



Appeal Decisions

Hearing held on 24 September 2025

Site visit made on 23 and 24 September 2025

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2025

Appeal A: APP/T3725/W/25/3359255

5-9 Tavistock Street, Leamington Spa, Warwickshire CV32 5PJ

- 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 Ni Ann Ltd against the decision of Warwick District Council.
 - The application Ref is W/24/0376.
 - The development proposed is demolition of existing two storey nightclub building and erection of five storey building containing ten purpose-built student apartments.
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Appeal B: APP/T3725/Y/25/3359294

5-9 Tavistock Street, Leamington Spa, Warwickshire CV32 5PJ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Ni Ann Ltd against the decision of Warwick District Council.
 - The application Ref is W/24/0377/LB.
 - The works proposed are demolition of existing two storey nightclub building and erection of five storey building containing ten purpose-built student apartments.
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Appeal C: APP/T3725/W/25/3366038

Smack Nightclub, Tavistock Street, Leamington Spa, Warwickshire CV32 5PJ

- 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 Ni Ann Ltd against the decision of Warwick District Council.
 - The application Ref is W/25/0194.
 - The development proposed is retention of existing façade and construction of new building containing nine purpose-built student apartments.
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Appeal D: APP/T3725/Y/25/3365442

Smack Nightclub, Tavistock Street, Leamington Spa, Warwickshire CV32 5PJ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Ni Ann Ltd against the decision of Warwick District Council.
 - The application Ref is W/25/0266/LB.
 - The works proposed are retention of existing façade and construction of new building containing nine purpose-built student apartments.
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Decision

1. Appeals A, B, C, and D are dismissed.

Preliminary Matters

The Appeal Schemes

2. For ease of identification, I have referred to the proposal in Appeals A and B as 'Scheme 1' and the proposal in Appeals C and D as 'Scheme 2'. The appeals in each scheme concern proposals which must be considered under different, complementary legislation. Accordingly, I have dealt with the appeals together in my reasoning, except where I have indicated in the main issues.

Amended Plans and Evidence and Approach to Main Issues

3. The Council did not raise concerns regarding the submission of amended plans and evidence regarding reasons for refusal for Appeal A relating to living conditions of neighbouring occupiers (Reason 3). Despite this, at the Hearing, I advised the main parties this would not meet the procedural test established in the recent judgment in *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin). That is whether they would cause unlawful procedural unfairness to anyone involved in the appeal, but the Council subsequently carried out re-consultation after the Hearing. Accordingly, I have accepted the amended plans and evidence, as those who should have been consulted on the changed development have not been deprived of the opportunity of such consultation. It is therefore not necessary for me to consider Reason 3 on Appeal A.
4. Receipt of revised Energy Statements and carbon offsetting calculation for both schemes, along with responses from the Council's Energy and Carbon Advisor and amended Unilateral Undertakings (UUs), also means it is not necessary for me to consider Reason 6 relevant to Appeal A, and Reason 4 for Appeal C, both regarding climate change.
5. The Statement of Common Ground (SoCG) between the main parties also provides clarification of the information submitted to the Council to satisfy Reason 5 for Appeal A regarding drainage and flooding. Moreover, a revised drainage strategy was provided prior to determination of the application, but was not considered. Since then, following consultation with the Lead Local Flood Authority, the main parties have agreed this satisfies the concerns outlined in Reason 5.
6. These matters do not therefore form main issues in my consideration of the appeals.

Main Issues

7. The main issues are:
 - whether the appeal building is situated within the curtilage of the Grade II* listed building, 'Numbers 12-42 and Attached Railings to Numbers 16 and 18 and 20a, Parade', and thereby should be considered as part of the listed building;
 - notwithstanding whether the appeal building is situated within the curtilage of the listed building, whether the proposal would preserve the listed building, and any features of special historic interest that it possesses, including its setting; and the effect of the proposal on the character and

appearance of the site and its surroundings, including whether it would preserve or enhance the character or appearance of the Royal Leamington Spa Conservation Area (CA);

- whether the proposal would provide acceptable living conditions for the future occupiers of the proposed development, with regard to the potential for noise and odour nuisance to occur from the neighbouring restaurant, known as La Coppola (Appeals A and C only); and
- whether the proposed developments would make suitable provision for local services, in relation to local green space and road safety initiatives (Appeals A and C only).

