



Appeal Decision

Site visit made on 9 July 2025

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2025

Appeal Ref: APP/U2750/W/24/3358158

**Site of the Former Malthouse building on land to the north of Court Terrace,
Ripon HG4 1AX**

- 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 Shabir, Ambient Energy against the decision of North Yorkshire Council.
 - The application Ref is 22/04521/FUL.
 - The development proposed is the renovation of the existing Malthouse building into two two-bedroom C3 dwellings and the erection of a pair of semi-detached C3 dwellings, and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of the planning application, a revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. The policies that are material to this decision have not fundamentally changed, therefore in reaching my decision I have had regard to the revised Framework.
3. I have also had regard, and in accordance with Paragraph 30 and 31 of the Framework in this appeal decision to the Ripon Neighbourhood Plan (RPN), made 10 April 2019, which the Council provided as part of their appeal submission.
4. I undertook an access required site visit on 9 July 2025, however access was unavailable for the building the subject of the appeal. Nevertheless, the site and surroundings were publicly accessible, and I was able to see both external and internally the building through the hoarding. I do not consider it was necessary to return to the site to undertake a full internal inspection of the building, and the main parties were advised accordingly.
5. The appeal relates solely to a refusal of planning permission under 22/04521/FUL for the proposal above. I am aware that Listed Building Consent (LBC) was not granted for works by the Council. However, as the appellant has not made an LBC appeal for those works, I have taken account of the evidence insofar as it relates to this appeal and the refused planning permission and have dealt with the appeal on this basis.
6. As the proposal is in a conservation area and relates to listed buildings, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

7. The main issues are:

- Whether the proposal would preserve a grade II listed building, the Maltings and any of the features of special architectural or historic interest that it possesses, the setting of nearby listed buildings, schedule monument and linked to that whether it would preserve or enhance the character or appearance of the Ripon Conservation Area and World Heritage Buffer Zone, including the implications and effect on trees;
- whether the proposal would provide adequate living conditions for future occupants, with regard to amenity space and privacy;
- whether sufficient noise information has been provided, with regard to the residential end use;
- the effect of the proposal on ground stability; and
- the effect of the proposal on protected species, with particular regard to bats.

Reasons

Special interests and significance

8. The appeal site is located within the centre of Ripon and relates to a building known as the Maltings to the south of Unicorn Yard. It lies within the Ripon Conservation Area (CA) and within the Buffer Zone of the Studley Royal and Fountains Abbey World Heritage Site (WHS). The site is adjacent to the Scheduled Monument of Ripon Minister Close (SM).
9. The Maltings has been identified as a curtilage Listed Building as it falls within the original service yard of the Grade II listed Unicorn Hotel and Public House. The Maltings consists of a 19th century single-storey red brick building with slate roof of simple functional appearance, with several detailed openings, albeit its current form has deteriorated. The Maltings building is recognised on maps as early as dating back to 1854. The Unicorn Hotel, was listed in 1970 listing (1150152), relating to a former coaching-inn of four storeys, with a third floor likely added in the early C19, consisting of a whitewashed brick and cased flush-framed sashes.
10. The appellants evidence including the design and access statement sets out that it should be considered as a non-designated heritage asset within the conservation area, and as a curtilage building to the Unicorn Inn. Section 1(5)(b) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) states that any object or structure within the curtilage of the listed building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948 shall be treated as part of the listed building. From the evidence, before me the Malthouse Building was under the same ownership as the Unicorn hotel.
11. The parties do not dispute, ownership, and functional links to a degree as the outbuilding is listed by virtue of being within the curtilage. The suggestion that it was distinct land not associated with the historic public house or an ad-hoc use would necessitate a change of status are unfounded. Whilst not in the list description, listings are primarily for identification purposes and do not usually provide an exhaustive or complete description of the special interest. Even if a

building is listed by virtue of being within the curtilage, this does not necessarily mean that it has any significant value in contributing to the character or special interest of the principal building. This will depend on matters such as its history, use and appearance. Nevertheless, its preservation carries considerable importance and weight, and therefore it should be considered as part of the listed building as set out in the Act.

