
Appeal Decision

Site visit made on 13 January 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal Ref: APP/P0240/W/24/3344861

ECL House, Lake Street, Leighton Buzzard, Central Bedfordshire LU7 1RT

- 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 M & A Knightsbridge Properties Ltd against the decision of Central Bedfordshire Council.
 - The application Ref is CB/23/01549/FULL.
 - The development proposed is demolition of existing office building and redevelopment with 8x 1-bed mews houses and 1x 1-bed flat (conversion of existing office) and all ancillary works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by the appellant against Central Bedfordshire Council and also by Central Bedfordshire Council against the appellant. These applications are the subject of separate decisions.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) was published in December 2024 and is applicable to this appeal. Both parties have had the opportunity to comment on changes relevant to their cases and I have taken those comments into account.
4. A Unilateral Undertaking (UU) dated 23 August 2024 was provided while the appeal was in progress and provides for financial contributions relevant to the third reason for refusal. I have taken the UU into account, along with the Council's comments on it, and return to this matter below.

Main Issues

5. The main issues are:
 - whether suitable living conditions would be provided for future occupiers of the development,
 - the effect of the proposal on the character and appearance of the area, with particular regard to the proposed layout and landscaping, and
 - whether the proposed layout would make suitable provision for pedestrian circulation.

Reasons

6. The appeal site contains an existing two storey office building on a long, narrow footprint, with a parking area adjacent. It is behind a frontage of typical town centre premises along Lake Street. These include the currently vacant Lancer Public House (PH) and a dental practice at 12 Lake Street, both of which are Grade II listed buildings, within the appellant's ownership, but outside the appeal site. Behind the office building and an intervening alleyway, is the Picture House PH. To the other side of the site is a fire station. There is vehicular access from Duncombe Drive at the rear, where there is also a public car park, and also via an arched entrance from Lake Street.

Living Conditions

Noise and disturbance from neighbouring uses

7. The majority of the proposed dwellings would back on to the Picture House PH, which includes a beer garden at the rear, as well as a roof-mounted mechanical extraction fan. On the opposite side of the appeal site is the fire station, which includes garaging for fire engines. Both these adjacent sites are in use and therefore the extraction fan, beer garden and fire engine sirens are among the existing noise sources around the appeal site.
8. The Lancer PH also includes a beer garden at the rear, directly adjacent to the appeal site. The public house is not operating and has not done so since its closure in 2020. However, representations on behalf of the operator describe the licensed use of the premises when it was operational as having included late night opening, until 3am at weekends, music entertainment up to closing time and external screening of sporting events, with similar opening hours and activities also being described at the Picture House PH.
9. The effect of noise from adjacent uses on occupiers of the proposed dwellings has been assessed in a Noise Assessment by Auracle Acoustics dated May 2023, with an Addendum dated September 2023 (collectively the Noise Reports). This evidence focusses mainly on noise from the Picture House PH and fire station, as well as some other existing noise sources identified through monitoring on site. There is some consideration of internal noise within the Lancer PH, but the reports do not model the likely level of noise from the beer garden, music and external screenings, in the event of the premises re-opening.
10. As recommended in the Noise Reports, the proposed dwellings would be fitted with acoustically treated mechanical ventilation with heat recovery, in order that windows need not be opened. The Council's statement for this appeal does not dispute that acceptable internal noise levels could be achieved by this means, while disagreeing that it would provide a satisfactory living environment.
11. In response to this appeal the operators of the Lancer PH have expressed an intention to re-open the public house in the near future, following further investment. Those representations would not have been available to the Council when it commented on the efficacy of the noise mitigation measures in its statement. While the appellant disputes that re-opening of the Lancer PH with similar opening hours is a realistic or viable prospect, the operator does not appear to share that view.