Reasons

Curtilage of the Listed Building

8. Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) clarifies that a listed building also includes any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948.
9. The building at 5-9 Tavistock Street (all odd) is not expressly identified in the list description, but this is for identification purposes only and does not form an exhaustive list of the features of the listed building that are of special architectural or historic interest. This is also not determinative as to whether it should be treated as being part of the listed building. Whether the building is 'curtilage listed' as per Section 1(5)(b) of the Act is a matter of fact and degree based on the evidence before me. Caselaw has established three tests which should be considered by a decision taker in defining the extent of curtilage. These comprise the physical layout of the listed building and the building in question, their ownership past and present, and their use or function past and present specifically whether the building was ancillary to the purposes of the listed building at the date of listing. These tests are also set out in Historic England Advice Note 10¹.
10. The appeal building was first listed on 19 November 1953, prior to 1 January 1969, when the law relating to curtilages first came into effect. At the Hearing, the main parties agreed that determining the situation at this point in relation to the tests outlined above would be appropriate.
11. The former stables and coach houses, with associated servants' accommodation, at 5 to 9 Tavistock Street originally served the large family homes located at 12 to 16 Parade (all even). However, societal changes meant the homes quickly changed to commercial uses at ground floor with flats above. Due to there no longer being a requirement for horsedrawn coaches, Nos 5 to 9 changed to separate unrelated commercial uses, including stabling. The original intimate physical and functional relationship between both sets of buildings therefore ceased in the early part of the 20th century.
12. Nevertheless, together with other aspects of the appellant's evidence, the chronology for Nos 5 to 9 indicates that East Midland Electricity Board (and its earlier iteration) operated from the ground floor of 14 Parade from 1922 into the

¹ Listed Buildings and Curtilage (published in February 2018 and amended in June 2025).

early 1950s. Moreover, aerial photography shows signage running across the top of Nos 5 to 9, and the evidence indicates No 5 was a temporary electricity showroom. Consequently, as of 1 July 1948 and the date of listing, there was a different functional connection between 14 Parade and Nos 5 to 9.

13. There is very little information before me as to how the buildings were used after the Board ceased to operate from the buildings, until they were all sold along with 16 Parade to a property company in 1973. All of these buildings coming back together into the same ownership is therefore coincidental.
14. There is also limited information regarding the planning history of the building after this point, with the SoCG indicating that, in the mid-1980s, No 7 was altered from a storage use to a printer's and No 9 from garage/storage to offices, possibly in connection with 16 Parade. Whereas Nos 3 and 5 were in use for a different company in the early 1990s. A proposal for a wine bar across Nos 5 to 9 is also recorded in 1995, but it is unclear whether this was implemented and, ultimately, Nos 5 to 9 were sold to the appellant in March 1998 to form the nightclub in situ.
15. The 1885 Ordnance Survey (OS) and Town Maps both indicate that the buildings at 5 to 11 Tavistock Street and the gardens between them and the properties at Parade were largely intact. However, following the sale of 12 Parade, a later map and aerial photograph from 1920 show a larger area to the rear of No 5 to be subdivided. These also show outbuildings between the rear of 14 Parade and No 7, the configuration of which later changed to those in situ. While later OS Maps show the dividing walls between 14 and 16 Parade and Nos 5 to 9 to be in place until at least 1966, the walls were later removed to provide a service yard / car park between the uses in Parade and Tavistock Street. Indeed, the appellant's ownership is confined to the footprint of the appeal building.
16. Accordingly, while Nos 5 to 9 were not always in use ancillary to the listed building, they were ancillary to 14 Parade when it was listed as part of 12 to 42 Parade. There is no evidence before me that this did not continue, and that the layout changed considerably between them, at 1 January 1969. In conclusion, even though Nos 5 to 9 were sold separate to 14 Parade in 1973, they should still be treated as part of the listed building, because they were ancillary in 1969 and form part of the listed building curtilage protection thereafter. As with the situation at 1 to 17 Parade (all odd), the only way to address this is for the listing to be changed.
17. I appreciate that Historic England did not reach the same finding, in the face of evidence by the Council, and it could reach a similar determination with a change to listing request. Nevertheless, my finding is made based on the evidence before me, and I cannot conclude that Nos 5 to 9 do not form part of the listed building. Hence, the outcome of the review to the listing of 1 to 17 Parade does not alter my findings in relation to the subject buildings.

