



Appeal Decision

Site visit made on 14 November 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/M2840/W/23/3315472

**Land Between Louisa Lilley Almshouses and St Peter's Way,
Irthlingborough NN9 5SD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Resham Ltd against North Northamptonshire Council.
 - The application Ref: NE/22/01375/FUL, is dated 1 November 2022.
 - The development proposed is the erection of a single block containing 6 apartments (4 x 1 Bedroom Studios and 2 x 2 Bedroom Flats) together with associated parking, landscaping and refuse and cycle storage.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a single block containing 6 apartments (4 x 1 Bedroom Studios and 2 x 2 Bedroom Flats) together with associated parking, landscaping and refuse and cycle storage at land between Louisa Lilley Almshouses and St Peter's Way, Irthlingborough NN9 5SD, in accordance with the terms of the application, Ref: NE/22/01375/FUL, dated 1 November 2022, subject to the conditions listed in the attached schedule.

Preliminary Matters

2. This appeal relates to the non-determination of an application for planning permission. The Council has confirmed that they would have been minded to refuse the application for 4 reasons had they made a formal determination. These have informed the main issues for this appeal.
3. Since the appeal was lodged the Council has adopted the East Northamptonshire Local Plan Part 2 (LLP2) which supplements the adopted North Northamptonshire Joint Core Strategy 2016 (the JCS). The Irthlingborough Conservation Area Appraisal (CAA) has also been finalised and adopted. I am satisfied that the main parties have had opportunity to cover the relevance and emerging status of those documents in their submissions. I have taken account of these changes in reaching my decision.
4. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has also been published. Although I have made my determination against that updated national policy context, the relevant changes relate to formatting and do not raise any new matters which are determinative to the outcome of this appeal.
5. The appeal site is located directly opposite the grounds of the Grade I Listed 'Church of St Peter'. It falls just beyond the 'Irthlingborough Conservation Area'

and bounds 'the Louisa Lilley Almshouses', a non-designated heritage asset. Previous Decisions¹ have found that the appeal site falls within the setting of each of these heritage assets. From the evidence before me and my site visit, I have no reason to find otherwise. In making my determination I have exercised my statutory duties under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

6. A Unilateral Undertaking has been submitted as part of this appeal. In the event that I were to find that an affordable requirement is triggered, it is intended to secure the payment of a commuted sum for off-site affordable provision in the event the number of dwelling completions across the appellant's wider land holding were to exceed the relevant requirement. I address this matter later.
7. The appeal proposal would result in the provision of additional residential units within the 3 km buffer of the Upper Nene Valley Gravel Pits Special Protection Area (SPA), a European Designated Site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) requires me to make an assessment of the proposal's effect on the integrity of that protected site, either alone or in combination with other plans and projects. I return to this matter later.

Main Issues

8. The main issues are:

- whether or not the appeal proposal would preserve the setting or features of special architectural or historic interest of the nearby Grade I listed Church of St Peter
- the effect on the setting of the neighbouring Louisa Lilley Almshouses, a non-designated heritage asset
- the effect on the character or appearance of the area, with particular regard to the setting of the Irthlingborough Conservation Area and its significance
- the effect on the living conditions of the appeal proposal's future occupants, with particular regard to outlook and privacy
- whether or not the proposed mix of housing is justified, with particular regard to affordable housing provision; and
- the effect on nature conservation interests, with particular regard to onsite biodiversity and the integrity of the Upper Nene Valley Gravel Pits Special Protection Area.

Reasons

Setting of Listed Church

9. The appeal site is currently undeveloped, with the exception of the private access road that intersects it as it leads to neighbouring Louisa Lilley Almshouses, a private car park and also the rear of properties on High Street.

¹ Refs: APP/G2815/W/17/3181795 and APP/G2815/W/20/3265389.

It falls within the wider setting of the Grade I listed Church of St Peter located on the opposite side of St Peter's Way.

