

Appeal Decisions

Site visit made on 12 September 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2023

Appeal A Ref: APP/K0235/W/22/3308165

Land to the Rear of Figaro House, 11-23 Mill Street, Bedford MK40 3EU

- 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 Westfields Homes (Figaro) Ltd against the decision of Bedford Borough Council.
 - The application Ref 21/02970/FUL, dated 3 September 2021, was refused by notice dated 14 April 2022.
 - The development proposed is erection of a part three, part four and part five storey residential block raised over existing parking area, containing nine self-contained car free units with bicycle and bin storage.
-

Appeal B Ref: APP/K0235/W/23/3315822

Land to the Rear of Figaro House, 11-23 Mill Street, Bedford MK40 3EU

- 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 Westfields Homes (Figaro) Ltd against the decision of Bedford Borough Council.
 - The application Ref 22/02035/FUL, dated 8 September 2022, was refused by notice dated 26 October 2022.
 - The development proposed is erection of a part three and part four residential block raised over existing parking area, containing nine self-contained car free units with bicycle and bin storage.
-

Decisions

1. Both appeals are dismissed.

Preliminary Matter

2. The two appeals relate to the same site. I have considered each proposal on its individual merits but, as they raise similar issues, I have dealt with the cases in a single decision letter, with specific reference to Appeal A and B as necessary.

Main Issues

3. The Council issued similar reasons for refusal in respect of both schemes. Therefore, the main issues in both cases are:
 - The design of the proposal and its effect on the character and appearance of the area;
 - The effect of the proposal on the character and appearance of the Bedford Conservation Area (BCA) and the setting of the listed Howard Congregational Church;
 - Whether the proposal would provide adequate access, parking and cycle storage;

- The effects on the living conditions of neighbouring occupants, with respect to privacy, outlook and overbearing effect;
- Whether the proposal would provide a satisfactory standard of accommodation for future occupants, having regard to the proximity of external noise sources and air pollution;
- Whether adequate waste storage would be provided.

Reasons

Design, Character and Appearance

4. Figaro House is a large, 1970s three storey block with a recessed fourth storey and three rear wings of differing depths. Access is provided to the rear yard via an undercroft and access lane. The proposed building, in both appeals, would be located to the rear of the yard where surface car parking takes place.
5. The western side of the site is bordered by the rear extensions of historic buildings on High Street. A substantial, warehouse-like extension to 53-55 High Street stands to the rear of the site, beyond which to the south-eastern side is another yard. The recent Castle Quay development, standing between 5 and 7 storeys high, stands beyond the adjacent yard on the far side of Ram Yard.
6. The proposal under Appeal A is for a building comprising staggered elements of increasing height and footprint. The largest element, at five storeys, would span along a significant extent of the southern boundary, with shorter four and three storey elements to the north. The building would have an almost complete void to the ground floor level to provide parking space, with the entire building supported on columns apart from a small structure to the eastern end containing the building entrance. The building would feature a series of prominent, stepped roof forms. The proposal under Appeal B differs principally in the removal of the fifth storey of the building and subsequent adjustments to the roof form, but otherwise maintains the stepped massing and ground floor void.
7. The rear service yard has a demonstrably secondary status in terms of function and contribution to the townscape. It is used primarily for access, parking and waste disposal and is overlooked from all sides by surrounding development. The rear of Figaro House is visible from the public realm on Ram Yard, though the yard itself is screened at ground level by boundary walls.
8. However, it was clear to me that the yard also represents an effective space to the rear of the built form on Mill Street and High Street, providing outlook and light at the rear in addition to its functional uses. The insertion of a building of significant height and bulk into this enclosed space would create a cramped, very dense pattern of development. The proposals, although visible from Ram Yard, would not front onto the street but would form substantial, backland forms of development that would match or even exceed the heights of adjacent buildings in both iterations, but most jarringly in the five storey proposal under Appeal A. This failure to respect the prevailing scale and hierarchy of the townscape would result in an incongruous building that would physically and visually dominate its immediate surroundings, in both versions of the scheme.
9. In Appeal A, the five storey section would feature a prominent gambrel roof that would be replicated on a lower, four storey section to the eastern end of

the building. The gambrel roof seeks to replicate that on an adjoining building at 59 High Street but this does not represent a characteristic roof form within the immediate surroundings. When viewed from Ram Yard, the roofing material would extend down over around half the height of the building, creating a dominant, overbearing roof form. Under Appeal B, the stepped down element to the eastern end would not exist and the roof would be more consistent in alignment, but the proposed rows of solar panels in both schemes would add overtly modern elements that would jar harshly with the ostensibly traditional character of the gambrel roof form.

