



Appeal Decisions

Site visits made on 21 November 2023

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2023

Appeal A Ref: APP/P0240/W/23/3319765

Units 13-21 Waterborne Walk Shopping Centre, Leighton Buzzard LU7 1DH

- 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 Sheet Anchor Evolve (London) Ltd against the decision of Central Bedfordshire Council.
- The application Ref CB/22/02568/FULL, dated 20 June 2022, was refused by notice dated 3 October 2022.
- The development proposed is single storey rooftop extension to create 2no. residential units.

Appeal B Ref: APP/P0240/W/23/3319767

Units 13-17 Part ground floor and first floor, Waterborne Walk Shopping Centre, Leighton Buzzard LU7 1DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA, Paragraph MA.2 of the Town & Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO).
- The appeal is made by Sheet Anchor Evolve (London) Ltd against the decision of Central Bedfordshire Council.
- The application Ref CB/22/02613/PAEC, dated 20 June 2022, was refused by notice dated 3 October 2022.
- The development proposed is conversion of the first floor from Use Class E to provide 3no. residential dwellings (Class C3).

Decisions

1. Appeal A is allowed and planning permission is granted for single storey rooftop extension to create 2no. residential units at Units 13-21 Waterborne Walk Shopping Centre, Leighton Buzzard, LU7 1DH in accordance with the terms of the application, Ref CB/22/02568/FULL, dated 20 June 2022, subject to the schedule of conditions in Appendix A.
2. Appeal B is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA, Paragraph MA.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for conversion of the first floor from Use Class E to provide 3no. residential dwellings (Class C3) at Units 13-17 Part ground floor and first floor, Waterborne Walk Shopping Centre, Leighton Buzzard LU7 1DH in accordance with the application CB/22/02613/PAEC made on 20 June 2022, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class MA, Paragraph MA.2 including drawing nos. 210416(PL)10 B, 210416(PL)11 B, 210416(PL)12 A and 210416(PL)13 A and subject to the schedule of conditions in Appendix B.

Preliminary Matters

3. As set out above there are two appeals relating to residential development at Waterbourne Walk Shopping Centre. They differ insofar as Appeal A relates to a planning application for an upwards extension to part of the building, and Appeal B relates to an application for prior approval for the conversion of the upper floor of the building. I have considered each proposal on its individual merits, however to avoid duplication I have dealt with the issues common to both schemes together.
4. In respect of Appeal B, Article 3(1) and Schedule 2, Part 3 Class MA of the GPDO), grants planning permission for the change of use of a building and any land within its curtilage from Class E use to Class C3 use, subject to limitations and conditions. The Council do not dispute that the development would meet the limitations in paragraph MA.1.
5. The conditions in paragraph MA.2 require that an application is made for a determination as to whether prior approval is required for the development, and paragraph MA.2(2) sets out the matters requiring prior approval. These include the impacts of noise from commercial premises on the intended occupiers of the development and the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council do not raise objection to the proposal in respect of the other prior approval matters, and therefore my decision on Appeal B focuses on these two issues.
6. Unilateral undertakings have been submitted with both appeals which purport to provide financial contributions to mitigate harm caused as a result of the development to the integrity of the Chilterns Beechwoods Special Area of Conservation (SAC). However in Appeal B it is not necessary for me to take the undertaking into account. Development subject of Article 3(1) of the GPDO cannot be begun until the appellant has received written notification of the approval of the local planning authority under Regulation 77 of Conservation of Habitats and Species Regulations 2017 and so prior approval can be granted independently.

Main Issues

7. In both appeals main issues are whether the development would provide acceptable living conditions for its future occupiers with regard to noise and disturbance. In appeal A additional main issues are whether the development would provide future occupants with safe access and the effect on the SAC and in Appeal B an additional issue is whether future residents would receive adequate natural light.

Reasons

Noise and disturbance

8. In both appeals, the residential units would be above vacant or active retail units. However in the adjacent building there is a hot food takeaway unit (Domino's pizza) and a pub (The Crooked Crow) which I understand has live music late into the evening on some days. In addition, immediately to the rear of the appeal building is the servicing yard for a supermarket (Waitrose).
9. Two noise assessments were undertaken in March 2022 and in March 2023. The latter survey found that dominant noise sources were plant at Domino's

and unloading activities in the service yard. Noise from these sources was above the background level to the extent that significant adverse impacts would be likely. However the assessments show that the fabric of the dwellings themselves could provide sufficient mitigation and when, at some times, windows need to be closed to provide that mitigation, alternative forms of ventilation can be provided. Subject to a condition requiring the submission of details of the insulation measures being approved by the Council, the occupiers of both developments would be unlikely to suffer unacceptably from noise or disturbance. The Council's Pollution Officer also considers that the developments can be made acceptable with the imposition of conditions, which supports my view.