10. The appeal scheme would provide a 6 unit apartment block with ground and first floor living accommodation, associated car parking and very limited outdoor space. Similar to other recent residential developments along St Peter's Way the proposed building, access road, car parking and refuse storage would occupy the majority of the appeal site with limited soft landscaped areas. Its single storey eaves and finished ridge heights and the incorporation of dormer windows and roof lights would mean it would be read as a single storey building with accommodation in the roof space.
11. The appearance of the site is defined by scrub vegetation including some self-seeded trees which have been evidenced as being of poor quality. Nonetheless, the site provides an informal green interlude within the street scene which visually connects with the verdancy and undeveloped character of the Church's grounds. As such it currently contributes positively to the verdancy of the listed Church's setting.
12. Given its Grade I listing, the Church of St Peter has been recognised as being of exceptional special interest. This Church mainly derives its special interests from its historical cultural role dating back to the 12th Century, and its many historical architectural details, including its imposing tower.
13. I observed that the Church's tower could be fully appreciated from the appeal site, along with the associated churchyard, when viewed through the Church's western entrance. Although the Council's CAA identifies a number of particularly important views of the Church, that particular view has not being recorded as such. Nonetheless, I observed that the undeveloped spaces which extend beyond the Church and its churchyard, including the appeal site, contribute to the understanding and appreciation of the special interests of this important designated heritage asset within its setting.
14. Although not constituting overdevelopment of the site, the appeal proposal would erode the informal undeveloped space within the Church's setting. That positively contributes to the immediate approach to and from this important listed building, as historically experienced by its community. However, the submitted plans and visualisations demonstrate that the appeal proposal would not visually overwhelm the setting of the Church due to the proposed scale and finished eaves and ridge heights. Furthermore, the proposed linear form, roof design, window and door design, proportions and placement and external materials would secure an appropriate transition between the locality's built historic fabric and the more recently constructed buildings along St Peter's Way and Oak Way which form part of the Church's wider setting.
15. Crucially, the appeal proposal would not compete with the Church's tower as experienced from surrounding vantage points. It would not be domineering or visually discordant when read within its context as part of the Church's setting. Furthermore, the removal of the existing trees would better reveal the Church's tower from Oak Way.
16. Overall, the proposed change to the Church's setting would not harm its cultural special interest. Furthermore, the appeal proposal would not harm the Church's architectural special interest but would improve the appreciation of it which would be a public benefit.

17. For these reasons, overall I conclude that the appeal proposal would preserve the setting of the nearby Grade I Listed Church of St Peter and it would not harm its special interests. Therefore, the proposal would satisfy the requirements of section 66(1) of the Act. Neither would the appeal proposal conflict with the Framework's approach to designated heritage assets. Furthermore, in view of my findings on this main issue there would be no conflict with Policy 2 of the JCS or Policy EN14 of the LPP2 in this regard.

Setting of Non designated heritage asset

18. The appeal proposal would be situated very close to the boundary to the grounds of the single storey Louisa Lilley Almshouses. The strongly defined walled communal grounds of these Almshouses reinforce their intimate and somewhat understated standing. The significance of these properties as a non-designated heritage asset includes their collective historical architectural and cultural interests as a group of charitable homes that were built to house the poor on the bequest of a member of a local shoe manufacturing family.
19. The appeal proposal would consume a currently leafy and undeveloped informal part of the wider setting of the Almshouses. Given the proposed lower ground levels, eaves and ridge heights relative to the Almshouses, the appeal proposal would not overwhelm it or undermine its existing secluded presence. Overall, the proposed change would not in itself harm how the significance of these understated and somewhat intimate neighbouring Almshouses are experienced and understood from surrounding vantage points. As such, the appeal proposal would not conflict with the Framework's approach to non-designated heritage assets.
20. Policy 2 of the JCS requires, amongst other things, that proposals conserve and, where possible, enhance the heritage significance and setting of an asset in a manner commensurate to their significance. Policy EN15 of the LLP2 supports developments which are designed sympathetically having regard to the asset's significance, features, character and setting. In the absence of harm, there is no conflict with these policies.