10. The building in both schemes would also be orientated away from the public realm. In Appeal A, the building would present an overwhelmingly blank, unrelieved and expansive rear elevation toward Ram Yard that would appear isolated and anomalous. By contrast, the front elevation would contain some 33 windows and an elaborate, stepped series of hipped roofs seeking to replicate the gambrel roof at lower levels. This elevation, facing directly towards the flats in Figaro House, would appear cluttered, overbearing and wholly at odds with the muted architecture of the secondary, rear elevations present within the immediate surroundings.
11. In Appeal B, the rear elevation would include hit-and-miss brickwork to create false windows and give some articulation to the façade. The more consistent roof form and lower height would also lessen the overbearing impact of the design compared Appeal A. However, the proposal would still not present the principal façade to the public realm and would also include the cluttered roof and window arrangement on the northern façade. Therefore, the proposal under Appeal B would still appear strident and incompatible in form with its surroundings.
12. Moreover, in both schemes, the building would appear to 'float' above a substantial void at ground floor level to retain the existing parking on the site. Whilst many buildings incorporate ground floor parking, this is often screened by the façade of the building. Here, the amount of space required for parking and manoeuvring would result in an almost wholly open ground floor level and a building lacking a solid base. This incongruous floating design would be plainly visible from surrounding buildings and is likely to be perceptible from Ram Yard at the rear, which would exacerbate the sense of the building being squeezed onto a site too small for such a quantum of development.
13. The appellant refers to the Castle Quay development to the far side of Ram Yard. This is a substantial, modern mixed-use development rising to between 5 and 7 storeys. However, it is obviously different in context in that it occupies a substantial site fronting the highway on three sides and has created a new block within the townscape. In contrast, the proposal would not address the street and would not represent a considered redevelopment of a large site, but an attempt to insert substantial development into a confined, backland site ill-suited to accommodate it.
14. For these reasons, I conclude that the proposals under both appeals would represent poor design and would cause significant harm to the character and appearance of the area, contrary to Policies 28S, 29 and 30 of the Bedford Borough Local Plan 2030 (January 2020) (the BBLP), which require development to achieve high quality in terms of design; to integrate well with and complement the character of the area; paying particular attention to scale,

density, massing, height, materials and layout. There would also be conflict with the aspirations of the National Planning Policy Framework (the Framework) to achieve high quality design in new development.

Effect on Designated Heritage Assets

15. The site lies within the Bedford Conservation Area (BCA), which covers a large area of the town centre. The immediate surroundings are characterised by mixed development of historic housing, shops, public houses and chapels, many with vertical proportions and irregular rooflines. The surviving rear offshoots of buildings on High Street are identified as positive features of the BCA, alongside the frontages. Post-war development has comprised buildings with large footprints and massing, including Figaro House and the substantial rear extension to 53-55 High Street, which have not respected the character of the area, particularly in their lack of architectural detail and use of flat roofs, and are not regarded as positive features of the BCA. It is noted that the rear yard of Figaro House historically had development, but on a distinctly subservient scale to the frontage buildings on Mill Street and High Street.
16. The scale and backland location of the buildings in each appeal would fail to respect the historic pattern of development within the area, instead adding a further building of substantial massing that would have a similar detracting effect as other post-war developments. In particular, the building would exceed the height of the historic rear wings of buildings on High Street, upsetting the natural hierarchy of the urban grain, but also at odds with the historically small, granular development which existed on the site of the current yard. As set out above, both iterations of the building would comprise uncharacteristic design elements that would fail to reflect the surroundings and would introduce largely blank, imposing façades and rooflines to public view from Ram Yard.
17. I also agree with the Council that the development at Castle Quay differs in context from the schemes before me, both in terms of its location and the context within which it is appreciated within the BCA, but also in the specific considerations, including public benefits, associated with that development.
18. The Howard Congressional Church (Grade II) derives its special interest from its late 18th century origins, its classical façade and its original use providing evidence of Bedford's strong non-conformist traditions. It was rebuilt extensively following a fire in 1985 with only the Mill Street façade and a school building to the rear on Ram Yard remaining. It is no longer in use as a church. The main façade of the building would be unaffected as the proposed buildings would not be visible alongside it in the Mill Street streetscape.
19. The Council's Conservation and Historic Buildings Officer notes the school building to the rear as a pleasant structure with some architectural and historic interest in and of itself, but that it is not the reason for the building's designation. Nonetheless, I concur that it is an example of the historic hierarchy of spaces in the town centre, being a secondary element relative to the main chapel located on a back street in Ram Yard. The immediate setting has been affected by other later developments, but the proposed buildings, as set out above, would further disrupt the surviving hierarchy by introducing an intrusive, overbearing structure within the setting of the listed building that would undermine appreciation of the asset. Overall, having regard to the existing setting, the proposals would result in a low level of less than substantial harm to the significance of this designated heritage asset.

