



Appeal Decision

Site visit made on 7 January 2025

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2025

Appeal Ref: APP/P0240/W/24/3344832

The Cross Keys, 201 Castle Hill Road, Totternhoe, Central Bedfordshire LU6 2DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by MGM Hotels Ltd. against the decision of Central Bedfordshire Council.
 - The application Ref is CB/23/02279/FULL.
 - The development proposed is described as changes to the car park, access arrangements and pub garden for the Cross Keys PH and the erection of 1 No. single storey dwelling on land to the rear of the PH and part of the garden of No. 203 Castle Hill Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal the appellant has submitted additional information in the form of an updated Biodiversity Net-Gain Assessment Report¹. Although the additional information represents a change to what was considered by the Council at the application stage, the Council has provided detailed comments on the information submitted at appeal within their evidence. On this basis, having regard to the Wheatcroft Principles² and the judgment in Holborn Studios Ltd³, I consider that the additional information does not result in a substantial or fundamental change to result in a different application. Moreover, as the Council has commented, no party would be unfairly prejudiced.
3. The appeal site is proximate to a Grade II listed building. I have therefore borne in mind the statutory requirements placed upon decision-makers by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act, 1990 (the Act).
4. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. The main parties have been given an opportunity to comment on the relevance of the revised Framework to the proposal and I have taken their comments into account.
5. This version of the Framework was amended on 7 February 2025 to correct cross-references from footnotes 7 and 8, and to amend the end of the first sentence of paragraph 155 to make its intent clear. The amendment to paragraph 155 has not materially changed the policy set out in the Framework as published on 12 December 2024.

¹ Version 3 Dated April 2024 Ecoline

² *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [JPL, 1982, P37]

³ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

Main Issues

6. The main issues are:

- i) whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- ii) the effect on the openness and purposes of the Green Belt;
- iii) the effect of the proposed development on the character and appearance of the area;
- iv) whether the proposal would preserve the setting of the Grade II listed building known as The Cross Keys;
- v) whether the future occupiers of the proposed development would be likely to experience acceptable living conditions, with particular regard to noise and disturbance;
- vi) the effect of the proposed development on the viability of the public house, known as The Cross Keys;
- vii) the integrity of habitats sites;
- viii) the effect of the proposal upon biodiversity; and
- ix) if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development

- 7. The appeal site is located within the South Bedfordshire Green Belt. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and the essential characteristics of Green Belts are their openness and their permanence. The Framework goes on to state that inappropriate development is harmful to the Green Belt. The construction of new buildings in the Green Belt should be regarded as inappropriate, and thus should be approved only if very special circumstances exist, unless they come within one of the categories in the closed list of exceptions as set out in paragraph 154 of the Framework.
- 8. The appellant submits that the appeal proposal would be a form of infill development, which in their view establishes that the proposal would accord with the development plan and Framework.
- 9. The development plan does not define infill, nor is there a definition in the Framework. Whether the proposal would represent infill is a question of planning judgement based on an assessment of the site and its surroundings.
- 10. Castle Hill Road is a primary route through Totternhoe where there is a predominantly linear built form where properties front the highway. The appeal site

lies to the south side of Castle Hill Road and would be located in a backland position, set back from the highway.

11. No 203 and the public house would be located some distance north of the appeal site. I observed a building, understood to be in commercial use, to the west of the site, set back a similar distance to the proposed dwelling from Castle Hill Road, However, this is separated by the garden to the rear of No. 205 Castle Hill Road, which represents a significant gap from the appeal site. There is also a substantial gap to the east between the appeal site and the nearby caravan site. With intervening land, devoid of buildings, any visual interrelationship would be limited. Accordingly, the proposal could not reasonably be considered as limited infilling and would not meet exemptions e) or g) of Paragraph 154 of the Framework.
12. The revised Framework introduced further developments that should not be regarded as inappropriate. Paragraph 155 states that development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate where the development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan; there is a demonstrable unmet need for the type of development proposed; the development would be in a sustainable location; and where applicable, the development would meet the Golden Rules requirements set out in the Framework. The last of these criteria is not applicable in this case. I return to grey belt considerations later in my decision.

