



Appeal Decision

Inquiry held on 24 – 26 September 2024

Site visit made on 26 September 2024

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 January 2025

Appeal Ref: APP/G3110/C/22/3292360

Land at 1 Quarry High Street, Oxford, Oxfordshire OX3 8JT (“the Land”) shown edged red on the attached plan

- 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 appeal is made by Mr Jonathan Beecher of Quarry Mews Limited against an enforcement notice issued by Oxford City Council.
- The enforcement notice was issued on 5 January 2022.
- The breach of planning control as alleged in the notice is:
- Without planning permission, erection of 6 x 1 bedroom dwellings in a 3-storey terrace (“the Mews Building”), alterations to the existing access and formation of 9 car parking spaces on the Land.
- The requirements of the notice are:
 - (i) Demolish the Mews Building: and associated car parking spaces and
 - (ii) Remove all materials and rubble arising from step (i) above from the Land
- In relation to (i) and (ii) above, the periods for compliance with the requirements are:
 - (i) 6 months after this notice takes effect, and
 - (ii) 7 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant no longer pursues an appeal on ground (b).
2. All main party evidence at the Inquiry was given under oath save for that of Messrs Wilson and Murdoch, as their evidence concerns matters of professional opinion on planning merits only.
3. Since the Inquiry closed, the National Planning Policy Framework (the Framework) has been updated. I am satisfied there are no changes of any consequence for the main issues in this appeal.
4. I have taken the same view of the 2023 Housing Delivery Test results, also published since the Inquiry closed, as these show no consequences for the Council.
5. By the time the Inquiry opened, for the ground (f) appeal the appellant had provided Documents 3 – 6. The appellant states that these are in direct response to paragraph 6(vii) of my Pre-Inquiry Note, regarding lesser steps.

6. Documents 3 – 6 include amended plans, proposing a reduction in the height of the mews building by removing its roof ridge. The Council was content for me to accept these Documents and so in light of ambiguity that existed in relation to the appellant's ground (f) appeal, I have done so.
7. But these Documents are also relevant to ground (a) and my power under section 177(1)(a) of the 1990 Act to grant planning permission in respect of the matters stated in the notice, or "part of" those matters.
8. At the Inquiry, the Council stated its satisfaction that I have the power to grant planning permission for the development shown on the amended plans, it being "part of" the matters stated in the notice and so I have considered those plans, in addition to what has been built on site, under ground (a), below.

Background

9. On 18 September 2006 the Council granted planning permission on the appeal site, Ref 06/00023/FUL. I shall hereafter refer to this as 'the 2006 permission'. The description of development was as follows:

"Demolition of existing workshop building and outbuildings. Retention of existing shop and one bedroom flat. Erection of 2-storey workshop building, with music room and office. Erection of 6 x 1 bedroom dwellings in a 3-storey terrace. Alterations to the existing access and formation of 9 car parking spaces (3 for the workshop and 6 for the dwellings) (Amended plans)"

10. The appeal site is broadly triangular in shape. The retained shop referred to in the description of the 2006 permission is a violin maker's shop, 'Beecher Acoustics', which fronts Quarry High Street, on the eastern side of the appeal site. I shall hereafter refer to this as 'the music shop'. The proposed workshop building, with a music room and office, is an extension to the music shop, on its northern side. To its opposite side, along the southwestern boundary of the site, a 3-storey terrace of 6 houses has been built. I shall hereafter refer to this as 'the mews building'.
11. The enforcement notice is directed only at the mews building and its associated car parking spaces. As such, the extension to the music shop (ie the workshop building with music room and office, referred to in the 2006 permission), is not before me.

Main Issues

12. Based on the grounds of appeal pleaded, the main issues are:
 - (i) whether the matters stated in the notice (if they occurred) constitute a breach of planning control, ie the ground (c) appeal; and
 - (ii) if the above ground of appeal is not successful, whether planning permission ought to be granted for the breach of planning control alleged, ie the ground (a) appeal; and
 - (iii) if the above ground of appeal is not successful, whether the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach, ie the ground (f) appeal; and

- (iv) whether the periods for compliance fall short of what should reasonably be allowed, ie the ground (g) appeal.