20. 53-55 High Street (Grade II) was originally listed as the Lion Hotel, but now includes the substantial rear extension of no historic interest. The building's significance instead derives from its 19th century origins and decorative frontage. The proposals would affect a part of the setting that does not contribute to the significance of the listed building, being to the rear and not seen in the same views as the frontage. Therefore, no harm would arise to the heritage significance of this listed building through development in its setting.
21. However, for the reasons set out, I conclude that the proposal would cause demonstrable harm to the character and appearance of the BCA, resulting in less than substantial harm to the significance of the designated heritage asset. There would also be a low level of less than substantial harm to the significance of the listed building at Howard Congressional Church through development in its setting. Paragraph 202 of the Framework directs that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
22. In each appeal, the proposals would add nine residential units to the Borough's housing stock, on brownfield land and in an accessible location where residents would not be reliant on the private car. The social and environmental benefits arising from this would be limited however, given the scale of each proposal. There would be economic benefits from the construction of either scheme, and subsequently from residents working and spending money in the local area, but again at a scale which attracts limited weight.
23. In each case, the identified benefits, taken cumulatively, would not outweigh the less than substantial harm to the significance of the designated heritage assets, to which the Framework directs I must give great weight. Consequently, the Framework indicates that this provides a clear reason for refusing the developments proposed. Both proposals would therefore conflict with Policy 41S of the BBLP, which reflects the Framework in seeking to preserve heritage assets in a manner appropriate to their significance and weighing the public benefits of the proposal against identified harm.

Access, parking and cycle storage

24. Both schemes would be accessed via the existing entrance off Mill Street. A pedestrian access route is shown on the submitted plans but would not be fully segregated from the vehicular entrance. Residents would be required to cross the vehicular access and walk through the parking area to the building entrance. The shared nature of the yard would increase the risk of conflict between pedestrians and drivers. Although the yard is not large, it is indicated that a number of spaces are used by a taxi firm, and the yard also serves several commercial units, both of which are likely to increase the frequency of vehicular movements compared to residential parking.
25. The proposal is indicated to be car-free, with residents not entitled to park on site. The plans indicate a total of 21 existing parking spaces to the rear. Under both schemes, 20 spaces are shown retained for existing users, with one lost to provide cycle parking. However, nine of the spaces would be within the undercroft of the building in a tight arrangement, with access made more difficult due to the pillars required to support the building which would sit awkwardly at the front of the spaces and within the yard where manoeuvring would take place. The appellant has sought to provide tracking diagrams to show how the spaces could be accessed, but the local highway authority has

pointed to vehicles only being shown reversing into spaces measured to be smaller than the Council's standard dimensions, with no additional clearance where spaces abut a boundary.

26. The appellant's tracking diagrams may show that vehicles would technically be able to manoeuvre into the spaces, but in practice, the small spaces and presence of the pillars is likely to make access to spaces difficult or entirely impractical. This would increase the risk of additional, hazardous manoeuvres within the yard, or lead to indiscriminate parking if certain spaces cannot be conveniently accessed, such as those tight against walls. In turn, this would add to the risk of conflict with pedestrians who would have to cross the car park to enter and leave the site, and to use the communal bin store.
27. The cycle parking, though sufficient in number, would be located where it would potentially block access to the existing substations along with the bin store and parking spaces, which further demonstrates the physical constraints of the yard in accommodating the scale of development in each appeal.
28. The proposed residential units would also create additional traffic through deliveries, but there is no substantive detail before me as to how these would be managed. Whether occurring within the yard or on Mill Street, this has the potential to add to parking congestion and create inconvenience for residents.
29. For these reasons, I conclude that the proposal would fail to provide adequate access and vehicular and cycle parking arrangements, as a result of which there would be an unacceptable risk to highway and pedestrian safety. This is contrary to Policy 31 of the BBLP, which sets out that development should not have any significant adverse impact on access to the public highway, having regard to highway capacity, parking provision, safety or general disturbance to the area and the suitability of access arrangements to and within the development for all members of the community. The proposal would also conflict with the Framework which requires that safe and suitable access to the site can be achieved for all users.