Openness and Green Belt Purposes

13. Openness is an essential characteristic of the Green Belt. There are spatial and visual aspects to the assessment of the openness of the Green Belt.
14. The land where the dwelling would be located is currently free from development. The introduction of built form, irrespective of its limited height, and the likely accompanying domestic paraphernalia, would inevitably lead to a loss of openness in spatial terms.
15. Land levels fall from the roadside, with the appeal site set much lower than the properties which front the highway. Views of the proposed dwelling would be limited from Castle Hill Road due to the presence of existing built form that fronts the highway. However, the proposed building, and its associated domestic paraphernalia, would be visible from southern vantage points where there are long range views. The proposal would visually harm the openness of the Green Belt.
16. As outlined above, the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. Although the proposal would not conflict with many of the purposes of the Green Belt, given the important role the appeal site plays in acting as a transition between the open countryside and the existing built form along Castle Hill, the introduction of the proposed dwelling on land behind existing dwellings would fail to keep land permanently open and fail to assist in safeguarding the countryside from encroachment.
17. As a result, the proposed development would harmfully diminish the openness of the Green Belt and would conflict with the purposes of including land within it. Conflict therefore arises with Policy SP4 of the Central Bedfordshire Local Plan 2015-2035 (LP) and Policy TP1 of the Totternhoe Neighbourhood Plan (2020-2035)

(NP) amongst other things, requires that planning applications within the Green Belt are considered in line with the provisions of the Framework. I attach substantial weight to this harm.

Character and appearance

18. Castle Hill Road is a busy main road, predominantly residential in character. The appeal site is of sloping topography that falls away from the highway. Given the topography of the locality there are extensive views of the wider open countryside to the south.
19. The spacious and green character of the garden of No 203 and the beer garden associated with the public house contributes positively to the area. Whilst I observed some variety to the pattern of development, architectural character, appearance and style of buildings within the surrounding area, the prevailing character is that of detached dwellings set within large, well-landscaped plots and this sense of openness, and the mature trees within gardens, provides a spacious, verdant character. The proposal would introduce residential development to the rear of this established form. This would be at odds with the prevailing pattern of development in the locality, where most dwellings face onto the principal route through the settlement.
20. The introduction of the access driveway intersecting the pub garden and the associated land to the south would have an urbanising impact and would appear incongruous within this semi-rural setting. Furthermore, the development would erode the positive contribution that the garden and public house beer garden make to the verdant character and appearance of the locality.
21. Whilst existing landscaping may provide some screening, as land levels continue to fall to the south of the site, when viewed from the south the proposed development would be within an elevated and prominent position.
22. Although the surrounding buildings are mainly of traditional designs, these vary considerably in appearance due to their styles, forms and materials. In this context the design of the new dwelling would be acceptable. However, this would not overcome the harms identified to the overall character and appearance of the area.
23. For the above reasons, I conclude the proposed building would result in harm to the character and appearance of the area. Conflict would arise with policy SP4 of the LP insofar as it requires the quality and design of development proposed, to ensure that development respects and is sympathetic to the character and openness of the settlement and its surroundings. Conflict arises with policies HQ1 and HQ8 of the LP which, amongst other things, require all developments to safeguard the local character of the surrounding landscape and to resist backland development where it is against the pattern and grain of development and the character and appearance of the area would be harmed. Conflict would also arise with Policies T4 and T5 of the NP which amongst other things, require developments to be appropriate in respect of their scale, nature and location.

Setting of listed building

24. The Grade II listed building, known as The Cross Keys, comprises a detached thatched building. It occupies a prominent position to the south side of Castle Hill

Road. The statutory list description identifies it as “17th century, timber-framed first floor, colour washed brick ground floor and nogging to first floor. One storey and attics, three eyebrow dormers with casements, three ground floor sashes and gable end to road”. The significance of the listed building is derived in part from its age, surviving historic fabric and its relationship to the evolution of the village.