Site and Surroundings, Significance, Special Interest and Setting

18. The appeals concern former coach houses situated in the appeal site behind 'Numbers 12-42 and Attached Railings to Numbers 16 and 18 and 20a, Parade', a Grade II* listed building, situated in the CA.
19. Leamington Spa expanded rapidly in the early 19th century as a Spa town with significant development of stuccoed terraces and villas designed and built in the

Regency style. Amongst the most important to the form of the town are the 'set piece' terraces found in Parade, which were originally built as high-class residences in various sections into the 1820s. These were eventually flanked by mews buildings, built to serve most of the homes, in the streets to either side. However, societal changes led to shops being added at ground floor and Parade became the commercial centre of the town.

20. The external details referred to in the listing description primarily focus on the property's frontage and its architectural adornment. This is for identification purposes only and does not form an exhaustive list of its features of special interest. The building's rear façade exhibits less formal architecture, with exposed brickwork, and closet wings up to third floor. This reinforces an architectural hierarchy, with greater emphasis to public façades of the building and, while the rear façades are not prominent, their architecture, rhythm and historic fabric are also important.
21. The significance of a heritage asset is the sum of its heritage values and, for the listed building, it is primarily found in its architectural and historic interest as a former terrace of 19th century homes, now shops with offices and flats above. This includes the established hierarchy from the grand detailing of its front façade to the simpler rear, despite significant changes to accommodate the Tesco retail store.
22. As far as it is relevant to these appeals, the significance of the CA is principally derived from the contribution made by the high quality of the architecture and townscape found in the variety of the buildings. The principal listed building is impressive and makes an important contribution to Parade, a primary route in the development of the area. It also appears typical of the buildings along it. Hence, it makes a telling contribution to understanding the historical development of Leamington Spa as an early 19th century Spa town, and to the character and appearance of the CA and its significance
23. Significance is also garnered from the setting of a listed building, which is defined in the National Planning Policy Framework (the Framework) as the surroundings in which a heritage asset is experienced. The setting of the listed building has been subject of considerable change over time, the most significant being the relationship between buildings in Tavistock Street, but the introduction of the unsightly surface carpark behind 12 to 20 Parade has largely eroded the gardens and evidence of the plot boundaries of these properties.
24. *A Guide to Conservation Areas* (AGCA) describes Tavistock Street as one of several mews roads, but it has experienced a considerable amount of change, including soon after coach houses were first built, as the type of housing in Parade no longer required coaching. Their importance as coach houses and the other accommodation that they provided in connection with the houses in Parade was therefore short-lived and the hierarchy of the streets evolved to include separate commercial uses in Tavistock Street. The street went on to accommodate further change.
25. While the street remains part of the original grid iron plan around Parade, the appeal building and those towards both of its southern corners and northwest corner remain the only structures of diminutive two-storey scale fronting the street. The appeal building also contains the last remaining former coach houses in the street, as buildings opposite were primarily terraced housing. Buildings of large

floorplates now occupy large parts of the street, albeit the imposing height of the six-storey 'The Space', which turns the corner from Clarendon Road, is an outlier in its immediate context. Moreover, the rear of the Tesco retail store in Parade, and an open service yard area, occupy most of the remainder of eastern side, but this is around two-and-a-half storeys. Furthermore, although subject of works to demolish it in connection with lowering of the Council's Covent Garden Multistorey carpark on the western side of the street, the bridge over the street from it is also around three storeys high. These sit comfortably lower than the buildings in Parade, which emphasises the hierarchy to the development in the streets.