Neighbours' Living Conditions

30. The proposed building, under both schemes, would face towards the flats in Figaro House at a distance of between 10 and 13 metres, well below the 18 metre separation distance advocated by the Council's design guidance.¹ The rear yard provides separation for the flats from the surrounding built form. Although the appellant's evidence indicates there would not be a material loss of light to these flats as a result of either development, the existing outlook and sense of space would be severely eroded by the proposals, due to the height, width and proximity of the buildings in each case. The effects would be most pronounced under Appeal A due to its greater height, creating a dominant, overbearing structure that would cause a severe sense of enclosure and loss of outlook. The impact would only be slightly lessened under Appeal B, but even with its lower height, the building would span across a wide footprint and would match the height of Figaro House, severely restricting outlook beyond the site, still causing significant harm to neighbouring occupants.
31. Moreover, the design of both schemes concentrates windows to the northern elevation, with either 33 or 28 windows facing Figaro House at close range.

¹ Residential Extensions, New Dwellings & Small Infill Developments (January 2000) (RENSID)

Some would be obscurely glazed, but not all. Consequently, there would be significant opportunity for overlooking, but also a constant perception of overlooking for existing residents of the flats from the cumulative array of windows facing towards them.

32. For these reasons, I conclude that the proposals under both appeals would cause unacceptable harm to neighbours' living conditions, contrary to Policies 30 and 32 of the BBLP, which state that regard should be had to the quality of the development in terms of scale, massing and height; and particular attention should be given to factors which might give rise to disturbance to neighbours, including overlooking. There would also be conflict with the Framework which states that developments should create places with a high standard of amenity for existing and future users.

Standard of Accommodation

33. The site is surrounded by a number of noise generating uses, including a public house, beer garden and delivery yard to the rear, a nightclub to the east behind the eastern wing of Figaro House and other commercial uses to the west on High Street. The Council's Environmental Health Officer raises concern at the proximity of these uses, and the presence of a substation and plant within the Figaro House site.
34. The appellant's Noise Impact Assessment (NIA) sets out that the proposed flats, due to the orientation of the windows to habitable rooms away from the main sources of noise to the south, would experience 'modest' external noise levels that are less than presently experienced by the flats in Figaro House. The NIA adds that the proposed building itself, under both schemes, would provide acoustic screening for the flats in Figaro House, leading to an overall reduction in noise levels for existing residents.
35. However, the NIA accepts that due to the nature of the noise from the public house, windows would need to remain closed to achieve required internal noise levels, with attenuated trickle vents to provide ventilation, or a mechanical ventilation system if an acceptable level of ventilation cannot be achieved. It also sets out that noise levels from plant atop Figaro House would result in sound levels well above background levels, with an adverse effect for some proposed receptors within the development.
36. The proposed building designs have sought to address the potential noise from the public house to the south, but I share the concerns of the Council that there would be nothing to stop residents opening their windows, experiencing unwelcome noise from the public house, the mechanical plant or other sources and complaining about it. This in turn may compromise the operation of neighbouring uses or equipment. The alternative of residents having to keep windows closed, particularly in hotter weather, would unduly restrict their comfort and enjoyment of their homes.
37. I am not persuaded by the appellant's argument that sustainable brownfield sites within dense urban environments should be able employ different techniques to overcome noise from local commercial facilities. The Framework is clear that new development should be integrated effectively with existing businesses and community facilities, which should not have unreasonable restrictions placed on them as a result of development permitted after they were established.