25. The setting of the building has clearly changed over time. Although there has been development proximate to the listed building the land to the south has retained a relatively open and undeveloped character, providing it with a degree of spaciousness that contributes a semi-rural character. Consequently, the undeveloped areas, which include the appeal site, are part of the setting of the listed building that better reveals its significance as a heritage asset.
26. The introduction of a detached dwelling, and associated hard landscaping, would urbanise the appeal site. The access track would dissect the beer garden and would intrude into the sense of spaciousness that surrounds the listed property. Furthermore, the suburbanising impact of the surfaced access would be prominent and conspicuous and would undermine, and weaken, the semi-rural qualities of the appeal site. Consequently, the proposed development would fail to preserve the setting of the Grade II listed building, leading to conflict with the statutory presumption under s66(1) of the Act.
27. Bearing in mind the scale and nature of the proposal relative to the listed building, the degree of harm to its significance would be less than substantial. The Framework requires that great weight should be given to the conservation of heritage assets, irrespective of the level of harm. Any harm to the significance of a designated heritage asset requires clear and convincing justification, with any such harm to be weighed against any public benefits.
28. The appellant has set out a series of benefits which are argued in support of the proposal, and I have considered and taken them all into account. In particular, the development would result in an additional dwelling which would make a positive contribution to local housing supply, including adding to the variety of house types. The Framework is supportive of small and medium sized sites, such as this, which can make an important contribution to meeting the housing requirements of an area and are often built out relatively quickly. I acknowledge that the proposal would make a direct and indirect contribution to the local economy through an increase in spending power, and through increased employment opportunities and during construction.
29. The benefits of the proposal, identified above, would be limited. Even cumulatively, the wider public and planning benefits associated with the dwelling would carry limited weight in favour of the proposal. Accordingly, the weight of public benefits in favour of the proposed development would not be sufficient to outweigh harm to the significance of the identified designated heritage assets. The proposal therefore fails to accord with the historic environment protection policies of the Framework.
30. Through development within the setting of the Grade II listed building there would be harm to significance. Furthermore, having regard to the Framework, I conclude that the public benefits associated with the proposal would not be sufficient to outweigh the less than substantial harm to setting, and thereby the significance, of the designated heritage asset. Accordingly, the proposal would fail to comply with Policy HE3 of the LP and Policy T4 of the NP insofar as it seeks to ensure that all

new developments which affect designated, or non-designated, heritage assets will preserve, sustain and enhance the special character, significance, appearance and/or special architectural or historic interest. Conflicts also arises with the Framework insofar as it is concerned with safeguarding heritage assets.

Living conditions of future occupiers

31. A small area of decking lies directly to the rear of the public house car park with land to the south utilised as outdoor seating. The layout plans indicate that the proposed dwelling includes a living/kitchen/dining space which opens out into the garden, proximate to the outdoor areas associated with the public house.
32. The Framework seeks to create places that promote health and well-being, with a high standard of amenity for future users.
33. The appellant has undertaken noise assessment⁴ that considered the main noise sources as being vehicles on the nearby road and noise from the adjacent public house. The noise associated with the established use is likely to be audible within the garden of the proposed dwelling and may well be audible inside the dwelling when windows are open, which would be likely to cause a nuisance to the future occupiers of the dwelling.
34. In respect of noise mitigation, it has been suggested that restricting window openings and mechanical ventilation could be secured by planning conditions and the Building Regulations regime. Whilst it is not disputed that mitigation, in the form of closed windows, would not be effective, to my mind, reliance upon it would not lead to satisfactory living conditions for future occupiers. It is reasonable to expect the public house beer garden to be utilised into the evening, especially during summer months. Similarly, in such circumstances, future occupiers of the proposed dwelling would reasonably be expected to have windows and doors open for ventilation purposes. Furthermore, the requirement to keep windows and doors closed would be difficult to enforce.
35. Turning to the external areas the submitted plans show the provision of a boundary fence along the shared boundary between the appeal site and the public house. The Council seeks the installation of an acoustic boundary fence of 2.4m in height to protect future occupiers from noise. To leave such a matter to a condition would leave serious doubts over the appearance and effectiveness of the screening, as sufficient details are not before me. It could also potentially substantially alter the nature of the development proposal, and being of such height would likely have further impact in terms of character and appearance and the openness of the Green Belt. Moreover, to allow such details to be submitted to the Council for its approval, there is no assurance that an acceptable form of screening would be approved by the Council. I am therefore not persuaded that it would be reasonable to apply such a condition.
36. For these reasons, I therefore cannot be satisfied that the future occupants of the proposed dwelling would be provided with satisfactory living conditions having regard to noise and disturbance associated with the adjacent public house. Conflict therefore arises with Policy HQ1 of the LP, which seeks to protect the amenity of the surrounding area. In reaching this conclusion I have had regard to the