12. While I have noted the appellant's understanding that an alternative use is likely to be sought for the Lancer PH, there is no evidence before me to indicate that any such proposal has been progressed at this point. Furthermore, I cannot rely on any private contractual arrangement between the appellant and operator to manage the future use of the site. Therefore, notwithstanding the Council's comments about the effectiveness of the mitigation measures, I have had regard to the effect on future occupiers of the dwellings in the event of the public house re-opening, taking account of the previously established opening hours and activities as described by the operator. I have also had regard to the appellant's response to those representations.
13. The beer garden at the Lancer PH is directly underneath the proposed flat at Unit 9 and in very close proximity to the proposed terraced houses, particularly those at Units 5 and 6. Whereas the beer garden at the Picture House PH is behind the solid rear wall of the proposed development, such that the building would itself provide some noise mitigation, there would be a much more direct relationship between the Lancer PH and the proposed window openings. The Noise Reports do not analyse whether the specification of the glazing and mechanical ventilation could adequately protect the occupiers from noise emanating from the beer garden, including from music and external sports screenings, taking account of this much more direct relationship.
14. Internal sound insulation is proposed between the flat at Unit 9 and the adjacent toilets and flat at the Lancer and the Noise Reports also indicate that additional acoustic mitigation would be provided in the event that the Lancer PH re-opens. Pre-commencement conditions are recommended to secure the implementation and monitoring of noise mitigation measures, in the event that the appeal is allowed and the appellant's agreement to that approach has been confirmed. However, since the underlying evidence does not confirm that adequate mitigation is possible, I cannot be confident that those conditions would be capable of securing suitable living conditions for future occupiers in the long term.
15. I am also mindful that the Framework advises that planning decisions should ensure that new development can be integrated effectively with existing businesses, including pubs, and that such businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established (Framework paragraph 200). In this case, the Lancer PH is a long-standing public house, albeit currently closed. The operators have expressed significant doubt whether adequate mitigation would be achievable and consequently about the effect of an adjacent residential use on the future of the business and the benefits of bringing the building back into use.
16. There are a variety of other residential uses in the town centre, including flats above bars and other noisy uses. I accept that some of these may not benefit from a similar level of noise mitigation to that proposed at the appeal site, and that the occupiers may experience noise and disturbance from nearby uses. It is also realistic to expect that occupiers of town centre properties will generally experience and tolerate a higher level of noise and activity than is the norm in more suburban or rural locations. However, the layout of any particular site in relation to nearby noise sources is relevant.
17. Where flats are directly above bars or public houses, the transmission of internal noise is likely to be a factor, but that is not the primary consideration in this case.

Although the flats at Leck House and Market Mews are fairly close to other public houses, even the flats at Leck House do not have such an intimate relationship with the adjacent beer garden. Those at Church Square are on the opposite side of the road and only one elevation faces towards the nearby pub. Therefore, the layout in each case differs from that at the appeal site and does not alter the particular concern about whether noise from the Lancer PH could be adequately mitigated. Nor does the absence of any records of formal complaint from the existing flats reliably confirm that suitable living conditions are available.

18. As such, the existence of these other residential uses nearby does not justify the introduction of additional dwellings in such close proximity to the existing business premises, in circumstances where adequate noise mitigation has not been demonstrated.

Private amenity space

19. The Central Bedfordshire Design Guide Supplementary Planning Document (the Design Guide) was adopted in 2023 and supports the Central Bedfordshire Local Plan 2015-2035, adopted in 2021. The Design Guide particularly references Policy HQ1 of the Local Plan, which is described as the overarching design policy. Although Policy HQ1 includes a range of criteria to ensure high quality development, it does not include any specific requirements for the provision of outdoor amenity space. However, it does include an expectation that all new development will have regard to the Design Guide. Therefore, while the Design Guide does not itself form part of the development plan, the extent to which its guidance has been followed is relevant to consideration of whether the development complies with Policy HQ1.
20. The Design Guide includes guidance that every home should have the benefit of individual private or communal amenity space. Minimum standards are included, although it is recognised that such space can be provided in a variety of ways, such as private gardens, communal gardens, roof terraces and balconies, and that garden size will vary according to property size.
21. No private amenity space is proposed within the development. Balconies included in an earlier version of the scheme were omitted based on advice that they were inappropriate within the Conservation Area. However, there is no indication that the Council advised that an absence of any private amenity space was an acceptable approach in this location, or that the relevant provisions of the Design Guide, or its predecessor, were inapplicable. Nor, given that the Design Guide allows for a variety of approaches, including communal amenity areas, has it been demonstrated that provision of outdoor amenity space would inappropriately subdivide the site, contrary to heritage considerations, or that the inclusion of some form of private amenity space would render the dwellings unsuitable for occupiers who do not require individual gardens.
22. It is not uncommon for private outdoor space to be limited in town centre locations and my attention has been drawn to other examples nearby, including at Market Mews. Paragraph 125 of the Framework includes support for forms of town centre housing such as flats above shops, service yards etc, which tend to lack private amenity space. However, in this case the proposed development would be mostly for houses, not flats, and the site is not so constrained as to preclude any form of outdoor amenity space. While the recreation ground is within easy walking