12. There are several Grade II listed buildings in the vicinity along Kirkgate and directly close by to the appeal site. These include a row of residential terraces 1-4 Court Terrace (listing 1150117) of red brick and slate roofs with alternating doors and windows have glazing bars and sliding sash with wedge lintels. The Court House (listing 1174464) dating from 1830 as a medieval court. The Old Courthouse and walls (listings 1315493, 1295756) were associated with the Archbishop of York, as a courthouse and debtors' prison. To the North is the Ripon Cathedral (listing 1150164) a Grade I listed building as an Anglo-Saxon Church. Adjacent to the site is the Ripon SM (listing 1003148) it is a site of early medieval monastery and associated sites, with human burials acknowledge to have been recorded within or close to the scheduled area. The Close overlies the core of the Anglo-Saxon monastery in the mid C7th, with the boundary following the line of the wall being included in the listing.
13. Given the above, I find the special interest of the Maltings building, insofar as it relates to this appeal, to be primary associated with its historic and architectural interest. Its historic interest is primary in respect of its age, association with the public house use as a malthouse, medieval times and ancient settlement including the 12th century City Cathedral and early 19th Century courthouse and other historical buildings. The building's value is derived from its distinct openings, one storey, timber frames and brick appearance, notable ancillary architecture. It is further represented historically by the association of the adjacent SM with the historic archaeological interests and past human activity in the immediate and wider vicinity of the site.
14. The CA was designated in 1976 and further revised in 2009, it covers a large part of the city including the historic core of medieval Ripon and the cathedral. The area is identified as Area B, within the Conservation Area Appraisal, 2009 (CAA). It identifies the settlement in Ripon with an early focus on an ecclesiastical precinct with Ripon having a rich architectural and archaeological heritage including some 425 listed buildings, identifying the Cathedral as the most important. Area B is centred around the Market Place and identifies the Unicorn Hotel occupying a prominent site. The area of the appeal site has varying characteristics including the location of the large supermarket, but mainly terraces are in uniformity and buildings of both two to four storeys. The significance of the CA is derived from the uniformity of design through the streets with a sense of enclosure and encompassing historic buildings with landscaping and trees and with buildings notably showing their evolution from the early medieval settlement.

The appeal proposal and its effects

15. *The Former Malthouse* – This would involve the restoration and renovation of the building for an end residential use, resulting in 2 2-bed dwellings with associated parking. The conversion would entail considerable works to be undertaken to the building to facilitate the use with several walls needing to be taken down leading to a small proportion being retained. Existing materials are proposed to be retained

and reused where possible with recycled/reclaimed materials to match sourced where this is not possible.

