



Appeal Decision

Hearing Held on 17 October 2023

Site visit made on 17 October 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/P0240/C/23/3319582

**Land at The Old Rectory, The Green, Marston Moretaine, Bedford
MK43 0NF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act as amended).
 - The appeal is made by Mr Colin Ingram-Moore of Maytrix Group Ltd against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice was issued on 16 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached single storey building (in the approximate location shown in black on the plan attached to the notice).
 - The requirements of the notice are:
 1. Demolish the detached single storey building.
 2. Remove all resultant building materials from the land.
 3. Restore the land to its former condition before the building was constructed.
 - The period for compliance with the requirements is three months in respect of steps 1 and 2 and five months in respect of step 3.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the notice is varied by the deletion of the third requirement from paragraph 4 and by the deletion of the words "in respect of requirements 1 and 2 and 5 months in respect of requirement 3" from paragraph 6.
2. Subject to these variations, the appeal is dismissed, the notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The appellant received details about the service of the notice after they submitted the appeal. As a result, they have withdrawn the appeal on ground (e) and the appeal will therefore proceed on grounds (a), (f) and (g).
4. The Council's 2014 Supplementary Planning Document (SPD) has been replaced since the issue of the notice by the Central Bedfordshire Design Guide, August 2023. The appellant has been given an opportunity to comment on the sections of the document on which the Council now rely. I have proceeded to determine this appeal on the basis of the new SPD and any comments made.

Background

5. A planning application was made in 2021 to erect a detached flat roof building on a disused tennis court roughly to the west of The Old Rectory, a grade II listed building. It was referred to as the Captain Tom Foundation Building on the drawings. These were amended at the Council's request to a pitched roof design and permission was granted for what is known as the L-shaped building amounting to approximately 140 sqm in November 2021, subject to various conditions.¹
6. The application's accompanying Design, Access and Heritage Statement (DAHS) stated the use of the building would be as home office space incidental to the enjoyment of the dwelling together with charitable uses in connection with the Captain Tom Foundation (CTF).
7. The proposed use was subsequently amplified by the Council in their Officer report on the application. This states the use would be twofold, namely in part for private use but mostly in connection with the CTF. This use was explained as being for storage and office space for the applicants' charitable work in support of the CTF as well as for occasional use for meetings related to the charity.
8. At the Hearing the Council stated that it was impressed upon them that the building was urgently required to facilitate CTF activities including presentations to press and TV but primarily for CTF memorabilia. It was submitted that the existing boardroom and storage in The Coach House (a detached outbuilding in the grounds of The Old Rectory) was inadequate for meetings/presentations with up to 20 people. In addition, it was stated that the applicants were storing items in two rooms in The Old Rectory and The Coach House together with two external storage units, at their personal expense.
9. Work started on the construction of a building on the tennis court on 1 December 2021 and in January 2022 the matter was brought to the attention of the Council. The building under construction was not in accordance with the November 2021 planning permission in that it was being built closer to the Woburn Road properties and it included an additional wing.
10. In March 2022 a retrospective application was submitted by Maytrix Group Ltd to retain the building as built, amounting to approximately 208sqm. The application covering letter described the proposed use as being "for purposes incidental to the existing dwelling including private domestic use, interviews and charity functions. You will note that a spa pool pit has been incorporated in the additional wing to accommodate the prefabricated spa pool". The accompanying revised DAHS stated the use would be for uses incidental to the enjoyment of the dwelling. This application was refused in November 2022.²
11. Thereafter the enforcement notice (the notice) was issued at which point the building was substantially complete with roofing, windows and doors all in place save for final finishes for the outside walls.

¹ Council Reference CB/21/03877/FULL

² Council reference CB/22/00805/FULL

The ground (a) appeal and the deemed planning application

Main Issues

12. The main issues are the effect of the development on i) The Old Rectory; ii) the character and appearance of the area; and iii) the living conditions of neighbouring occupiers, having regard to outlook.