Setting of the Irthlingborough Conservation Area

21. The Irthlingborough Conservation Area derives much of its character and appearance from the presence of 19th Century buildings, particularly on High Street and College Street, which were associated with the boot and shoe industry. Additionally, the Church of St Peter provides evidence of a medieval core to the settlement. These all make important contributions to the Area's historical, architectural and cultural significance.
22. For the same reasons stated earlier, the appeal proposal would also give rise to a change to the setting of the Conservation Area on approach along St Peter's Way. However, the proposed change to that setting would not harm the character or appearance of the Conservation Area itself or its significance.
23. For these reasons, the appeal proposal would preserve the character and appearance of the Irthlingborough Conservation Area and its significance. Consequently, there would be no conflict with the Framework's approach to heritage assets in this regard. Furthermore, in the absence of any such harm, there would be no conflict with Policy 2 of the JCS or Policy EN14 of the LPP2.

Living conditions

24. The appeal proposal would have 4 ground floor units with a studio layout whose rear sleeping areas would be separated from the kitchen, living and dining areas by shelf dividers. The windows serving the sleeping areas and bathrooms for Flat Nos 2, 3 and 4 would be positioned in close proximity to the existing high boundary walls which enclose the site to the rear and one side. Therefore, the main outlook for these particular units would be limited to that from full height glazed openable window and door openings with Juliette balconies which would look over negligible outdoor space between them, the access road or St Peter's Way and the proposed associated car parking beyond.
25. Overall, the scheme would provide varying levels of outlook for the proposed units with those on the first floor being less compromised. The multiple roof lights proposed in the bedrooms for the first floor units would provide an acceptable level of light, ventilation and sky view. The proposed ground floor studio layout, shelf dividers and large glazed openings would mitigate what would otherwise be very gloomy and oppressive sleeping arrangements for Flat Nos 2, 3 and 4. Those units, which fall at the lower end of the spectrum in terms of outlook, would be just adequate.
26. In terms of privacy, the appeal proposal would provide adequate separation distances with neighbouring properties and windows would be orientated or obscurely glazed so that appropriate levels of mutual privacy would be maintained. The proximity of proposed windows to the public footpath and road is not an unusual situation and could be adequately addressed through the occupant's choice of window dressing.
27. The very limited outdoor space associated with the proposed units is just adequate in view of the apartment style accommodation proposed, their Juliette style balconies and the site's central location. Furthermore, concerns expressed about noise for prospective residents and neighbours has not been adequately substantiated through evidence or corroborated during my site visit.
28. In terms of living conditions, subject to a condition to secure the retention of the obscure glazing shown on the submitted drawings, the appeal scheme would meet the requirements of paragraph 135 of the Framework.
29. For these reasons, the appeal proposal would not have a harmful effect on the living conditions of its future occupants, with particular regard to outlook and privacy. In the absence of harm and, contrary to the Council's opinion, there would be no conflict with Policy 8 of the JCS or Policy ENV13 of the LLP2.

Affordable housing

30. The main parties dispute whether an affordable housing requirement is triggered. This is because they disagree on whether the appeal site should be treated as forming part of a larger development so as to generate a further affordable housing requirement.
31. Despite their stance, a Viability Study based on the proposed 6 unit appeal scheme has been provided by the appellant. That Study finds that before applying any planning obligations, the appeal scheme would make a considerable loss and any affordable provision would further reduce that scheme's viability. The Council has advised that contrary to their standard