26. The mews character of the street has therefore been overtaken by these developments and is far removed from the traditional characteristics referred to in AGCA. Tavistock Street now has a different context, that somewhat undermines the setting of the rear of the listed building, but has enabled change to take place in the evolution of the town without significant detriment to the experience of the 'set-pieces' within Parade and the original hierarchy to the streets.
27. The appeal building would originally have incorporated features relevant to its use as a coach house, including stabling, but its conversion for use by the Board and then as a nightclub, has eroded most of its significance and evidence of its original function. What remains of this is limited to parts of the exterior, through its form and the positioning of wheeled entry points and elements of the original brickwork. Moreover, the Board's use led to insertion of windows throughout, particularly to the first floor frontage in place of original windows. The consented scheme for the nightclub² allowed the entire roof to be replaced above a steel frame inserted in the building. Most window openings were either blocked internally or externally, with those to the front retained in front of blockwork. A non-original arched opening was also created to the front of No 5 in place of a door and window. Almost all the interior was removed, including stairs and original brick flooring.
28. The location of the appeal building remains important to understanding the original pattern of development, but the space between the buildings has been severed by the carpark. Although the building still incorporates brickwork and slate roofing, which are synonymous with secondary streets behind Parade, its interior and façades have been significantly altered, including window openings. Together, these factors undermine the legibility and form of the building as a former coach house use to Parade, which limits the architecture and historic interest of the building and the contribution it makes to the special interest of the principal listed building. Equally, at the Hearing, the main parties agreed that there would not be great significance drawn from the nightclub use to the communal value of the building, as it is only accessible by students. Furthermore, while the appeal building is the last remnant of former coach housing in Tavistock Street, and there are few remaining mews buildings in the CA, for the same reasons, the contribution the building makes to the understanding and significance of the CA can also only be limited. Moreover, the change that has been allowed to occur to the building, particularly in the late 20th century, has meant that the horse has already been allowed to bolt in this respect.

² Planning References: W/98/0432 and W/98/0433/LB.

Effect of the Proposed Schemes to the Designated Heritage Assets

29. Despite my finding in relation to the extent of significance of the appeal building, and my understanding that this could be preserved by record, this does not mean a carte blanche approach to its alteration and/or demolition and replacement would be appropriate. Equally, it does not mean the status quo should be preserved in aspic. Rather, any harm to the significance of the listed building and/or CA, including through loss of historic fabric to their architectural and historic interest, requires clear and convincing justification.
30. Schemes 1 and 2 would each be constructed of brick which, of itself, would not be problematic, as it would reflect the utilitarian appearance of mews buildings, as outlined in the AGCA. I also do not subscribe to the notions that modern buildings cannot be distinguishable from old when built in brick, or that brickwork cannot be used to reduce the perception of scale and mass. As such, it is not always necessary to turn to modern materials or utilise render, as brickwork it is often more robust and weathers better.

Scheme 1

31. The *Design and Access Statements* for the schemes acknowledge that a building in the site should be considerably lower than Parade, including on the basis that Tavistock Street is a secondary street. The frontage of the building proposed in Scheme 1 would not be overly wide, only being within part of the street, and it would not project a long way back from its frontage. The building would also provide a more subtle step up to The Space and partly mask its blank end elevation, whilst adding to the density of development in the town to increase its efficiency and meet the aims of the Framework. Nevertheless, the resultant scale, massing and bulk would be seen over neighbouring land in much the same way as The Space and appear significant in comparison to most other buildings to the east side of Tavistock Street.
32. The five storeys would also continue to the back of the rear wings, facing the listed building, which would detrimentally undermine the existing hierarchy provided by the appeal building, where the wings are set down at the rear. Similarly, it would compete with the listed building and undermine the hierarchy between it and the appeal building, as well as the contribution these relationships make to the character and appearance of the street and the understanding of the development of the town, as designated within the CA. Scheme 1 would therefore be harmful to the understanding and, thereby, significance of these designated heritage assets.
33. Turning to the external appearance of the building, at the Hearing the appellant confirmed the design approach was not to replicate the existing building, but to acknowledge it and allow for the evolution and change, as the next phase in the development of Tavistock Street.
34. The west and south façades of the ground and first floor of the proposed building would be of contrasting bricks to the floors above. Elsewhere, this differentiation would only be to the ground floor. I appreciate that this could be considered a simpler way to achieve the distinction between elements of architecture, such as the change from ground floor to the floors above in the 'set pieces' of Parade. However, the proposed approach to demolish the buildings and utilise contrasting

facing brickwork would appear uncomfortable and confused, as it would lack the authenticity it is seeking to achieve, given Scheme 1 is for a new building.