Reasons

Setting

13. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires decision makers to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest. This is the case when considering whether to grant planning permission for development which affects the listed building or its setting.
14. The Old Rectory has three very different elevations reflecting its development over time beginning with a modest two storey building thought to predate the 18th century. The main elevation and entrance of the 18th century element face north east. The dwelling was extended to the rear in two phases, firstly with a long half width two storey extension facing north west and then secondly by a similar depth but taller Victorian extension, resulting in the rectangular plan form present today. Most recently, a former garage has been replaced with a new kitchen which further extends the dwelling.
15. Notwithstanding the differences in size and style of fenestration on each elevation and the noticeable height differences between the three elements of the building, there is some uniformity in its appearance as all of the roof is covered with clay tiles and most of the walls are faced in a similar attractive orange/red brick. Therefore, I consider that the significance and special interest of the listed building, insofar as it relates to this appeal, mainly derives from its age, architectural features and historic fabric.
16. The setting of a heritage asset is defined as the surroundings in which that heritage asset is experienced. In this case The Old Rectory is in use as a dwelling and is situated in the middle of extensive (1.4ha) partially wooded grounds, which include an incomplete moat and a detached two storey outbuilding known as The Coach House, currently used as offices.
17. The site is situated towards the south east edge of the village with a long tree-lined frontage to Woburn Road, a main road running through the area. There is also a similar frontage to The Green, a narrow road which leads from Woburn Road to the grade I listed parish church of St Mary the Virgin. The remaining two long boundaries of the appeal site front Banks Close, a development of bungalows and houses. These boundaries are also well planted with trees and shrubs.
18. Vehicular access into the site is from The Green and that road is lined on one side by modest red brick cottages. There are three detached houses along Woburn Road that back onto the appeal site and on the other side of Woburn Road there is Moreteyne Manor, listed grade II* with a complete moat. This building is also set within extensive grounds and like the appeal site is largely hidden from view. The more modern dwellings mark how the surroundings of

the appeal site has changed over time whereas Moreteyne Manor with its moat is a reminder of how wealthy the area once was. The Old Rectory and the church were linked historically but that relationship ended in the 1970's. Nevertheless, the pedestrian gate within the boundary wall of The Old Rectory opening onto The Green is a visual reminder of that former connection.

19. As there are very limited public views into the site, due to the extent of natural screening, The Old Rectory is mainly experienced from within the boundaries of its extensive grounds. The dwelling is sited roughly off centre in the plot towards the south east and west. The drive leading to the parking area outside the oldest part of the dwelling leads directly from the north east corner at an angle across the plot. The Coach House is the first building that comes into view on entering the site and this is situated at right angles to the dwelling. Nonetheless, the listed building itself is experienced from the driveway and the lawn and a large terrace area that adjoins its north west elevation. That then wraps around the new kitchen addition.
20. Another lawn and the moat adjoin the south east side of the house. West of the dwelling there is a difference in land levels with a steep drop down from the terrace to another area of water. It is not clear whether this body of water was part of the moat or a later pond. The ground then rises to a higher level, which was the location of the tennis court and is slightly higher in height than the terrace. The tennis court was separated visually from the dwelling by a mature hedge, now since removed.
21. Nevertheless, the listed building was experienced from this part of the garden. Old plans show there was a pathway through the trees and given the slightly elevated position of this part of the garden, The Old Rectory would have been visible from the pathway. That did not change with the development of the tennis court as this was an open structure. It was not entirely screened by hedging and even though there was also hedging between the tennis court and the Woburn Road properties, neighbours submitted, and I see no reason to disagree, that they could still have viewed the listed building over this part of the garden. The listed building is also visible from the pond.
22. The incomplete but extensive stretch of moat does not highlight the importance of the current listed building as the moat predates this but it does illustrate the importance of the site and its connections to other moated sites in the area. The Coach House however does emphasise the importance of the listed building. It appears it may not have been built as a coach house but rather began life as a granary and dovecot. Together with the extent of the gardens it highlights the significance of The Old Rectory as a once important farmhouse building within the village which became associated with the church.
23. As a result, the setting provided by the extensive grounds makes a positive contribution to the special interest and significance of the listed building. Recently, The Old Rectory and its extensive grounds have been viewed through social media and television programmes due to the achievements of Captain Sir Thomas Moore (Captain Tom) who occupied the property. He used the terrace to complete his walking laps as part of his fund-raising exercise and, to that extent, views of the north west elevation of The Old Rectory now have additional historical and communal value. These views are not just limited to direct views from the lawn but also the approach to the north west elevation from the site entrance and views from across the tennis court and pond area.