⁴ RandTech Consulting Ltd Ref: MDR/J5305a 29th May 2023

Framework which seeks to ensure a good standard of amenity for all future occupants of buildings.

Viability of the public house

37. The appeal site area encompasses the existing public house and associated surfaced car park to the east. A small area of decking lies directly to the rear of the car park with land to the south utilised as outdoor seating for the public house. Land levels drop significantly across the site to the south with the southern garden area being set at a lower ground level to the public house and car park.
38. As previously outlined, given the proximity of the public house to the proposed dwelling, in order to provide a high standard of amenity for the future occupiers of the dwelling it is necessary for noise mitigation measures to be provided. I have set out my concerns in this regard and without such measures there is a high probability that the future occupants of the dwelling would complain that the established business is a source of noise. This would be highly likely to prejudice the operation of the existing business.
39. The proposed driveway would traverse the beer garden. Although, the proposal would not result in a substantial loss of the public house beer garden in accommodating this. The appellant submits that the proposal would result in investment in the external areas of the public house, including reconfiguration of outdoor seating areas, thus enhancing the long-term viability of the public house. The appellant goes on to state that the proposal would not have an adverse impact upon the function and quantum of land available to the public house for its customers amenity or initiatives and events that further support the viability of the business. I have no compelling evidence before me to contradict this assertion.
40. For the reasons stated, I cannot be satisfied that the proposal would not materially harm the viability of the existing public house, known as The Cross Keys. Accordingly, conflict arises with Policy HQ1 of the LP which seeks to ensure that all new development would not have an unacceptable adverse impact upon nearby existing or permitted uses, including impacts on amenity, privacy, noise or air quality. Conflict would arise with the Framework insofar as it sets out that new development should be integrated effectively with existing businesses.

Habitats Sites

41. The information indicates that the site lies within the Zone of Influence (Zoi) for the Chilterns Beechwoods Special Area of Conservation (SAC). The SAC is an attractive and accessible site of regional significance for recreation. Residential development within the Zoi is expected to result in further recreational pressure from the increased number of people using it.
42. The Council imposes a tariff on development proposals to mitigate the effects of recreational disturbance and protect the integrity of European sites. In this case, the appellant has indicated a willingness to enter into an agreement to secure mitigation in accordance with the Strategic Access Management and Monitoring (SAMMS) and the Suitable Alternative Natural Greenspace (SANG). Nevertheless, the appellant has confirmed that they are unable to execute such an agreement within a timely manner.

43. Although this may be minimal by itself, a significant effect on the integrity of the SAC would occur, when considered in combination with other residential development in the surrounding area. I consider that the evidence indicates that mitigation is required because the proposed development would increase the recreational pressure on the habitats sites. This should be mitigated if there is not to be adverse harm to these European designated ecological sites.
44. Consequently, when undertaking an appropriate assessment, I conclude that in the absence of any mechanism to secure such mitigation the proposal would not meet with the legislative requirements of the Conservation of Habitats and Species Regulations 2017. The scheme would, therefore, also be in conflict with Policy EE3 of the Local Plan, and the Framework which seek, in this respect, to ensure development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided.