35. In particular, the use of punctuations to the brickwork at ground floor in identical positions to the original building, to create mock wheeled openings, would appear at odds with the other openings in this modern building, with timber fins in front of timber cladding or windows. Moreover, while metal windows would be used like those in the appeal building, the ground floor openings would contrast markedly with the arrangement of columns of punctuations in the façade.
36. The detailing to the front would be more elaborate than that of the rear which, because it occupies the footprint of the former wings of the original building, is also broken down into wings. Together with the texture that would be present in the proposed brickwork, the undulating form of the rear façade would add visual interest, including shadow lines.
37. While the architectural expression of the façades utilised in the design process would help to reduce the perception of the scale, mass and bulk of the new building, this would not successfully mitigate against the harm that would be caused by the proportions of the building and how this relates to the listed building and the CA, as a whole.

Scheme 2

38. The *Design and Access Statements* for the schemes acknowledge that a building in the site should be considerably lower than Parade, including on the basis that Tavistock Street is a secondary street. Like for Scheme 1, the frontage of Scheme 2 would not be overly wide, only being within part of the street, and it would not project a long way back from the frontage.
39. The scale of the building would also be broken down further, as the uppermost storey would be set back from the west and south façades. This would provide a further step up to The Space to Scheme 1, in a more subtle way than at present, and partly mask its blank end elevation. It would do so whilst adding to the density of development in the town to increase its efficiency and meet the aims of the Framework
40. While the height of the building would be lower than Scheme 1, the resultant scale, massing and bulk would be seen over neighbouring land in much the same way as The Space and would be significant in comparison to most other buildings to the east side of Tavistock Street. The five storeys would also continue to the back of the rear wings, facing the listed building, which would detrimentally undermine the existing hierarchy provided by the appeal building, where the wings are set down at the rear. Similarly, it would compete with the listed building and undermine the hierarchy between it and the appeal building, as well as the contribution these relationships make to the character and appearance of the street and the understanding of the development of the town, as designated within the CA. Scheme 2 would therefore be harmful to the understanding and, thereby, significance of these designated heritage assets.
41. Turning to the external appearance of the building, the revised proposals in Scheme 2 would retain the west and south façades and part of the east, and remove the remainder. The new parts of the building would therefore be stacked

atop the retained parts of the building in contrasting brickwork to that beneath. This would be more authentic than Scheme 1, as the memory of the old building would be encapsulated, to a certain extent, including the existing façade treatment to Tavistock Street, with new development layered on top of it.

42. The varied approach to the size and nature of openings and voids in the front façade would also continue the approach taken with the appeal building over time. The more contemporary picture windows, with vents to the side, would also help to distinguish the old from the new. While the southern aspect created on the fifth floor, and the taller floor to ceiling heights and larger windows, would all add to the quality of the living spaces therein, the latter would also add to the perception of the building appearing top heavy.
43. The detailing to the front would be more elaborate than that of the rear which, because it occupies the footprint of the former wings of the appeal building, is also broken down into wings. Together with the texture that would be present in the proposed brickwork, the undulating form of the rear façade would add visual interest, including shadow lines.
44. Nevertheless, the architectural expression of the façades utilised in the design process would not successfully mitigate against the harm that would be caused by the proportions of the building and how this relates to the listed building and the CA, as a whole.

Conclusion on the Second Main Issue

45. In considering both schemes, I have had regard to the appellant's conceptual and architectural precedents from elsewhere, with the knowledge that each scheme needs to be considered in relation to the original building and its overall context. Nevertheless, the schemes would not be comparable with those built in Bedford Street and Guy Street, with the former being of four storeys within a tighter knit grouping of buildings of a similar scale, and the latter situated to the eastern side of the street, not in the same block as buildings immediately rear of Parade.
46. The same development plan was in situ for the now lapsed scheme for the Covent Garden Multistorey Carpark and I accept that the appellant would expect the Council to be consistent in its approach to decision-making. However, that site was like that at Guy Street, in that it entailed development within an adjacent block. Nonetheless, I cannot now be certain of what would come forward, particularly the scale of any building(s), and the scale and massing of the appeal schemes would be disproportionate with the secondary street arrangement, immediately behind Parade.
47. Given that both schemes relate to part of the listed building, they would both incur direct harm to the special interest of the listed building, and indirectly through development within its setting. For the reasons conveyed in the individual assessments relating to each of the schemes, they would fail to preserve the listed building and its features of special architectural and historic interest and, thereby, its understanding and significance as a designated heritage asset. Furthermore, as the special interest of a listed building within the CA would be diminished, this would add to the overall harm that would occur to the character and appearance of the CA, as a whole.