10. As such the proposals would accord with policy CC8 of the Central Bedfordshire Local Plan which sets out that development will only be permitted where measures to minimise the impacts of pollution, including noise, can be implemented.

Access

11. In both proposals, there would be two separate pedestrian accesses to the flats; one from within the shopping centre, and one from the rear of the building. In respect of Appeal B the Council raised no objection in terms of the highways impacts. In terms of Appeal A however, concerns were raised that use of the rear access would involve pedestrians walking across the service yard. Although amended plans were provided showing a dedicated pedestrian route protected by key clamp fencing, the Council considered this would be a less desirable option as it would restrict the manoeuvring space for articulated vehicles in the yard. Evidence from the appellant suggests that manoeuvring for articulated lorries is already restricted and so such vehicles do not turn within the yard and instead reverse across it, keeping well clear of the proposed pedestrian route.
12. Most shops and services in the town centre would be more readily accessible via the front entrance which is also covered. Although the cycle parking would only be accessible via the rear access and the using the bin store would require a brief incursion into the service yard, it is likely that residents of the development would most commonly use the front access. Bearing in mind the limited number of dwellings proposed, and the limited number of commercial units that use the yard, it is considered that the frequency of pedestrian and vehicles moving around the yard simultaneously would be very limited. As such, although it may be beneficial to provide the fencing shown on the amended plans, it is not necessary to make the proposal acceptable in planning terms.

Overall it is considered that the development would provide a safe pedestrian access. The lack of objection from the Highways Officer supports my view. Accordingly, the proposal would accord with policy HQ1 of the Local Plan which aims to ensure that developments provide safe and convenient routes.

SAC

13. The appeal site is within 12.6km of the Ashridge Commons and Wood Site of Special Scientific Interest (SSSI) which is one of the areas that make up the SAC. The SAC is designated for three qualifying features; for beech forests, for dry grasslands and scrublands on chalk or limestone, and for the stag beetle.

14. It is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC, either alone or in combination with other plans and projects.
15. By being within 12.6km, the site would be within the SACs Zone of Influence within which future occupiers of the development would be likely to visit the SAC. The SAC Mitigation Strategy states that recreational pressures, such as trampling, is already churning and compacting the ground and damaging tree roots. The proposed development has the potential to place additional pressure on the SAC from increased usage. Therefore the proposal alone, and in combination with other developments, would be likely to have significant effects on the integrity of the SAC.
16. The Mitigation Strategy states that Natural England have advised that such significant effects can be mitigated through contributions towards Strategic Access Management and Monitoring (SAMM), which would aim to manage and avoid impacts and to better educate visitors; and towards Suitable Alternative Natural Greenspace (SANG), which aims to provide alternative attractive and publicly accessible space which would draw visitors away from the SAC.
17. The Mitigation Strategy advises that such contributions can be secured by a unilateral undertaking and gives figures for the required contributions per unit. The completed unilateral undertaking contends to secure contributions to SAMM and SANG. These sums are in line with the figures given in the Mitigation Strategy. Natural England have confirmed that, subject to that undertaking, the development would not affect the integrity of the SAC. As such I am satisfied that the effects on the integrity of the SAC can be mitigated. The proposals would therefore accord with Local Plan policy EE3 which aims to ensure important habitats are protected.

Natural light

18. At present the first floor windows on the south elevation are obscurely glazed, high level windows. Across the development there would be five bedrooms that would be served by these windows. Due to their elevated position and small size, these windows would not provide adequate natural light.
19. However since the Council's decisions on the applications subject of these appeals, planning permission¹ has been granted for external works to the building which includes the provision of additional windows to serve these bedrooms. These windows would provide the bedrooms with adequate natural light. This permission is extant and is a significant material consideration. With a condition in place to ensure the development is not occupied until the consented works are completed, the development would be served by sufficient natural light.

