development would conflict with the development plan taken as a whole, given that three dwellings would be located outside of the development plan defined settlement boundaries. However, the harm arising from this conflict is limited to the technical conflict with the development plan. There is no conflict with the purpose of the relevant policies in terms of the effect on character and appearance or access to services and facilities.

36. Whilst the Framework emphasises the importance of a plan-led system, it also requires planning decisions to significantly boost the supply of housing. Within this context, given the very limited harm which would arise from the conflict with the development plan policies, the benefits of the development, including the addition of three dwellings to the housing stock, would outweigh the harm.
37. As such, material considerations demonstrate that a decision should be made other than in accordance with the development plan.
38. The appeal is therefore allowed.

*Luke Simpson*

INSPECTOR

## **CONDITIONS SCHEDULE**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 001 REV E - Location & block plan (22.07.2021)
  - 002 C - Proposed floor plans (08.07.2021)
  - 003 E - Proposed elevations (08.07.2021)
  - 004 E - Proposed roof plan (08.07.2021)
  - 006 E - Proposed elevations (08.07.2021)
  - 007 E Proposed elevations (08.07.2021)
  - 7121-D-AIA B Tree survey (08.07.2021)
  - Arb Method Statement & Tree Protection Plan by Hayden's, Project No 9040, dated 07/11/2022 as updated under DC/22/1831/FUL, received 25.01.2023
  - 9040-D-AMS Tree Protection Measures (dated 02.11.2022) received 25.01.2023
  - GUA-DR-L-001 P02 Landscape plan 08.07.2021
  - GUA-DR-L-002 P02 Detailed Soft Landscaping Schedule
- 3) The biodiversity enhancement measures listed below shall be installed prior first occupation of the development hereby approved. The measures shall be retained thereafter.
  - Installation of two groups of three bat boxes on trees close to the site facing different directions to provide a greater diversity of roosting opportunities. One group of three boxes to be installed on the mature tree (t4) at the end of the site boundary to the north of the extension. A second group of three boxes to be erected in a suitable location in the group of trees to the south west of the extension or in the woodland area adjacent to the existing hotel car park (group A001)
  - The bat boxes should be of standard woodcrete construction such as the 'Schwegler 2F' or equivalent.
  - To enhance the potential for breeding birds a total of four bird boxes be installed in appropriate locations, sheltered from wind, rain and strong sunlight and approx. 1.5 to 5m above ground level.
- 4) Prior first occupation of the development hereby approved, a "lighting design strategy for biodiversity" shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:
  - a. Identify those areas/features on site that are particularly sensitive for bats and that are likely to be disturbed by lighting;
  - b. Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) to demonstrate that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and shall be retained and maintained

thereafter in accordance with the strategy. No other external lighting be installed.

- 5) Tree protective measures shall be implemented in accordance with Hayden's Arboricultural Consultants Arboricultural Method Statement and Tree Protection Plan- In Accordance with BS 5837:2012 (Project number 9040, date of report 07/11/2022) prior to commencement of any development, site works or clearance and shall be maintained and retained until the development is completed. Within the root protection areas the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon. If any trenches for services are required within the fenced areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.
- 6) Prior to first use of the development hereby permitted, the area within the site shown on drawing No. 001 rev. E for the purpose of loading, unloading, manoeuvring, and parking of vehicles shall be provided. Thereafter the area shall be retained and used for no other purpose.
- 7) All HGV and construction traffic movements to and from the site over the duration of the construction period shall be in accordance with the 'Initial Construction & Delivery Management Plan' M&D Developments HGM (received 25.01.2023). No HGV movements shall be permitted to and from the site other than in accordance with the routes defined in the Plan. The site operator shall maintain a register of complaints and record of actions taken to deal with such complaints at the site office as specified in the Plan throughout the period of occupation of the site.
- 8) Prior to first occupation or use of the development hereby approved, at least six publicly available electric vehicle charge points shall be provided at reasonably and practicably accessible locations within the car park. The Electric Vehicle Charge Points shall be retained thereafter and maintained in an operational condition and shall comprise Fast (7-22KW) or Rapid (43KW) chargers.
- 9) The materials to be used shall match in type, colour and texture those on the existing building and as set out in drawing 006 and 007.
- 10) All planting comprised in the approved details of landscaping drawing no. GUA-DR-L-001 REV P02 shall be carried out in accordance with the details submitted under reference GUA-DR-L-002 REV P02 in the first planting season following the commencement of the development. Any planting removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season thereafter with planting of similar size and species.
- 11) A noise limiter shall be fitted to the musical amplification system and retained and maintained thereafter in accordance with the following criteria:
  - (a) The limiter must be set at a maximum level of 95 dBA or such other lower level as determined by and to the satisfaction of an authorised Environmental Health Officer from West Suffolk Council so as to ensure that no noise nuisance is caused to local residents;