distance and includes a wide range of facilities for active recreation, the inclusion of some modest level of outdoor space, close at hand and of a private character, would nevertheless be beneficial to living conditions for future occupiers. Furthermore, since the dwellings would be small, single-aspect and reliant on mechanical ventilation, easy access to the outdoors in a convenient and private location, would be of particular value.

23. Taking the above factors into consideration, given the particular circumstances of this site, the absence of any private amenity space weighs against the suitability of the proposed living environment.

Single-aspect layout and parking

24. The Design Guide advises against single-aspect dwellings, stating that this approach should only be used when there are no alternative opportunities for other designs. However, the existing office building on the site is also single-aspect, with a solid wall at the rear. The solid wall along this boundary would also help to mitigate noise from the Picture House PH. Units 7 and 8 would back directly on to a building within the Fire Station site, so a blank wall along that boundary is not unreasonable. Taking account of these relationships with adjoining sites, there is some justification for the single-aspect approach in this case.
25. The proposed dwellings would not have a particularly deep floorplan and all the main rooms would have windows. While Plots 7 and 8 could feasibly include additional windows in the flank elevations, there would only be one room on each floor and there is no indication that it would be inadequately lit. Since mechanical ventilation is proposed, windows on additional elevations would not be of particular benefit from that point of view. That being the case, the single-aspect layout would not result in an unsuitable internal environment.
26. While the parking layout includes spaces directly in front of some of the dwellings the plans indicate that these would be allocated to the development. With only one space per dwelling, the level of vehicle movement is likely to be fairly modest. The planted strips would provide something of a buffer for most of the dwellings, and the parked cars would themselves help to shield the occupiers from vehicles using the main circulation route. However, the ground floor windows of Units 5 and 6 would be more exposed to the adjacent parking spaces, including those allocated to neighbouring properties.
27. It is not uncommon for ground floor front windows to face directly on to a street or footpath with passing pedestrians, and the first floor bedrooms would not be overlooked. Blackout blinds or curtains would provide adequate protection from the occasional glare of headlights. Notwithstanding the shortfall in evidence about mitigation of noise from the Lancer PH, the likelihood is that the proposed acoustic glazing and mechanical ventilation would provide some protection from the noise of car engines and neighbours arriving and departing. On that basis, while the relationship between the parking spaces and Units 5 and 6, in particular, is not ideal, it would not be significantly detrimental to living conditions for the occupiers.

Conclusion: living conditions

28. While I have found that the single-aspect layout and the arrangement of parking spaces would not be unduly harmful to living conditions for future occupiers, the evidence before me does not establish that they would be adequately protected

from noise and disturbance. The absence of any private amenity space would also be harmful, particularly when considered in combination with the reliance on mechanical ventilation.

29. Taking those factors in combination, based on the evidence before me, I conclude that suitable living conditions would not be provided for future occupiers of the development. The proposal would conflict with relevant requirements in Policy HQ1 of the Local Plan, which requires amongst other things that all developments are of the highest possible quality, avoiding unacceptable adverse impacts between neighbouring uses, including in relation to noise, and having regard to the Design Guide.
30. The proposal would also conflict with relevant requirements in the Framework that new development should provide a high standard of amenity for future users (paragraph 135), should take into account the likely effects of pollution, including noise, on living conditions (paragraph 198) and should be integrated effectively with existing businesses, through application of the 'agent of change' principle in paragraph 200.