- practices, the appellant has declined to have the Viability Study independently verified and the Council disputes its robustness.
32. My attention has been drawn by the Council to a Decision which was subject to a legal challenge². In that case the Inspector's planning judgement relied on 3 principles to determine the factual question of whether development proposals could be aggregated or considered to form part of a larger whole. These are ownership, whether the land parcels could be considered to be a single site for planning purposes and also whether the developments should be treated as a single development. The facts of this case are not identical to the appeal proposal before me. Those principles were not specifically endorsed. They are nonetheless matters which resonate with me in exercising my own planning judgement on this particular aspect of the dispute before me.
33. There is no dispute that, alongside the appeal site, all of the neighbouring consented development sites fall within the appellant's ownership. There is a planning history for that land which indicates an intention to develop the buildings and carpark as well as the appeal site before me. There would be no physical boundary to delineate the schemes apart from one another and they would be served by a common access road.
34. However, the Council has previously validated and determined separate applications falling within parts of the red and blue line ownership boundaries. The land relating to the appeal proposal and those other permitted schemes are not allocated sites in the area's development plan. Neither Policy 30 or the Framework specifically address the scenario before me. In addition, it has not been clearly demonstrated whether or not Nos 13- 21 High Street comprise a single planning unit. The proposed residential units would be spread across separate buildings. Furthermore, the evidence provided does not indicate that the schemes could not be developed independently of one another or are reliant upon each other.
35. Therefore, my application of those particular principles does not conclusively support the Council's stance that the appeal proposal should be aggregated with those extant neighbouring permitted schemes.
36. Furthermore, the Viability Study conclusions have not been clearly demonstrated by the Council to be unsound. Moreover, I have found no cause to doubt its findings. I am satisfied that no affordable requirement or other planning obligations could be withstood in this instance unless there were significant future changes in circumstances relating to viability.
37. The submitted Unilateral Undertaking provides scope to cater for future changes in viability across the appellant's land holding. However, overall there is no justification to require it in the first instance based upon the particular circumstances of this case which I have just outlined.
38. For these reasons, the proposed mix of housing is adequately justified, with particular regard to affordable housing requirements. Consequently, the appeal proposal would not conflict with Policy 30 of the JCS.

² Ref: *R (Westminster City Council) v First Secretary of State and Brandlford Limited* [2002] EWHC 2725 Admin

Biodiversity and Habitat Regulations

39. The appeal proposal would require the removal of the existing tree and ground cover. I am satisfied that the details shown on the submitted drawings have been adequately reconciled with the submitted Extended Phase 1 Ecological Assessment (PEA) and biodiversity metric which shows a net-gain of 7.6%. Providing the works are carried out in accordance with all of those details I am satisfied that the appeal proposal has scope to secure and maintain the on-site biodiversity net-gain anticipated and would avoid significant harm to the local nature conservation interests directly associated with the site itself.
40. A condition proposed by the Council requiring a 30 year Habitat Management Plan (HMP) for the appeal site is disputed by the appellant as not meeting the prescribed tests for planning conditions. The development plan does not include a specific biodiversity net-gain requirement. Rather, Policy 4 of the JCS states that a net-gain in biodiversity will be sought and that biodiversity will be protected where significant harm to an asset cannot be avoided, mitigated, or as a last resort compensated.
41. The proposed planning condition to secure a HMP is precise, is relevant to planning and the proposed development, and would be enforceable. However, suggested conditions Nos 2,7 and 8 would adequately secure the proposed mitigation of any loss of biodiversity and so ensure that the appeal scheme would be acceptable in environmental terms and compliant with the development plan. Furthermore, the Council has not clearly demonstrated to me that a further condition requiring a HMP would be necessary and reasonable in all other respects in this instance. For all of these reasons, I concur that the suggested condition requiring a HMP does not meet all of the prescribed tests in this particular instance. It would therefore not be justified.
42. The appeal site falls within the zone of influence buffer area for the SPA which has been defined by the Council in conjunction with partners, including Natural England, as part of the Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document (SPD). This designation is recognised for its international importance as 20 separate blocks of land and water providing important wetland for an assemblage of more than 20,000 wintering waterbirds in the non-breeding season, including the Bittern, Gadwall and the UK Golden Plover. The Site's conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the aims of the Wild Birds Directive.
43. The appeal proposal would result in an increase in dwellings within this defined zone of influence. The SPD evidences that an increase in dwellings within this buffer area could result in an increase in visitor access to the SPA and recreational activities, including dog walking, fishing and water sports; which could in turn increase the level of disturbance to the water bird assemblage.
44. The Habitats Regulations require me, as the Competent Authority, to consider whether the proposal could adversely affect the integrity of the protected site, either alone or in combination with other plans. The submitted evidence indicates that without any appropriate mitigation, there would be likely direct significant effects on the integrity of this Site's individual qualifying features, their conservation and current condition. This could arise from increased disturbance from noise, off-lead dogs and increases in recreational activities arising from the increased occupancy of the appeal site. Therefore, the

requirement for a financial contribution towards their mitigation strategy in line with the SPD would be justified in this instance.