Other matters

20. Although no dedicated parking would be provided for either development, its town centre location and proximity to shops and services therein, including public transport, leads me to consider that car ownership by the occupiers

¹ CB/22/02567/FULL

would be unnecessary for most day to day needs. In any case, there are surface and multi-storey public car parks nearby.

21. Any disruption during construction would be for a limited period and a condition can be attached to ensure such works do not interfere with the operation of the nearby units, particularly those using the service yard.
22. From the plans it does not appear that the development would block the fire escapes of other units. Notwithstanding this, the retention of clear fire escapes for other units would fall under separate legislation.

Conditions

23. With respect to appeal A, I have considered the Council's suggested conditions. Where necessary I have made minor amendments to them to meet the advice in the National Planning Policy Framework and the national Planning Practice Guidance.
24. Conditions relating to the commencement of development and the approved plans are attached in the interest of certainty and to maintain the character and appearance of the area. A condition is also attached in the interest of ensuring highway and pedestrian safety. Conditions relating to the provision of noise mitigation and cycle and bin storage are also necessary to ensure acceptable living conditions and facilities for future occupiers are provided.
25. With respect to Appeal B, the GPDO does not provide any general authority for imposing conditions in addition to those in paragraph MA.2. However a condition may be attached if it is reasonably related to the subject matter of the prior approval.
26. In this case a condition requiring details to be submitted of acoustic design is necessary to ensure the occupiers of the development do not suffer from unacceptable noise from nearby commercial premises. Likewise, a condition ensuring the development is not occupied until the windows approved by the separate planning permission are installed is necessary in the interest of ensuring adequate natural light to habitable rooms.
27. I have not imposed the Council's suggested condition relating to the commencement of the development as it is inconsistent with paragraph MA.2 (5) of the GPDO. The condition relating to the provision of the cycle parking and bin stores is also unnecessary as it does not relate to a prior approval matter. The approved plans are identified within the terms of the decision for certainty. I understand revision C of drawing no. 210416(PL)10 was submitted to the Council before they made their decision. This differed from revision B only by including within the appeal site boundary land in the service yard within which no development is to take place. The Council's suggested condition refers to revision B, the appellant is willing for the prior approval to refer to revision B, and I am content to grant the prior approval on this basis.

Conclusions

28. The development subject of Appeal A accords with the development plan taken as a whole. Therefore, for the reasons given above, and taking account of all other considerations, Appeal A is allowed.

29. In respect of Appeal B, for the reasons given above and taking account of all other considerations, I conclude that Appeal B is allowed and prior approval is granted.

A Owen

INSPECTOR

Appendix A: Schedule of Conditions for appeal A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out, including in respect of the external materials, in accordance with the following approved plans: 210416(PL)20 D, 210416(PL)21 B, 210416(PL)22 B, 210416(PL)22 B and 210416(PL)24.
- 3) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall provide details on how construction work will be undertaken in a manner that minimises disruption to vehicles and pedestrians within the public areas and servicing yard associated with Waterborne Walk Shopping Centre, as well as the highway network surrounding the site. The approved Construction Management Plan shall be adhered to throughout the construction period of the development.
- 4) Prior to the commencement of development, a detailed acoustic design shall be submitted to the local planning authority for approval. The design shall include details of external noise levels including reflected and re-radiated noise, details of the sound insulation of the building envelope, and of acoustically attenuated mechanical ventilation as necessary, to achieve internal room and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014 for 'non anonymous' noise. A post-installation noise assessment shall be carried out to confirm compliance with the sound criteria and additional steps to mitigate noise shall be taken, as necessary. The approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 5) The cycle and refuse storage point location shown on plan no. 210416(PL)21 B shall be fully implemented prior to occupation of the dwellings and shall be retained thereafter.

Appendix B: Schedule of Conditions for Appeal B

- 1) Prior to the commencement of development, a detailed acoustic design shall be submitted to the local planning authority for approval. The design shall include details of external noise levels including reflected and re-radiated noise, details of the sound insulation of the building envelope, and of acoustically attenuated mechanical ventilation as necessary, to achieve internal room and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014 for 'non anonymous' noise. A post-installation noise assessment shall be carried out to confirm compliance with the sound criteria and additional steps to mitigate noise shall be taken, as necessary. The approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 2) No unit shall be occupied until the first floor windows in the south and north elevations of units 13-17 Waterborne Walk, shown on drawing no. 210416(PL)03 C as approved under planning application reference CB/22/02567/FULL, have been installed.