24. The new building appears to be sited on most of the former tennis court. Although described as a 'C' shaped building, it has no curves and comprises a central rectangular block with wings at either end, which create a partially enclosed courtyard. It is orientated towards The Coach House which is roughly opposite it across the lawn and pond.
25. The new building has an overall width of 21m and it is in full view from the approach to the terrace and from the terrace itself. That width is about two thirds of the width of the north west elevation of The Old Rectory and so it is not an insignificant size. Furthermore, the size of the building is emphasised by its design with two wings jutting towards the direction of the terrace and the lawn. These wings are each approximately 5.9m wide and 9m in depth, again not insignificant and, for context, in terms of their volume are akin to two very large garages.
26. Overall, the form of the new building is disproportionately broad and is at odds with the pleasingly domestic scale of The Old Rectory, which is not a grand building in terms of its design and style. It has become a large building over time but each of the three elevations still portray domestic proportions. The two extensions to the original building are each only one room deep and the north west elevation in particular, with its various random small windows and doors, is vernacular in style.
27. I accept that the approach to the design of the new building was to rely on the concept of an agricultural building such as a barn, which is a large structure. This was to be the general form of the building but with modern elements such as large windows to ensure it was not a pastiche. However, I find the resulting form of the building is not subservient to The Old Rectory, notwithstanding its height. It competes for and distracts attention from the listed building when viewed from the terrace and the approach to the terrace, unlike The Coach House. This, although one and half to two storeys in height, complements The Old Rectory due to its domestic proportions.
28. Furthermore, I find that the pond does not provide a visual break between The Old Rectory and the new building. This is because the pond is at a much lower level and the new building is at a similar level to the terrace. Therefore, I consider that the new building erodes the contribution that the setting makes to the significance and special interest of The Old Rectory.
29. The appellant relies on the L-shaped building planning permission to justify the existing development and submits that the only differences between the two schemes relate to slightly different siting and the additional wing. However, this is an oversimplification of the circumstances surrounding the L-shaped building and the C-shaped building.
30. At the time of the former, the Council understood the use of the building was to be mostly in connection with the CTF. Mr Ingram-Moore (son-in-law of Captain Tom) is a trustee of the CTF and at the time Mrs Ingram-Moore (Captain Tom's daughter) was the interim Chief Executive Officer. The Council had concerns about the size of the building but in the planning balance exercise this was outweighed by the public benefits. These benefits were that the building would be used for much needed "charitable purposes" and that it was "urgently required to facilitate Foundation activities, including presentations to the press and TV".

31. I have had regard to the planning history of the site but it does not determine my approach to the assessment of the C-shaped building. This has been carried out having regard to my statutory duties. Furthermore, the existing and intended use of the building have changed and I was advised by the appellant that it is likely the CTF would soon close down.
32. Having considered the effect of the C-shaped building on the setting of the listed building, I now turn to consider mitigation. There is a small tree adjacent to the pond which currently screens part of the new building when viewed from the terrace. However, the tree together with proposed additional landscaping, would only go some way towards mitigating the harm I have found. I also accept that the building is unfinished but even if it was clad with an appropriate material, such as timber weather boarding, this would not disguise the size and form of the building and the harm I have found.
33. For the reasons given above, I find the erection of the new building erodes the positive contribution that the setting, provided by the extensive grounds, makes to The Old Rectory. The proposed mitigation would alleviate to some extent its impacts but it would not fully mitigate them. Consequently, the new building has resulted in a moderate impact to the contribution that the setting makes to the special interest and significance of The Old Rectory. As such, the expectations of the Act are not met. The harm I have identified above caused to the designated heritage asset, is, in the context of the significance of the asset as a whole, and in the language of the National Planning Policy Framework (NPPF), is less than substantial.
34. In those circumstances, paragraph 202 of the NPPF says that this harm should be weighed against the public benefits of the development. Even though I have found that the harm to the designated heritage asset is less than substantial, it is not to be treated as a less than substantial objection.