45. Natural England have endorsed the SPD's approach to securing a reliable strategic solution for securing mitigation relating to access management which is set out in the SPD's Mitigation Strategy Addendum (March 2022). Furthermore, this body has confirmed no objection to the appeal proposal subject to mitigation for recreational pressure impacts is secured.
46. Overall, I am satisfied beyond all reasonable scientific doubt that the provision of a commuted sum in line with the SPD would provide appropriate mitigation which would be effective in avoiding the identified likely significant effects.
47. During the course of this appeal the main parties have confirmed that an adequate financial contribution has already been made to the Council towards proposed access management mitigation. Consequently, I find that there would be no residual adverse effects on the integrity of this Site. Accordingly I find that the proposal, alone or in-combination with other plans and projects, would not have an adverse effect on the qualifying features and integrity of the SPA. As the appellant has already met their obligation in connection with the required mitigation in line the SPD the appeal scheme would meet the provisions of the Habitat Regulations.
48. For these reasons, the appeal proposal would not harm nature conservation interests, with particular regard to onsite biodiversity and the integrity of the Upper Nene Valley Gravel Pits Special Protection Area.
49. Consequently, there would be no conflict with Policy 4 of the JCS which seeks to protect the natural environment, including biodiversity interests.

Other Matters

50. The submitted Transport Assessment confirms that the proposal would not place pressure on the local highway network or give rise to additional highway safety concerns. The level of car parking would be just adequate, bearing in mind the site's accessibility to local services and facilities, including nearby public car parks. The existence of private rights of access is not a matter that I can determine. However, the proposed layout would not negatively impact on the route currently provided by the existing access road. The proposed footpath and highway visibility improvements would be a public benefit of the scheme. As such, I concur with the main parties that there would be no harm to highway safety. Consequently, there is no conflict with the development plan in this regard.

Conditions

51. In imposing the following conditions, I have had regard to the prescribed tests which they must meet. Conditions Nos 1 and 2 are necessary to define the commencement period and scope of the planning permission in line with current legislation in the interests of clarity.
52. Condition No 3 requiring the agreement of all materials is necessary to safeguard the character of the local area and historic environment. Furthermore, it is necessary in the interests of clarity in view of the alternative material options provided on the drawings 788.08 and 788.09 dated September 2022.

53. Condition No 4 is necessary to secure obscure, fixed glazing in a particular part of the approved building in perpetuity in order to safeguard living conditions of neighbouring residents. Condition No 5 is necessary to manage external lighting details for the scheme in the interest of safeguarding neighbouring amenity and ecology from light pollution.
54. Condition No 6 is necessary to secure the implementation of a programme of archaeological work in accordance with an agreed written scheme of investigation. Condition No 7 is necessary to secure an appropriate method statement for the felling of the trees along the southern boundary of the site in the interests of managing local biodiversity interests. Condition No 8 is necessary to secure acceptable details of both hard and soft landscape works and their implementation thereafter in the interests of the character and appearance of the area and enhancing local biodiversity interests.
55. Conditions Nos 9, 10 and 11 are necessary to manage the potential effects of the construction phase of the proposed scheme in terms of air quality, noise and the effects of dust emissions in the interests of living conditions of neighbouring residents and highway safety.
56. I am satisfied that condition Nos 6 and 7 cover details that need to be agreed prior to the commencement of any development on the site by virtue of their direct implications on it from the outset and the appellant has not disputed those. Since the Council submitted their draft conditions, the main parties have agreed that condition No 9 does not need to be a pre-commencement condition. I have therefore modified the timeframe for that condition as that would not undermine the outcomes it seeks to achieve.