16. The appellant outlines that care has been taken to incorporate existing aspects of the building into the design reflecting the commercial history of the site and that the constraints of the site limit internal orientation and layout. As I saw the building is in a poor condition including the loss of many of its original features, roof collapse and likely structural movement due to continuous open elements impacted by weather conditions and a distinct lack of continued maintenance.
17. However, the design would incorporate several features including somewhat excessive fenestration to the southern elevation which would not reflect the traditional characteristics of the original building and retain its simplistic form. The historic fabric would be completely lost and the proposed 4 rooflights featured on both sides of the roof would impact negatively on the roof plane resulting in incongruous and a totality of unwelcome additions. Although, of conservation style they would appear disproportionate, prominent and uncharacteristic for a historical subservient building. In addition, alterations shown for the round window feature would not introduce any enhancement to preserve the character and/or appearance of the original building, nor the CA.
18. Therefore, the proposal would go some way beyond seeking to repair and preserve the historic character and appearance and the historic entity of the building with the proposed conversion would be lost resulting in a degree of harm. I have also had regard to the comments from Historic England, and their significant objections to the proposal in its current form.
19. Furthermore, the proposal would not necessarily follow the aims and guidance of the Conservation and Design Guidance Note 1 in terms of position and visibility and the Harrogate District Heritage Management Guidance, Supplementary Planning Document, 2014 (HMGSPD). The HMGSPD paragraph 8.10 requires that the traditional appearance of any historic building should be maintained as far as possible, whilst at paragraph 8.12 it stipulates that poorly designed alterations can damage the appearance, such that it may completely lose its original character and appearance, which would be harmful to its significance.
20. The HMGSPD sets out the general principles at paragraph 8.15 that an array of panels to a clean roof pitch may dominate the building and hence be unacceptable. It further reiterates that new openings or alterations to existing elevations are likely to harm the character and appearance, and it is important that conversions and alterations re-use historic openings, or that new openings follow the character of the host building.
21. *The new dwellings* – The pair of semi-detached dwellings constructed of red brick with natural slate roofs, painted timber vertical sliding sash windows and a non-functional chimney would be erected adjacent to the east with associated parking and landscaping. They are proposed to sit on axis to the Maltings building with a small separating gap. The appellant considers that the design is taken from that of Court Terrace, the nearby row of terraces.
22. Historic evidence suggests that to the east of the building it has remained undeveloped, nonetheless this does not mean that some acceptable form and layout of development would not be acceptable. However, the HMGSPD, at paragraph 7.20 advises that the layout of new development should be designed to

conserve heritage assets on the site and protect and enhance their setting. This would include the orientation, layout, gaps, impact on existing trees and the heritage assets and their significance.

23. Both the layout of the development and design including sash windows of the new dwellings would not be reflective of that row of listed terraces on Court Terrace, including the approach to the sliding sash windows and further inclusion of rooflights. I acknowledge that some features are replicated, however when combining the totality of the development and the layout presented including the necessary works to achieve a maximum residential end use within the site it would cause considerable harm to the character and appearance of the conservation area taken as a whole and no doubt some impact on the surrounding historical features including the sites relationship to the SM.
24. Although the building forms part of the Grade II listed Unicorn Hotel, there appears to have been significant alterations to the pub to facilitate a more modern use with the intervening rear gaps and attachment to other residential and commercial properties from the main town centre and Market Place. Therefore, I find that the proposal would have a neutral impact on the significance of the public house building itself and the significance of the nearby Court house building and the Cathedral due to its proximity to the site.
25. However, the listed Court Terrace is near the site and falls within the setting due to its clearly discernible views from the site and approach. Therefore, there would be some harm, albeit minor harm to the setting and significance of this historic terrace row by the addition of the new development in its current form.

The impact on Trees

26. The Council contend that there would be severe impacts on trees from the development including that most of the amenity space serving the new dwellings would be under tree cover. This would result in significant effects for long term protection and longevity of trees with foreseen future conflicts harming both the trees and having implications on the CA.
27. The appellant's '*Arboricultural Report*' dated 2019 including a survey acknowledges that trees on the site have a moderate impact on the local treescape, reasonable visual amenity and occasional specimens have a high amenity value. Trees are afforded protection due to the site falling within the CA. The species identified were Common Ash (G4, G5), Sycamore (T1, T2, T10, G3, G5), Common Lime (T11), Large-leaved Lime (T6), Common Alder (T7) and Norway Maple (T8, T9). It recommended no trees are for removal in the current context or remedial works deemed necessary at this time, unlike what is set out in a revised '*Arboricultural Impact Assessment*¹' (AIA).
28. The report highlighted that it is accepted that it is not entirely possible to completely avoid the Root Protection Areas (RPA) or canopy lines within a new development. It identifies that T7 is the closest to the building and the canopy overhangs the roof, of being within good form, high amenity value and having a retention category of B1. T6 is near the site boundary, with high amenity value and has a retention category B2. G4 has dense Ivy but canopies are healthy contributing to a screening belt, it is of good condition with high amenity value and

¹ JCA Ref: 15188b/ME – Rev 2, dated 2023

retention category of B2. Therefore, all have moderate quality with a reasonable life expectancy.