Reasons

Ground (c)

13. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
14. The crux of the appellant's case on ground (c) is that the 2006 permission is an extant planning permission for the appeal development. This is because, according to the appellant, the 2006 permission was implemented within the relevant 3 year time limit by the construction of the extension to the music shop (amongst other things), said to be completed in May 2009.
15. In the Statement of Common Ground, the main parties have agreed the application drawings for the 2006 permission. Of particular relevance is drawing PL/07 revision D. Drawn to scale, this shows the proposed east, north and southwest elevations of the development approved by the 2006 permission. It includes the proposed mews building, the retained music shop and the proposed extension to it, as well as the outline of the demolished workshop building and outbuildings, all referred to in the description of the 2006 permission.
16. It is common ground that the approved drawings erroneously show the music shop as being higher than it is in reality, both in respect of its ridge height and its eaves height. There remains disagreement between the main parties over the scale of error. But in either case, the effect is that the mews building cannot be implemented in accordance with the approved drawings of the 2006 permission because once the mews building is built in accordance with the dimensions shown on the plans it would not replicate the relationship between the buildings, most clearly understood from drawing PL/07 revision D.
17. This drawing shows that the mews building and music shop would be perceived to be broadly the same height. Notably in this regard, the ridge of the mews building is below the height of the music shop's chimney pots; the eaves of the mews building sit below the ridge of the music shop and the ridge of the music shop is roughly half-way up the roof of the mews building.
18. In correspondence prior to the granting of the 2006 permission, the mews building architect was clear that the height of all the proposed buildings is lower than that of the existing workshop building, which was to be demolished. This is clearly shown on drawing PL/07 revision D.
19. But the mews building has been constructed significantly taller than planned. This is obvious when viewed on site as the eaves of the constructed mews building are higher than the ridge of the music shop. This is confirmed by the Midland Survey drawings commissioned by the Council. Consequently, the 'broadly similar' height relationship between the mews building and music shop has not been achieved and, at least in respect of the mews building, the 2006 permission is not capable of being implemented in accordance with the approved drawings.

20. From all of the evidence before me, this situation reflects that which occurred in *Choiceplace Properties Ltd v SSHCLG & LB Barnett* [2021] EWHC 1070 (Admin). The appellant seeks to draw a distinction between this appeal and *Choiceplace* for two reasons.
21. First, no condition requiring the development to be constructed in accordance with the approved plans was imposed on the 2006 permission. But this makes no difference because, as established in *Barnett v SSCLG* [2009] EWCA Civ 476, an application for full planning permission requires plans and drawings as necessary to describe the development which is the subject of the application. So it is unnecessary for a permission to expressly incorporate the application plans and drawings and a grant of full planning permission for building operations is incomplete without approved plans and drawings showing the detail of what has been permitted.
22. Second, according to the appellant, the error in *Choiceplace* fundamentally altered, by reversing, the relationship between the heights of the proposed building and its neighbours in a way that has not occurred in this appeal case. But whilst the relationships between the respective buildings in each case may be different, it is clear that the principle is the same: because of inaccuracies in the drawings it is impossible for the 2006 permission to be built-out in accordance with the approved plans, particularly drawing PL/07 revision D. On this basis alone, the ground (c) appeal cannot succeed.
23. Even if I were wrong in this regard, there are several differences between the mews building as approved and as built. These include fenestration and detailed design differences. But as well as these, the mews building is bigger in all dimensions. On the appellant's own case, the building has been built longer than it should have been by 2 brick lengths, wider by 1 brick length and higher by 7 bricks' height.
24. This may not sound like very much. But as a matter of my planning judgement, in this prominent, low-rise, small-scale 'village' context, the height difference is material. As is the extent to which the mews building protrudes into the front boundary wall on Quarry High Street, for the same reason. Taken together, these differences are material. In other words, in this context, details matter.
25. My attention has been drawn to a non-material amendment (NMA) granted by the Council for a pavilion in the adjacent park. But that is a completely different (and single storey) building type, on a site in a park, outside of any conservation area, where the statutory duty under section 72 (set out below) does not apply. Under such circumstances, more latitude may be appropriate in considering what is a material change. So that NMA does not assist the appellant's case and makes no difference to my conclusion on ground (c).
26. Taking all of the above into account, I conclude that the appeal on ground (c) fails.

Ground (a)

27. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice.
28. In considering whether planning permission ought to be granted for the appeal development, the main issues are:

- (i) the effect of the appeal development on the character and appearance of the area, including the Headington Quarry Conservation Area; and
- (ii) if there is harm arising from the above effect of the appeal development, whether the harm is outweighed by public benefits to justify a grant of planning permission; and
- (iii) whether the appeal development provides adequate outdoor amenity space for occupants.