- (b) The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of the authorised Environmental Health Officer at West Suffolk Council and access shall only be made by persons authorised by the Hotel owner;
  - (c) The limiter shall not be altered without prior written agreement from the Local Planning Authority;
  - (d) No alteration or modification to any existing sound system(s) should be affected without prior knowledge of the Local Planning Authority; and
  - (e) No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
- 12) Music entertainment in the function room shall cease between the hours of 2300 and 0900.
- 13) The west facing door of the function room shall only be available as an emergency exit and not a door that can be used to either enter or exit and re-enter the function room during an event. To manage this the west facing emergency exit door shall be fitted with sensor alarms and visible indicators to alert staff when the doors have been opened and appropriate signage to indicate this to hotel guests and visitors.
- 14) The three residential dwellings on the second floor hereby approved shall be fitted with a through-the-wall or through-the-mansard type mechanical vent to each room that faces the function room as recommended by Sound Acoustics in their 'Addendum to Report dated 27th September 2021 for 3 Apartments' dated 8th September 2022 so as to provide sufficient sound attenuation to limit external noise ingress to meet the indoor ambient noise levels for dwellings as specified in BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings'. The system shall also be capable of providing adequate ventilation ranging from background to rapid / purge to prevent overheating in accordance with the Acoustics & Noise Consultants (ANC) and Institute of Acoustics (IoA) 'Acoustics Ventilation and Overheating Residential Design Guide', January 2020.
- 15) Prior to first occupation of the hotel bedrooms that are directly below the three dwellings hereby approved, the doors of these hotel rooms shall be fitted with automatic closers and installed with acoustic seals, in addition to normal seals for fire and smoke. The door closers and seals shall be retained thereafter.
- 16) Prior to first occupation of the development hereby approved, details shall be submitted to and approved in writing by the Local Planning Authority, of an enhanced sound insulation value  $D_{nT,w}$  and / or  $L_{nT,w}$  as appropriate of at least +5 dB above the Building Regulations value for the ceiling and / or floor structures separating the first-floor hotel bedrooms and the three residential dwellings on the second floor. The approved details shall be implemented prior to first occupation of the development and shall be retained thereafter.
- 17) The three dwellings hereby approved shall not be occupied until the requirement for water consumption (110 litres use per person per day) in part G of the Building Regulations has been complied with and evidence of

compliance has been obtained and provided to the local planning authority for approval in writing.

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                               |                           |
|-------------------------------|---------------------------|
| Richard Ground KC             | Cornerstone Barristers    |
| Philip Cobbold BA PGDip MRTPI | Phil Cobbold Planning Ltd |
| David Harris                  | Appellant                 |
| Joshua Harris                 | All Saints Hotel          |

### **FOR THE LOCAL PLANNING AUTHORITY:**

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|-----------------|-------------------------|
| Britta Heidecke | Senior Planning Officer |
| Dave Beighton   | Principal Planner       |

### **INTERESTED PERSONS:**

|            |                       |
|------------|-----------------------|
| Leon Jones | Neighbouring Resident |
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