29. However, the updated AIA alters the findings of the report in that tree G5 is now recommended for removal due to the Ivy clad and would create additional light and space for remaining trees. Trees G3 and G4 may also require removal to accommodate parking and to reduce future pruning. It also states that to accommodate the proposals pruning is required for T1, G3, G4 and T6. It acknowledges that the new dwellings would encroach the RPA of G4, T6 and that electric cables are required to pass through the RPA of T1. In addition, the appellant contends that existing trees and T7 are causing damage to both the wall (SM) and pavement and these need to be removed for preservation purposes as set out in the AIA.
30. I acknowledge that the appellant has sort to address tree issues at the site and the constraints of the development in correspondence provided with the Council. Nevertheless, the RPA for several trees as shown within the survey and site plan including T7, T6 and G4 would have incursions from the dwellings. T1, T2 and T3 would still be affected by the parking bays and hardstanding areas. In addition, it is likely that a significant amount of pruning works would further be necessary to accommodate the whole development of the site including where canopies are located which in turn would impact on the existing natural form, treescape and character of the wider area. This would likely lead to future foreseeable conflicts with the development and where future occupiers may desire additional works to trees to be carried out.
31. The original report was undertaken in 2019, and the conclusions of the report at paragraph 6.5, indicate that the report is only valid for a period of 1 year. After this period a further survey should be carried out to ensure the condition of trees has not significantly changed. The AIA is dated 2023, and I do not consider it fully acknowledges the constraints, longevity of trees with a residential use of the site. On this basis I cannot be satisfied that the evidence before me, or that the evidence is truly reflective of works which are now needed to be carried out to trees, and therefore any additional works could pose a further significant impact on the visual amenities of the area and protection of longevity of trees. This in turn has the potential to affect not only the longevity of trees, but would result in an unacceptable visual change to the rural character and appearance of the area and on the CA.
32. In addition, it would be likely that the shading from the trees would be excessive and not be an acceptable situation for any future occupiers. This is set out within the shade drawings, albeit these are computer generated and does not include the full development layout. The AIA accepts that shading would take place, somewhat limited and it would be constrained in any case within the winter months. Nonetheless, shading from trees on both the dwellings and amenity spaces would lead to increased pressures on trees to be lopped, topped or even removed, of which would further and likely have an unacceptable effect on the amenity value of the trees within the area and in context of the CA.
33. As such, there is a significant prospect that tree works required to implement the proposal would have a harmful effect on the retention, longevity and health of trees, on the site. In addition, the risk to trees from potential harmful works would lead to harm to the character and appearance of the CA, the Maltings building, and

the setting of listed buildings of which I attach moderate weight against the proposal.

Heritage Balance

34. Given the above, I find the proposal would fail to preserve the special interests of the curtilage listed building and would negatively impact on its setting and significance and setting of the nearby listed buildings, including 1-4 Court Terrace. The former Malthouse building is an important element contributing to the CA and is a positive contributor to its character and appearance, despite its current state.
35. It must follow that if the curtilage listed building would be harmed, and the setting of nearby listed buildings then there would be a similarly harmful impact on the character and the appearance of the area including trees, and the significance of the CA including the setting and significance of the SM which is of national importance. Moreover, as I saw these proposals would be clearly discernible in views from the immediate and wider area, in the public realm and in the CA. Consequently, I give this harm considerable importance and great weight.
36. The site falls within the buffer zone of the WHS, which the WHS includes the ruins of Fountains Abbey and 18th Century green gardens. Although not a statutory provision the zone affords extended protection to the WHS to ensure its conservation and management. There is limited evidence to suggest any delineated areas are encroached resulting or that the proposal would cause harm to the cultural/or natural setting of the WHS as a whole or its significance. Therefore, the proposal would have a neutral impact, however this does not take away the harm I have already identified to designated heritage assets.
37. Paragraph 212 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation (and the more important the asset, the greater weight should be) This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 213 goes on to advise that significance can be harmed or lost through the alteration or destruction, or from development within its setting of those assets and that any such harm should have a clear and convincing justification.
38. The proposals would result in a negative impact on the historic and architectural interests of the building, setting of listed buildings, including the archaeological interests and significance of the SM, and the CA taken as a whole. In this case, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
39. Where the proposal would lead to less than substantial harm to the significance of a designated heritage asset, paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimal viable use.
40. The appellant is of the opinion that the scheme would cause no harm to the significance of the curtilage listed building, its setting and it would preserve the character of the CA. The proposal would provide some heritage and public benefits as it would result in the re-use of the building, works for its conservation and for a residential use by the effective use of land. It could secure a viable end