Character and Appearance

- 29. The appeal development is prominently sited at the junction where Quarry High Street meets Quarry Hollow, Quarry Road and Margaret Road. The building is within and at an entry point to the Headington Quarry Conservation Area. This is a designated heritage asset and there is a statutory duty upon me, under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of this area.
- 30. My attention has been drawn to the Headington Quarry Conservation Area Appraisal, February 2010, published by the Council. I have drawn on this and my own observations on site to determine the character, appearance and significance of the conservation area.
- 31. The area is characterised by low-rise, humble, stone and brick cottages in an intimate, organic, small-scale network of narrow winding lanes and alleyways. These are enclosed by traditional brick and limestone rubble boundary walls and are set within gently undulating hills and holes of former quarries. Relevant to the issues in this appeal, I consider the significance of the heritage asset is derived from the character and appearance described above. Moreover, there is no dispute that the music shop makes a positive contribution to the significance of the conservation area.
- 32. The 2006 permission included a 3-storey terrace of 6 dwellings along the western boundary of the appeal site. But what was permitted was smaller, both in height and footprint, than that which has been built. From a review of the relevant conservation officer's comments, the architect's response and the committee reports from 2006, it is clear that the relationships between buildings were "carefully considered" and what was reasonably anticipated was a mews building of "equal height" to the music shop. I have no doubt this is the case from the way these documents are written and it is consistent with the drawings which show these buildings to be of broadly similar height, as explained above. But this is not what has been executed on site.
- 33. What has been built has a significantly higher eaves height than as approved and a notably higher total height. This gives the mews building a bulky appearance, particularly exacerbated by the depth of tile hanging on the front elevation and the building's prominent location. There is no perception that the mews building and music shop are of a broadly similar height, instead the music shop is dwarfed by the mews building which sits proud of the consistent roofline of the street. This is particularly noticeable and harmful where the mews building is viewed in the context of the music shop, on Quarry High Street, Quarry Hollow and Quarry Road.

34. The Council's case draws on the height and width of the bay elements of the mews building. From an examination of the drawings compared to what has been built, these elements do not appear to be much wider than approved and so I do not find harm arising from the width of the bays, although they do contribute to the harm caused by the mews building's height.
35. The increase in height compared with what was approved, is made readily apparent on the mews building from the gap between the first floor windows and the tile hanging above. Drawing PL/08 revision D shows the tile hanging was meant to sit immediately above the first floor windows, as the roof does on the music shop. The result is that the mews building appears disproportionately tall by comparison and this is harmful.
36. In respect of the mews building's footprint, approved drawing PL/04 revision C shows the mews building set back from the boundary with the footway. But the increased length of the brick building constructed means that it now protrudes into the limestone rubble boundary wall. The appellant's own conservation witness accepted that this has resulted in an awkward relationship and one that is harmful to the character and appearance of the conservation area. This is clearly seen when passing the site and from within the site itself.
37. Policy DH2 of the Oxford Local Plan 2036 (the Local Plan), adopted 8 June 2020, states that planning permission will be granted for developments of appropriate height or massing, as demonstrated by criteria, all of which should be met. These criteria include that design choices regarding height and massing have a clear design rationale. According to the appellant, the size of the mews building had to be increased because Building Regulations changed between 2006 and 2019, when the mews building was constructed. Be this as it may, Building Regulations are not a licence to build a larger building, particularly in a conservation area, where details are more likely to matter.
38. Inappropriate infill developments in terms of design, scale and materials, are specifically identified as a vulnerability in the Headington Quarry Conservation Area Appraisal. In light of the above, I consider the mews building to be such a development. I am satisfied it is an infill development as this is specifically defined in the Local Plan.
39. I have had regard to the amended plans (Documents 3 and 4). These propose a reduction in the height of the mews building by removing its roof ridge. But even if the appellant were to alter the building to accord with these drawings, this would not address the harm caused by the mews building's eaves height or footprint or the bulk which is a consequence of these. Moreover, as a matter of my planning judgement, this amended scheme would result in an incongruous roof form which, from all of the evidence before me (including my site visit), is not seen anywhere else in this context.
40. Taking all of the above into account, I conclude that the appeal development, has a harmful effect on the character and appearance of the area, including the Headington Quarry Conservation Area and therefore its significance. I take the same view of the amended scheme, described above. I give the harm considerable importance and weight in my decision. In accordance with paragraph 212 of the Framework, when considering the impact on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Public Benefits