38. The proposals in each appeal would be located where residents would be exposed to noise sources with potentially adverse effects. The proposed mitigation would not be sufficient to eliminate the risk of disturbance to residents and/or subsequent complaint and consequences for the neighbouring uses. To achieve mitigation would require flats with closed windows and limited ventilation that would fail to provide a suitable standard of accommodation.
39. Furthermore, the site is located within an Air Quality Management Area, designated primarily due to nitrogen dioxide (NO₂) from vehicle emissions. The appellant has not provided an Air Quality Assessment (AQA) to address this matter, but points to NO₂ levels having fallen since 2019 and to the Council's Scientific Officer recommending a condition in both applications for an AQA to be submitted. However, I have no indication at this stage what levels of pollutants are present and what form and extent of mitigation may be required to address air quality.
40. Given my findings above with respect to windows having to remain closed for noise attenuation, it is possible that addressing air quality may require some form of filtered, mechanical ventilation requiring external plant and/or alterations to the layout of the building in each case. Therefore, whilst the appellant has suggested an MVHR system, principally to address the issue of noise, I have no details as to what such a system would entail. Therefore, I am not satisfied that this is a straightforward matter capable of being dealt with by condition. In this respect, the proposal differs from the appeal referred to me from 2020, wherein an MVHR system appeared to form part of the proposal. In the absence of satisfactory details, the proposals have not demonstrated that residents would enjoy a satisfactory standard of accommodation with respect to air quality.
41. For these reasons, I conclude that the proposal would fail to accord with Policies 32 and 47S of the BBLP, which state that developments should give particular attention to factors which might give rise to disturbance to neighbours and the surrounding community, including noise and harmful emissions, and should be appropriate for their location, having regard to existing noise levels and air quality. There would also be conflict with the aforementioned guidance of the Framework.

Waste Storage

42. The proposed bin store would be located to the eastern end of the undercroft, some 25 metres from the entrance to the flats. The Council's Technical Guidance: Waste and Recycling in New Developments (March 2011) sets out that residents should not be required to carry waste more than 30 metres from their flat to the waste storage area², or to pull bins more than 25 metres from the storage area to the highway for collection. It adds that the Council's collection crews will only pull bins a maximum of 15 metres from storage areas to be emptied, but that neither crews nor vehicles will enter private roads or driveways under any circumstances.
43. There is an existing bin store within an undercroft to the side of the entrance road from Mill Street which serves the existing units at Figaro House, at a distance of between 15 and 25 metres from the highway. The appellant indicates that these bins are serviced by the Council with a waste collection

² In line with the Building Regulations 2010, Part H, Section H6, Paragraph 1.8

vehicle reversing into the site to reach the bin store, and that the proposed bin store could also be serviced from this point. The Council however states that it will not service the proposed bin store which would stand around 15 metres further into the site, or 40 metres from the highway.

44. In respect of the distance for residents to move waste, the Building Regulations exclude vertical distances. On the plans before me, the distances would be within a reasonable tolerance of the 30 metre limit, even taking vertical distances into account. The bins would also be located on the exit route from the building which would provide some convenience for residents. On this issue, therefore, I am satisfied that the waste storage area would be adequate.
45. In terms of waste removal, the bin store would be located beyond the stated distances for either residents or Council operatives to move bins to the highway. The Council's position reflects this conflict with the guidance, but the situation on the ground with the existing bin store suggests some flexibility in practice. However, in the absence of any clarity that the Council would in fact service the new bin store or that the developer would secure private means of waste disposal in the alternative, I cannot be certain that the proposed development under either appeal would be adequately serviced. Therefore, the proposal would be contrary to Policies 29(viii) and 32(v) of the BBLP, which require development to integrate functional needs such as refuse/recycling storage and collection points and make arrangements for dealing with waste (including recyclable materials) storage and collection.

Other Matters

46. The Council did not refuse permission in either case in respect of biodiversity, drainage, energy efficiency and water usage. An absence of harm means they are neutral factors weighing neither for nor against the development.

Planning Balance and Conclusion

47. In both proposals, there would be significant harm arising in respect of the character and appearance of the area, the effect on designated heritage assets, highway safety, neighbours' living conditions, the standard of accommodation and waste management. As a result, both proposals would conflict with the development plan, taken as a whole. I afford significant weight to this conflict in each appeal.
48. I have had regard to the public benefits weighing in favour of both proposals in conducting the heritage balance of the Framework above, the result of which is that, as a material consideration, the Framework directs that permission should be refused in each case. It follows that these benefits would also not be sufficient to outweigh the overall development plan conflict in either case.
49. Consequently, in both appeals, there are no material considerations which would justify a decision being made other than in accordance with the development plan, taken as a whole. Therefore, for the reasons set out, I conclude that both appeals should be dismissed.

K Savage

INSPECTOR