Public benefits

35. The inside of the building appears to be used for three purposes. The wing nearest Woburn Road contains some storage boxes but a large proportion of the floorspace is laid out for podcasting and filming with a dais furnished with chairs and a table, lighting and sound systems. Whether all the podcasting and filming is in connection with Captain Tom or is used for other business ventures is not clear. The central block is used to display some Captain Tom memorabilia on the walls and is furnished with some informal tables and chairs. The wing nearest the dwelling contains a WC, shower, kitchenette, a spa pool and some gym equipment.
36. At the Hearing the appellant explained that the new building would enable Captain Tom's story to be enjoyed by the public and be supported by the appellant's personal charity work. In particular, the spa pool could offer rehabilitation sessions to elderly people in the area once or twice a week; the public could view a selection of the memorabilia held by the family; the building could also be used for coffee mornings to combat loneliness as well as to host meetings with other charities who work in the elderly persons' sector and to make podcasts/films. Essentially, the appellant's view is that the building provides an opportunity for Captain Tom's family to take his legacy forward and that they have a responsibility to continue the conversation about elderly people and loneliness.

37. I accept that the appellant's intentions are laudable however, it has not been demonstrated in any detail how all of this would work in practice. In the absence of any substantiated information, I find the suggested public benefit would therefore not outweigh the great weight to be given to the harm to the heritage asset.
38. As such, the development does not comply with paragraph 202 of the NPPF and conflicts with Policies HE3 and HQ1 of the Central Bedfordshire Local Plan 2015-2035, adopted July 2021 (the LP). These require development proposals affecting designated heritage assets to preserve, sustain and enhance the significance of the asset in terms of scale, form and proportions, amongst other matters. It also conflicts with the Council's SPD requirements set out in sections 5.22 and 5.23, which address the details of high quality.

Character and appearance

39. The appeal site is situated in a largely residential area comprising a variety of housing styles in different layouts. Well-kept gardens and public open space planted with trees and hedgerows all contribute to an attractive place.
40. Public views of the new building are limited and where it is seen, views are glimpsed with only part of the building seen, such as at a distance from Woburn Road. It is possible to see a long stretch of roof between 17 and 19 Banks Close but these bungalows are set a good distance back from the road behind an expanse of public open space and street trees. The effect of the view is therefore limited on the overall character and appearance of the area. There is also a partial view from The Green and the site entrance but again given the distance from The Green and the screening effect of the trees within the grounds of The Old Rectory, such views have to be actively sought. As such, I find the character and appearance of the area is preserved.
41. I therefore conclude on this issue that the development does not have an adverse effect on the character and appearance of the area. Accordingly, this aspect of the development does not conflict with Policy HQ1 of the LP which requires new development to have regard to local surroundings and distinctiveness.

Living conditions, outlook

42. The new building sits close to the boundary fencing abutting 1a and 1 Woburn Road and 15 and 17 Banks Close. It is also visible from 1b Woburn Road, 19 Banks Close and to a lesser extent other nearby properties. With regard to the Woburn Road properties, the building is sited approximately 2.9m back from the boundary with 1 Woburn Road and 6.25m back from 1a Woburn Road. This is closer than the L-shaped scheme, which shows a setback of between 4.8m and 9.3m. In addition, the building is sited more along the boundary with 1a than the L-shaped scheme. Although there is no difference in the overall width of the L-shaped building and the C-shaped building when viewed from Woburn Road, the new building includes a small gable in what is otherwise a featureless elevation.
43. When viewed from the Woburn Road gardens and rear habitable rooms, I find that the building causes some harm as it dominates the outlook due to its close proximity, which accentuates the height. With regard to the Banks Close bungalows, the new building is positioned further away when compared to the

L-shaped scheme, at approximately 10m as opposed to 6.4m. Notwithstanding this, the overall width of the building though has increased substantially from 15m to 21m and it appears as one uninterrupted roofline dominating the full width of both rear gardens at 15 and 17, thus causing some harm to the outlook.