41. Given the scale of the appeal development within the context of the conservation area as a whole, I consider it causes less than substantial harm to the designated heritage asset. Nevertheless, any harm to its significance should require clear and convincing justification and in accordance with paragraph 215 of the Framework, I must weigh the harm against the public benefits of the appeal development.
42. The provision of housing is a benefit to be weighed in the planning balance and I have had regard to all of the representations made in respect of housing need, including those who spoke at the Inquiry. But the Council has a 5 year housing land supply and the appeal site does not form part of that assessment. Moreover, I am not satisfied that the harm identified above is an inevitable consequence of this quantity of housing on the site. In other words, there are other means by which housing may be provided on the site and nothing has been provided to lead me to a different conclusion in this regard. So I attribute limited weight to the provision of the modest quantity of housing in this case as a public benefit.
43. My attention has been drawn to the environmental benefit of not demolishing the appeal development, with disruption, pollution and a waste of resources and energy that demolition may entail. But this argument could be too easily repeated, to defeat the whole point of enforcement notices and encourage unauthorised development. So I give this argument limited weight in my decision.
44. I have had regard to the appellant's written submission, dated 28 March 2022. This states that Beecher Acoustics has made a unique contribution to violin making and restoration and to classical music in this country and abroad. I have no reason to doubt this is the case. The submission goes on to say that if the houses are unable to be sold it will mean the financial collapse of Beecher Acoustics. But no financial evidence to support this claim was presented to the Inquiry to be tested and so I ascribe this issue limited weight.
45. Overall, as a matter of my planning judgement, the public benefits do not outweigh the heritage harm identified to justify a grant of planning permission.
46. I conclude the appeal development, including the amended scheme, harms the character and appearance of the area, including the Headington Quarry Conservation Area and its significance. As such, in this regard, it does not comply with Policies DH1, DH2 or DH3 of the Local Plan or the historic environment policies of the Framework.

Amenity Space

47. Paragraph 4(iii) of the enforcement notice identifies the dwellings in the mews building as "flats". But this is at odds with the Council's committee reports, which identify the dwellings as 1 bedroom "houses" and the layout of the mews building, which is divided into 6 dwellings vertically, rather than horizontally, each with its own front door. So I consider the dwellings to be houses rather than flats. Accordingly, paragraphs (c) and (d) apply, from Policy H16 of the Local Plan.

48. This policy states that planning permission will only be granted for dwellings that have direct and convenient access to an area of private open space (in addition to bin or bike storage space).
49. Paragraph (c) of this policy states that houses of 1 or more bedrooms should provide a private garden, of adequate size and proportions for the size of house proposed, which will be considered to be at least equivalent in size to the original building footprint. None of the 6 houses have a private garden of this size.
50. However, every house has direct access to at least one private terrace and each end house also has a triangular private garden at ground level. From my observations at my site visit, the private amenity space for each dwelling provides convenient access to space for outside dining and/or clothes drying, with reasonable circulation. Moreover, from all of the information available to me, there is amenity space for each dwelling which broadly accords with the minimum dimensions of 1.5m deep by 3m long. In these regards, I consider paragraph (c) of Policy H16 to be satisfied.
51. Even if this is not so, paragraph (d) of Policy H16 specifies factors which will be material in assessing whether adequate space has been provided. These include the proximity to public open space, the orientation of the outdoor area in relation to the path of the sun and the usability of the whole space.
52. Each dwelling has a private terrace which is southwest facing and which enjoys pleasant, long views from the top floor of the building across the adjacent park. From what I could see on my site visit, this park provides a valuable green public open space. In my view, this supplements any shortfall in private amenity space for the dwellings in this case, given its immediate proximity and given the private space provided is usable for basic amenity purposes such as outside dining or clothes drying. Nothing has been provided to lead me to a different conclusion.
53. In this regard, it is also relevant that each of the 6 dwellings has one bedroom, meaning they are each designed to house 1 or 2 occupants. So they do not constitute "family sized dwellings", for the purposes of this definition in the Local Plan (however current occupants may use them) and this contributes to my conclusion on this main issue.
54. I have taken into account the Council's concern about overshadowing of the triangular private garden for each end house, which it attributes to the increase in height of the mews building. The mews building is sited broadly to the north of the southern triangular garden. So I am satisfied the increase in height of the mews building has no material effect on overshadowing of the south garden.
55. The mews building is sited broadly to the south of the northern triangular garden. So as approved, this garden was never going to be free from a significant level of overshadowing by the mews building. Moreover, consistent with the drawings of the 2006 permission, each of these triangular gardens is already enclosed by a high solid boundary wall, of a height far exceeding head height. As such, it seems to me that the overshadowing of each garden is not materially different from what was approved and so nor is their usability.

56. Taking all of the above into account, I am satisfied that the appeal development provides adequate outdoor amenity space for occupants. Accordingly, in this regard, I find no conflict with Policy H16 of the Local Plan.