Character and Appearance

31. In this town centre location, hard surfaced yards containing subservient buildings to the rear of the main commercial frontage are not untypical. The scale of the terraced dwellings would be comparable to that of the existing office building and would maintain a degree of subservience to the buildings on the frontage. The semi-detached houses would increase the overall level of built development, but there would still be a substantial open area and through route, in a similar configuration to the existing car park and accesses.
32. Although there is some limited vegetation around the periphery of the site, it is largely on adjacent land or outside the red edged area. There are some mature street trees in the environs, including within the public car park and behind the Picture House PH. But generally soft landscaping is not particularly prevalent.
33. The planted beds would introduce a new element of soft landscaping and use of the rest of the space for parking and circulation would be comparable to the existing use and that of adjacent sites. The development as a whole would not appear unduly cramped and the approach to car parking and landscaping would be consistent with the character and appearance of the surrounding area.
34. I therefore conclude that the proposal would not be harmful to the character and appearance of the area, having had particular regard to the proposed layout and landscaping. Subject to conditions securing appropriate detailing, this aspect of the development would not conflict with relevant requirements in Policy HQ1 of the Local Plan, which include that proposals should relate well to their surroundings, enhancing or reinforcing local distinctiveness, with hard and soft landscaping appropriate to the scale of development, integrating the proposal into the existing built environment.

Pedestrian Circulation

35. Apart from some short sections of footpath directly in front of the dwellings, pedestrian and vehicle movements would not be segregated, and occupiers of the dwellings would need to walk through the car park to reach the town centre.

However, the parking layout would cater only for the proposed dwellings and staff at the dental practice and public house and no customer parking is proposed. Furthermore, since the appeal site is within a town centre location, with a public car park at the rear, there would be no apparent need for customer parking to be introduced in future. Therefore, while there would be some vehicle movement within and through the site, it would be relatively limited.

36. Although access to the town is through a narrow arch, the appellant's evidence indicates this would continue to be used only for the limited number of staff arrivals and departures. The width of the arch is an inherent constraint on the speed of vehicles arriving and departing and both staff and residents would be aware of the need to take care. A similar layout has been in place in relation to the existing office building and, while that building was not occupied residentially, the level of interaction between office workers and vehicles is likely to have been similar.
37. As a result of the proposed residential use, children may be present, although the modest one bedroom properties proposed are not designed for family occupation. However, anyone on foot would also have to negotiate the busier areas within the town centre or the public car park just beyond the boundaries of the site. Therefore, any young children arriving and departing on foot are likely to be supervised by parents or carers.
38. Taking the above factors into account, in the context of this particular proposal, I conclude that the layout would make suitable provision for pedestrian circulation. It would not conflict with relevant requirements in Policy HQ1 of the Local Plan, which include that proposals should provide safe, attractive and convenient routes that encourage travel by sustainable modes and meet the needs of all street users.

Other Considerations

39. The proposed development would provide nine small dwellings, in a central location within a Major Service Centre. Public transport is available and future occupiers could easily access a wide range of services, facilities and employment opportunities on foot. Efficient use would be made of a previously developed site, bringing currently vacant land back into use, and the Council has confirmed its support for the principle of a residential development on the site.
40. The Council concluded that the development would preserve the special character and appearance of the Conservation Area and would cause no harm to the setting of the listed buildings. The significance of the Conservation Area includes the hierarchy of street frontage buildings, several of which are listed, with subsidiary building ranges and yards at the rear. Similarly, the significance and setting of the Lancer PH and 12 Lake Street include their three storey scale and prominent position within the main street frontage, with more modest buildings, yard and access to the rear. The proposed development would respect that relationship, and I concur with the Council that the character and appearance of the Conservation Area, and the setting of the listed buildings, would be preserved.
41. While the proposed dwellings would have a greater degree of articulation than the existing office building, the heritage significance of the site derives from its utilitarian function and appearance. As such, from a heritage perspective there is no clear imperative for the introduction of more domestic detailing or soft landscaping. Overall, the effect of the proposal on heritage assets and their setting would be neutral.