use incorporating some economic and social benefits which I ascribe moderate weight. However, these benefits would not be significant and limited based on the quantum of development proposed and are not sufficient to outweigh the totality of harm to the environment, trees and heritage assets including the impact on their significance.

41. Given the above, and in the absence of significant public benefits, I conclude that the proposal would fail to preserve the special historic interest of the curtilage listed building, setting of nearby listed buildings, SM, have implications for trees and the character or appearance of the CA would neither be conserved nor enhanced.
42. This would fail to satisfy the requirements of the Act, paragraphs 213 and 215 of the Framework and be contrary to Policies HP2, HP3, NE5 and NE7 of the Harrogate District Local Plan 2014-2035, 2020 (LP) and Policy C1 of the RNP. Taken together, amongst other matters the LP policies require developments affecting heritage assets or its setting, protect or enhance those features which contribute to its special architectural or historic interest; proposals in conservation areas protect and, where appropriate enhance, including trees, and ensuring scheduled monuments or other archaeological interests are conserved; development should protect, enhance or reinforces local distinctiveness including City Centre Quarters and restore the architectural detail to historic buildings. In addition, there would also be some conflict with the Council's heritage and design guidance.

Living conditions

43. The Council assert that residential amenity for the proposed dwellings would be poor and results in overdevelopment. This includes that LP Policy HP4 requires well-designed and located private and/or communal outdoor amenity space of an adequate size. However, the policy is absent on the definition of adequate size.
44. The Harrogate Borough Council Landscape Design Guide, 2023 (LDG) sets out that at least three fifths of the garden must be capable of receiving sunshine and not over shadowed. Paragraph 3.13 stipulates that two and single bedroomed house types must provide a minimum of 75m² of rear garden.
45. The proposed development would all be 2 bedroomed dwellings. The appellant contends that it is not unusual for dwellings within the locale to have large areas of private amenity space, and that there is precedent for this due to other developments being allowed. Although some details are provided, what is clear is that these developments have available private space, and that they do not set a precedent for providing limited or no available useable private amenity space.
46. The appellant asserts that given the site is some 710m² and the position of dwellings it would not result in overdevelopment. Whilst this may be the case, the proposed private amenity space for each of the individual dwellings and the conversion of the Maltings is unclear on the plans. That being whether grassed areas and paving/hardstanding would be private, shared or form part of a wider landscaping scheme for the site. Thus, in this instance the private amenity space would fall significantly lower than the recommended space and would not be adequate for the number of occupants and bedrooms of the development. Even if, amenity space was considered acceptable, including the appellant's reference to

communal space within the locality the position of trees and their canopies would likely restrict the use of these areas particularly to the west.

47. In addition, the scheme lacks detail on how the wall would work to prevent any privacy issues between the new dwellings and the public realm, including that pedestrian accessibility is significant from the rear of Sainsbury's supermarket, and existing walkways. Matters of noise, and further tree implications have been set out elsewhere within this decision.
48. For these reasons given, I conclude that the proposed development would not provide adequate living conditions for future occupants, regarding amenity space and privacy. It would conflict with LP Policy HP4 as set out above, and the guidance set out in the LDG at Section 3.