44. A landscaping scheme to mitigate the appearance of the building seeks to enhance the orchard character of the land to the south east of the building where there are various fruit trees. I also saw that there are two mature trees within the garden of 1 Woburn Road which due to their position already help to soften the appearance of the building. In addition to landscaping, the outlook onto the building would be improved by the addition of timber weather boarding. I find there is sufficient space around the building, where it borders Woburn Road and Banks Close, to implement the proposed landscaping. Together with appropriate cladding this would reduce the harm I have found to an acceptable level.
45. For the reasons given I conclude on this issue that the development does not have an adverse effect on the living conditions of neighbouring occupiers, having regard to outlook, subject to the imposition of a landscaping condition and a finishing materials condition. Accordingly, this aspect of the development does not conflict with Policy HQ1 of the LP or the Council's SPD section 11.33. These require development proposals to not have an unacceptable impact on neighbouring amenity.

Other Matters

46. The evidence before me indicates there are other nearby listed buildings. They are the grade II listed Old School House and Former School and, as mentioned already, Moreteyne Manor, the parish church of Saint Mary the Virgin, as well as the grade I listed tower belonging to the church of Saint Mary the Virgin.
47. The special interest and significance of these buildings is mainly derived from the quality of their architecture and artistic features, age, form and historic fabric. In the case of the Former School and the church, this is also from their historic uses and communal value. Their special interest and significance are experienced mainly within their immediate contexts, due to the mature landscaping and the location of each of them. That experience, and the views of them within their immediate contexts, and the ability of the viewer to understand and appreciate their significance, is unaffected by the overall unauthorised development. As such, there is no impact on the contribution that setting makes to their special interest and significance.

Conclusion

48. To summarise, it has not been demonstrated that there is unacceptable harm to either the character and appearance of the area or local residents, having regard to their living conditions in terms of outlook, subject to the imposition of appropriate conditions. However, the scale and massing of the building has resulted in harm to The Old Rectory which I find suggested conditions would not overcome. I therefore conclude that the appeal on ground (a) fails.

The ground (f) appeal

49. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are set out in

section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) and/or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires that the building should be demolished. I therefore consider that the purpose of the notice is to remedy the breach of planning control.

50. In appealing on ground (f) the onus is on the appellant to specify lesser steps which in their view would overcome the objections to the development. The appellant has not submitted any lesser steps but raises concerns with the third requirement of the notice, which specifies the restoration of the land to its former condition before the building was constructed. This is interpreted by the appellant as a requirement to re-instate the tennis court which they say is unreasonable as this would then be removed to implement the L-shaped building planning permission.
51. I accept that the requirement could have been clearer and the Council raise no objection to me exercising my powers to vary the notice by deleting this requirement. This would not affect the purpose of the notice.
52. I therefore conclude the appeal on ground (f) fails as no lesser steps were specified to remedy the breach of planning control.

The ground (g) appeal

53. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps.
54. The appellant submits that three months is not a reasonable period to comply with the requirements of the notice and that this should be increased to a year. This would allow for sufficient time to source appropriate contractors and for the site to be left in a fit condition, ready to implement the L-shaped building planning permission.
55. I find that the appellant's case largely relates to the time before and after the requirements can be carried out and that the actual removal of the building should take no more than three months, in my view. An extension of time has not been justified in any detail and it is therefore considered that the period for compliance is reasonable. As such, I see no cause to vary it. The appeal on ground (g) therefore fails.

Conclusion

56. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

S Stemp	Of Counsel
S Handforth	Director, Handforth Heritage
A Macquire	Director, ES Landscape Planning
J Paynter	Director, Sherwill Drake Forbes
C Ingram-Moore	Of Maytrix Group Ltd, the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

R Proctor	Team Leader Planning Enforcement
A Robinson	Principal Planning Officer
M Viciana	Conservation Officer

INTERESTED PERSONS:

H Roberts	Marston Moreteyne Parish Council
J Green	Marston Moreteyne Parish Council
B and M Shaw	Local Residents
J Bozdogan	Local Resident
J and F Shaw	Local Residents