Biodiversity

45. A reason for refusal relates to a lack of supporting information to demonstrate that the impact of the development upon biodiversity would be acceptable.
46. An updated Preliminary Ecological Appraisal and Biodiversity Net Gain Matrix has been provided which sets out that the development would result in a gain for biodiversity in both habitat and hedgerow units. The Council has confirmed that this provides sufficient information to address the reason for refusal, subject to the imposition of conditions to secure a Construction Environmental Management Plan and a Landscape and Ecological Management Plan. Based on the evidence before me I have no reason to reach a different view in this regard.
47. Whilst the Council cites the loss of a mature plum tree, as a concern, it is understood that trees within the appeal site were removed prior to the submission of the application.
48. Subject to the imposition of conditions, as outlined above, the proposal would accord with Policies EE2 and EE3 of the LP and Policy T8 of the NP. Collectively, amongst other things, these policies require that development proposals maintain, and where practical, enhance the natural environment and demonstrate a net gain in biodiversity.

Other Considerations

49. Improvements to the access and parking arrangements, along with a re-worked beer garden are neutral matters.
50. I note the evolution of the proposal from a previously refused scheme. However, I have considered the appeal proposal on its own merits based on the evidence before me.

Grey Belt

51. The appellant advances that the land in question is grey belt land. Annex 2 of the Framework states that for the purposes of plan-making and decision-making, 'grey belt' is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143.

52. In respect of Paragraph 143 of the Framework the proposal would not provide a strong reason for refusing in respect of unrestricted sprawl. Nor would it result in neighbouring towns merging into one another or harm the setting and special character of historic towns.
53. Notwithstanding the above, the definition of grey belt excludes areas or assets listed in Footnote 7 of the Framework where this would provide a strong reason for refusing or restricting development. Footnote 7 includes irreplaceable habitats and designated heritage assets. As I have found harm to the integrity of habitats sites and the setting of a Grade II listed building the proposal would not accord with the Framework definition.
54. Criterion b) of Paragraph 155 of the Framework requires there to be a demonstratable unmet need for the type of development proposed. The Council's housing land supply position is in dispute between the parties with the appellant referring to a recent appeal decision⁵. Nevertheless, in this circumstance, even if I were to accept that the Council did not have a Framework compliant housing land supply, paragraph 11 of the Framework clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including designated heritage assets and habitats sites, provide a clear reason for refusing the development. Accordingly, having regard to my findings above, I do not need to reach a conclusion on whether or not the Council can demonstrate a 5-year supply of housing land.
55. In terms of whether a sustainable location paragraphs 110 and 155 of the Framework promote sustainable transport in terms of managing pattern of growth to support this objective. The appeal site is located within Totternhoe, which is understood to be designated as a large village within the development plan settlement hierarchy. These settlements are considered to contain a 'small quantum of services and facilities with fewer transport links'. The appeal site is proximate to a bus stop. However, I have limited information before me regarding frequency of services and destinations. Nevertheless, the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. For the purpose of this appeal, there is no compelling evidence before me that the appeal site is not within a sustainable location in terms of criterion c) of Paragraph 155 of the Framework.
56. Be that as it may, given my conclusions above that the application of policies relating to habitats sites and designated heritage assets provide a strong reason for refusing development, the site is excluded from the grey belt definition within the Framework due to the application of footnote 7.

The Green Belt Balance

57. The proposal would be inappropriate development in the Green Belt which is harmful by definition. In addition, I have found that the development would lead to a loss to the openness which would be harmful. In these respects, the proposed development would not accord with the development plan policies and the Framework. As directed by the Framework, I attach substantial weight to this harm.

⁵ APP/P0240/W/24/3341832 Land to the east of Langford Road, Biggleswade and north of Queens Way, and Denny Crescent, Langford

58. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. I have examined all the benefits and arguments in favour of the appeal proposal advanced by the appellant. However, individually and cumulatively these other considerations do not clearly outweigh the totality of harm by reason of inappropriateness and any other harm of the proposal. Consequently, the very special circumstances necessary to justify the development do not exist.
59. Notwithstanding the above, having regard to footnote 7 of paragraph 11 d i) of the Framework the identified harm to the Green Belt provides a clear reason for reusing planning permission.

Conclusion

60. My above findings bring the proposal into conflict with the development plan when read as a whole. There are no material considerations, including the Framework, which indicate the decision should be made other than in accordance with the development plan. I, therefore, conclude that the appeal should be dismissed.

R. Gee

INSPECTOR