42. Matters relating to ecology, tree protection, highway access, parking and refuse provision could be addressed through conditions. However, that is likewise a neutral consideration and not a point in favour of the development.

Habitats Sites

43. The appeal site is within a 12.6km Zone of Influence around the Chilterns Beechwoods Special Area of Conservation (SAC) (in particular Ashridge Commons and Woods Site of Special Scientific Interest). The qualifying features of the SAC are vulnerable to harm through increased recreational disturbance arising from population growth. Consequently, a mitigation strategy¹ is in place to secure Strategic Access Management and Monitoring (SAMM), along with provision of Suitable Alternative Natural Greenspace (SANG), funded through developer contributions in relation to additional housing development.
44. While the Council has confirmed that the UU provides for the relevant contributions, no evidence of title has been provided, to confirm that it would be effective. Had I been minded to allow the appeal, this is a matter on which I could have sought clarification. It would also have been necessary for me to complete an appropriate assessment, taking account of any consultation response from Natural England, to determine whether the appeal proposal would result in a significant effect, either alone or in combination with other development, on the integrity of the SAC. However, since I am dismissing the appeal for the reasons given below, it is not necessary to complete that assessment.

Planning Balance

45. Neither party has provided evidence pertaining to the Council's housing land supply position, either at the time of the application, or following revisions to the Framework in December 2024. Should there be a shortfall against the required five year supply, paragraph 11d of the Framework would be applicable. Therefore, in the absence of any clear evidence on this matter, I have considered the proposal on that basis.
46. While the Council has raised concerns about the effectiveness of the UU, mitigation of likely significant effects on Habitats Sites is proposed. Therefore, the evidence before me does not demonstrate that there is a strong reason for refusing the development on those grounds, subject to completion of an appropriate assessment, and the test in paragraph 11dii is applicable.
47. For the reasons given above, based on the evidence before me, I have concluded that there would be conflict with relevant requirements in Policy HQ1 of the Local Plan. While other aspects of the policy would be satisfied, the harmful aspects of the proposal would bring the proposal into conflict with the development plan as a whole. Paragraph 232 of the Framework makes clear that the weight attached to any conflict with the development plan does not hinge on its age, but on the degree of consistency with the Framework. As applied to the harm arising in this case, Policy HQ1 is consistent with the Framework's approach to ensuring that all development is well-designed and the principle in Framework paragraph 139 that development which fails to reflect local design policies and design guides should be refused.

¹ Chilterns Beechwoods Special Area of Conservation (SAC) Mitigation Strategy adopted February 2023

48. For reasons previously given, the lack of any private amenity space would prevent the development from functioning well in the long term or providing a high standard of amenity for future occupiers, contrary to paragraph 135 of the Framework. It has also not been demonstrated that adequate protection from noise and disturbance can be provided, which could in turn create ongoing tension between future residents and any resumed operation of the Lancer PH, contrary to the 'agent of change' principle in paragraph 200 of the Framework. Considered collectively, these factors would amount to a substantial level of harm.
49. In the context of the Framework, including the recent revisions, the provision of any additional housing is valuable and an additional nine dwellings would make a meaningful contribution to the supply of housing land on a suitable, previously developed site. Paragraph 125 of the Framework states that substantial weight should be given to the value of using suitable brownfield land within settlements for homes, with such proposals to be approved unless substantial harm would be caused. However, in this case the quality of the proposed living environment within those dwellings would be compromised and that would amount to a substantial level of harm. As such, taking into account the form and layout of this particular development, the benefits of the proposal carry only moderate weight.
50. That being the case, based on the evidence before me, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, even if there is a shortfall in housing land supply, the development does not benefit from the presumption in favour of sustainable development as defined in paragraph 11d of the Framework.

Conclusion

51. The proposal would conflict with the development plan as a whole and there are no other material considerations, including the provisions of the Framework, which indicate that a decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should be dismissed.

Jane Smith

INSPECTOR