Noise

49. A noise survey² was originally submitted with the planning application, however this relates to a different site, 39-42 Kirkgate, the former location of Matrix nightclub and to inform a planning application ref. 19/04661/FUL. The appellant confirms this was undertaken pre-covid, and following the response from the Environmental Officer produced assessments and addendums³.
50. Nevertheless, the council have raised concerns that the proposal may be subject to elevated levels of noise from the service yard, equipment associated with the building to the north, and the licensed premises in proximity to the site. Therefore, they require assessments to be carried out to determine the existing and predicated noise climate for the residential use and proposed attenuation/design to protect the amenity of future occupants of the new residences.
51. To the north of the site is a Sainsbury's supermarket and the rear of this premises faces the appeal site. I saw at the time of the site visit significant amounts of mechanical ventilation for the supermarket operation were in place on the rear of the building and the rear area is used for delivery and services area. There was considerable noise emitted from the equipment and vehicles actively frequented the service areas in between the site and Sainsburys.
52. Despite the appellant providing updated noise evidence relating to the living areas of the building, it specifically does not set out noise readings or confidently set out the assessment of the area has been more recently undertaken between the appeal site and the north boundary wall and does not necessarily take into consideration the full impact from the servicing or comings and goings of the supermarket.
53. In the circumstances of the case, I cannot be certain there would not be a significant adverse impact on future occupiers, relating to noise. Furthermore, I do not consider that a condition would overcome any harm given that levels of noise are potentially unknown, and it would not accord with Planning Practice Guidance (PPG) if I were to do so. As such in the absence of insufficient evidence, I must conclude that the proposal would be contrary to Policy HP4, which ensures development proposals will not result in significant adverse impacts on the amenity occupiers, which includes (c) vibration, fumes, odour noise and other disturbance.

² Acoustic Report, Paul Horsley Acoustics Ltd, ref J2910 dated 05.02.20

³ NA-1046-22-076 dated April 2022

Ground stability

54. The appeal site is within an area which has the potential to be subject to localised subsidence hazards. This is due to existing cavities and on-going dissolution of gypsum deposits by groundwater. It is identified with Development Guidance Zone C.
55. Policy NE9 of the LP, amongst other matters requires that where there is potentially unstable land the developer will need to demonstrate that appropriate measures can be put in place to ensure development can be safely undertaken and there are no significant risks of instability over the lifetime of the development. The policy specifically gives regard to subsidence due to gypsum dissolution in Ripon, which are suspected as being potentially susceptible to the problem. The policy further directs to the requirements in the advice 'Gypsum Related Subsidence in the Ripon Area'.
56. The PPG highlights that the failure to deal with the effects of land instability could cause harm to human health, local property and associated infrastructure, and the wider environment. The planning system has an important role to play in minimising the risk and effects of land stability and helping ensure that development does not occur in unstable locations or without the appropriate precautions.
57. The appellant submitted a '*Ground Stability Declaration*' and a '*Phase 1 Study*'. For the purposes of Policy NE9 it requires that a ground stability report and declaration form signed by a Competent Person will normally be required. The report would need to be based on a geotechnical desk study and site appraisal followed up by a programme of ground investigation, unless adequate information is available from previous boreholes.
58. Notwithstanding the objections of the Council's Building Control Officer, in relation to the declaration and report, this was produced in 2019. It does appear that further intrusive works and ground works would be required to be undertaken, other than an assessment using mapped data. The Phase 1 Study recommends a geo-environmental Ground Investigation is required prior to the redevelopment of the site, and without an updated position since 2019 or further investigation the instability of the land, including the stability of the Maltings would be unclear. Therefore, failing the requirements of meeting the policy and advice for the area.
59. In these circumstances, I consider that a precautionary approach is required in that insufficient evidence has been provided to satisfy the criteria which is set out in Policy NE9, in safeguarding future occupants of the development and ensuring ground stability.