Planning Balance

57. In view of my findings and subject to the conditions outlined above and contained in the attached Schedule, the appeal proposal would not conflict with the development plan when read as a whole. This indicates to me that the appeal should succeed.

Conclusion

58. For the reasons given above, I conclude that the appeal should be allowed, and planning permission be granted subject to the conditions contained in the attached Schedule.

C Dillon

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents, as follows:

Location Plan– 788.01

Floor Plan – 788.02 Rev A

Elevation Plan – 788.03 Rev A

Proposed Site Plan – 788.04 Rev B

Proposed Site Plan – 788.05 Rev B

Proposed Site Sections – 788.06

Proposed Site Sections – 788.07

Proposed Bin Store – 788.08

Proposed Cycle Store – 788.09

Extended Phase 1 Ecological Assessment (submitted 14 December 2022)

BS5837 Tree Survey and Arboricultural Impact Assessment – Helicopter Trees Ltd

Acoustic Planning Report - Completely Sound Ltd

Daylight and Sunlight Assessment – Pro Sustainability Ltd

Transport Note – Lime Transport

Surface Water Drainage Assessment – What's the Flood Risk

3. Prior to any of the approved development taking place above the slab level, full details of the external materials for the building, including walls, roof doors, windows, facias, soffits and rain water goods of and also the cycle and refuse stores shall be submitted to and approved by the Local Planning Authority. The development thereafter shall be carried out in accordance with the approved details and retained in perpetuity. Sample of materials shall be provided onsite and product details shall be submitted to the Local Planning Authority.
4. Before the first occupation of the building hereby approved, the first floor dining kitchen window in flat 6 (floor plan 788.02) shall be fitted with obscured glazing to a minimum level of obscurity to conform to Pilkington Glass level 3 or equivalent, and any part of the window that is less than 1.7m above the floor of the room in which it is installed shall be non-opening. The window shall be permanently retained in that condition thereafter.
5. Prior to any of the approved development taking place above the slab level, full external light details (including product details, lighting plan and operating times) shall be submitted to and approved by the Local Planning Authority. Thereafter, the development hereby permitted shall be carried out in accordance with the approved details.
6. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.

This written scheme will include the following components, completion of each of which will trigger the phased discharging of the condition:

- (i) fieldwork in accordance with the agreed written scheme of investigation;
 - (ii) post-excavation assessment (to be submitted within six months of the completion of fieldwork, unless otherwise agreed in advance with the Planning Authority);
 - (iii) completion of post-excavation analysis, preparation of site archive ready for deposition at a store (Northamptonshire ARC) approved by the Local Planning Authority, completion of an archive report, and submission of a publication report to be completed within two years of the completion of fieldwork, unless otherwise agreed in advance with the Local Planning Authority.
7. Prior to the commencement of development, a method statement for the felling of the trees along the southern boundary of the site shall be submitted to and approved by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details.
8. Prior to any of the approved development taking place above the slab level, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried in accordance with the approved details.
- Soft landscape works shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment) schedules of plants noting species, plant sizes and proposed numbers and densities where appropriate. The works shall be carried out prior to the occupation or use of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written approval to any variation.
9. During the construction phases the developer shall provide, maintain and use a supply of water and means of dispensing it, to dampen dust in order to minimise its emission from the development site. The developer shall not permit the processing or sweeping of any dust or dusty material without effectively treating it with water or other substance in order to minimise dust emission from the development site. The developer shall provide and use suitably covered skips and enclosed chutes or take other suitable measures in order to minimise dust emission to the atmosphere when materials and waste are removed from the development site.
10. There shall be no burning of any material during construction, demolition or site preparation works.
11. No demolition or construction work (including deliveries to or from the site) shall take place on the site outside the hours of 0800 and 1800 Mondays to Fridays and 0800 and 1300 on Saturdays, and at no times on Sundays or Bank Holidays unless otherwise agreed with the local planning authority.

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