Other Matters

57. My attention has been drawn to representations which seek the imposition of a fine for the breach of planning control, as an alternative to the enforcement notice. But this is not a sanction available to me in an appeal under section 174 of the 1990 Act. Nor am I able to require the Council to buy the houses at cost price and turn them into social housing, as has been suggested in representations made.

Planning Balance

58. Whilst I have not found harm arising from the appeal development in respect of amenity space, I have found harm in terms of its effect on the character and appearance of the area, including the Headington Quarry Conservation Area and its significance.
59. I have considered the benefits of the appeal development, set out elsewhere in this decision so I shall not repeat them here. But as a matter of my planning judgement, the benefits do not outweigh the harm to justify a grant of planning permission. So I consider that there is conflict with the development plan overall and the conditions suggested would not be able to mitigate the harm.

Conclusion on Ground (a)

60. Taking all of the above into account, I conclude that the appeal on ground (a) fails.

Ground (f)

61. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
62. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
63. Based on the requirements of the notice, the purpose of the notice is to remedy the breach. This is clear from paragraph 5 of the notice which, in effect, requires restoration of the land to its condition before the breach took place. At the Inquiry, the Council reinforced its position in this regard.
64. The amended plans (Documents 3 and 4) have been submitted by the appellant to articulate 'lesser steps' the appellant wishes me to consider, pursuant to the ground (f) appeal.

65. But implementation of this amended scheme would not achieve the purpose of the notice and so the requirements of this enforcement notice cannot be varied to this effect.
66. In this regard, my attention has been drawn to the reasons for issuing the enforcement notice. But these do no more than set out why it was expedient for the Council to issue the notice. They do not indicate its purpose.
67. I conclude that the appeal on ground (f) fails.

Ground (g)

68. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.
69. The appellant seeks 18 months to comply with the notice to allow time for the tenants to find somewhere else to live and move out and to enable the owner to find funds to demolish the building.
70. But from the evidence before me, all of the tenants are on relatively short term contracts and they moved into their current accommodation in full knowledge of the enforcement notice. According to the appellant, upholding the notice would probably bankrupt them. But no financial information was presented to support this view.
71. However, I am sympathetic to the situation of occupants of the mews building, some of whom have children and/or have roles considered to be particularly important in the local community. Furthermore, the planning history clearly indicates that it is likely that an acceptable scheme for dwellings on the site of the mews building, could be developed, albeit at a reduced scale to that which has been built. With these points in mind, I shall exercise my discretion to allow more time for the notice to be complied with. This will allow the tenants more time to look for alternative accommodation and has the added benefit that it allows the appellant more time to progress an acceptable revised scheme.
72. So I am extending the compliance period to 11 months for requirement (i) and 12 months for requirement (ii). These are the maximum time periods I consider proportionate and reasonable in the circumstances, to minimise disruption to home and family life for the occupants. If during the relevant extended period, no approved revised scheme is progressed, the appellant may still comply by adhering to the requirements of the enforcement notice.
73. I conclude that the appeal on ground (g) succeeds to the above extent.

Conclusion

74. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement 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).

Formal Decision

75. It is directed that the enforcement notice is varied by the deletion of 6 months as the period for compliance with step (i) and its substitution with 11 months; and the deletion of 7 months as the period of compliance with step (ii) and its substitution with 12 months.
76. Subject to these variations, the appeal is dismissed, the enforcement 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.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Giles Atkinson	Barrister, Six Pump Court, instructed by Jonathan Beecher
He called	
Jonathan Beecher	Appellant
James Hutchison	Corbil Planning
Thomas Wilson	Stonebow Heritage

FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker	Barrister, Cornerstone Barristers, instructed by Jane Cotton, Solicitor for the Council
He called	
Andrew Murdoch	Oxford City Council

INTERESTED PERSONS:

Emil Kaijanen	Occupant
Lawrence Kelly	Friends of Quarry
Joseph Kwon	Occupant
Kei Landin	Occupant
Jonathan Saunders	Local resident

DOCUMENTS

- 1 Opening Statement on behalf of Appellant
- 2 Opening Statement for Oxford City Council
- 3 Drawing reference 102-SK-02 (elevations and section showing a roof curtailment of 450mm)
- 4 Drawing reference ALP 6642_02C (showing a second floor plan and roof overlay with a detailed roof section)
- 5 ALP 8959 Adjustment Letter, from Alcock Lees Partnership Ltd
- 6 ALP 8959 R01-R04, Structural Calculations from Alcock Lees Partnership Ltd
- 7 Drawing PL/04 Revision C (annotated with crosses)
- 8 Statement of Jonathan Beecher
- 9 Closing Statement for Oxford City Council
- 10 Closing Submissions on behalf of Appellant