Protected Species

60. The appellant has provided a completed '*Biodiversity Checklist*' produced by the Council, and a letter setting out reasons for exemption that an ecological survey was not required. They assert that by assessing against Natural England's standing advice the probability of the existing building being used by bats is negligible. This sets out several factors which reduce the likelihood of the presence of bats including the roof construction and building being open to the elements, and that it has active nesting for feral pigeons which would indicate no

bats present, nesting birds or barn owls. Including site photographs of the internal and external part of the building provides sufficient justification for exemption.

61. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) imposes a duty to consider the relevant Directives and whether there is a reasonable likelihood of European Protected Species being present and whether they are affected. This includes bats and consideration of any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of species. Including the places that bats roost, irrespective of whether or not they are present at the time the development is carried out.
62. The Framework at paragraph 193 sets out the principles that if significant harm to biodiversity resulting from development cannot be avoided or adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
63. From the evidence before me, it suggests a strong likelihood of bats being present including that open crevice-dwelling species may utilise the crevices where joists interlock either with each other or with the internal walls. In addition, given the nature of the building and surrounding trees, the presence of bats cannot be ruled out and the letter exemption is not sufficient. A competent survey would have been required and should have been undertaken by a competent and appropriately accredited individual. Surveys are required to be carried out at an appropriate time of the year and be proportionate.
64. Therefore, I cannot be certain that any harmful effects arising from the proposal could be adequately avoided or mitigated against, and consequently that protected species, bats would not be adversely affected. Moreover, Circular 06/2005⁴ advises that *'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed'*.
65. In the absence of detailed information that negative impacts would be avoided to protected species, with specific regard to bats. I conclude the proposed development would be contrary to Policy NE3 of the LP, which seeks to protect the natural environment and only permits proposals where significant harm can be avoided or adequately mitigated. Furthermore, it would also be at odds with the Regulations and guidance contained within the Framework, relating to habitats and biodiversity.

Other Matters

66. The appellant refers to the lack of co-operation and engagement from the Council including access to online public comments. However, it appears these are essentially procedural matters beyond my remit insofar as it relates to consideration of the planning merits of the appeal, and it appears that the proposals were dealt with having due regard to the requirements of the Act, and the relevant development plan policies.
67. Any recommendations for what may constitute an acceptable revised scheme are outside of my remit in the scope of this appeal and the appeal is determined on the

⁴ ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

plans which were before the Council. In any case such matters of potential revisions are future considerations if required between the main parties.

68. The appellant has drawn several comparisons to the scheme in support of their appeal with other adjacent developments that have been approved by the Council. Although I have had some regard, where relevant and been provided, albeit limited of details of these developments, it appears that they are not fully comparable to the precise circumstances of the appeal site constraints and the proposal before me. In any case, I have dealt with the proposal based on the evidence presented and from site observations.
69. Matters pertaining to highway safety, parking, construction dust and management including hours could be dealt with by suitably worded conditions. However, these are neutral matters weighing neither for or against the development.

Planning Balance and Conclusion

70. The Council have set out their latest position in respect of housing land supply, and that five-year housing supply figure is calculated at 5.9 years. They confirm that the LP is now over 5 years old and derived from the standard method the supply plus relevant buffer results in a significant shortfall of some 2.9 years. Therefore, in these circumstances paragraph 11(d) of the Framework is engaged.
71. The Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework. The most important policies relating to the main issues and heritage aims are generally consistent with the Framework.
72. The application of policies in the Framework that protect heritage assets (footnote 7 to paragraph 11 d) i) provides a strong reason for refusing the development, consequently the presumption in favour of sustainable development does not apply in this case.
73. I have identified the benefits of the appeal scheme and have undertaken the necessary balancing exercise in relation to public benefits. It is understood that the appellant has gone some way to address all comments and observations throughout the application stage. However, having considered the appeal scheme it would be unacceptable on noise and ground stability, and would cause harm to future occupiers living conditions, protected species, trees and designated heritage assets which overall attract significant weight against the grant of planning permission.
74. The proposal conflicts with the development plan taken as a whole and the material considerations including the Framework do not outweigh this conflict. For the reasons given above, I conclude that the appeal should not succeed.

KA Taylor

INSPECTOR