48. In the context of Scheme 1, the Council considers the harm to the listed building would amount to substantial harm, whereas the appellant considers it should be graded at the lower end of less than substantial, so I have had regard to the Planning Practice Guidance³ (PPG). The new building in Scheme 1 would result in the total loss of historic fabric in the appeal building. Limited significance remains from the appeal building to the listed building, which would not be altered by the proposal. Accordingly, the harm to the listed building would equate to a moderate level of less than substantial harm. For these reasons, and given that the proposal would have a moderate degree of prominence, the harm to the significance of the CA would also be to a moderate level of less than substantial harm.
49. In Scheme 2, despite parts of the appeal building being retained, some loss of historic fabric would occur, as most of the rear façade and wings would be demolished. However, the retention of some historic fabric means the harm to the listed building and CA would both equate to a lower level of less than substantial harm.
50. Policy HE1 of the Warwick District Local Plan 2011-2029 (Adopted September 2017) (LP) and Paragraph 215 of the Framework both identify this harm should be weighed against the public benefits of proposals. However, due to the nature of the other main issues relevant to the appeals, I return to this balancing in the *Heritage and Planning Balance* and then conclude against the relevant policies.

Living Conditions for Future Occupiers of the Development (Appeals A and C)

51. Behind the appeal site is a single-storey range forming part of 14 The Parade, which is occupied by the restaurant La Coppola. This forms its kitchen area and includes an odour extraction system. At the Hearing, the appellant identified that this has not been given approval by the Council, so should not be in place. Issues relevant to its presence are for the Council to address with the owner but, at this time, could not reasonably be determinative in my consideration of the appeals. As such, while the site is not situated within an air quality management area, the system is in situ and represents part of the existing noise and odour environment. Discussions between the main parties have centred around alterations to the existing system to enable the proposed developments to be occupied without harmful effects to living conditions from noise and odour.
52. Neither of the planning applications or subsequent appeals are supported by odour assessments. At the Hearing, the Council explained this is required to determine how the existing system needs to be changed. Ultimately the type of system required would be governed by the relationship with the proposed built form within the site, how the restaurant operates, and the space available to accommodate it. In terms of the first of these points, the existing building on site is much lower than what is proposed in both appeal schemes. Crucially, the absence of odour assessment(s) means I do not have a dispersal model for odours from the existing system. Nonetheless, there is a greater than theoretical possibility that the appeal schemes would influence how odours are dispersed from the extraction system, including how they could be experienced beyond the site at other properties.
53. The appellant's preference is for the proposed extraction system to be secured by a Grampian condition, as the agreement of a third party is required for this to be

³ Paragraph: 018 Reference ID: 18a-018-20190723 Revision date: 23 07 2019.

carried out land outside the site. However, I am mindful that the Planning Practice Guidance advises that such conditions should not be used where there are 'no prospects at all' of the action being performed within the time-limit imposed by the condition.

54. At the Hearing, the appellant sought to reassure me that the freeholder of La Coppola would be unlikely to object to any change to its extraction system. However, I have not been provided with any written assurance from the owner to this effect, despite my agreement to this being explored following the close of the Hearing. Similarly, the letter from the leaseholder for La Coppola indicates acceptance to any works being undertaken to change the existing extraction system, but it does not refer to any ongoing liability for the costs associated with its maintenance, including replacement of carbon filters. This would be required to ensure it continues to operate effectively. Furthermore, I am mindful that the system is also likely to need planning permission and listed building consent, and it is uncertain that these would be granted by the Council, given that they would relate directly to a Grade II* listed building. For these reasons, it would not be appropriate to impose the suggested Grampian condition, as there is not sufficient certainty that the action to provide a new means of extraction would be achieved within the timeframe of a permission.
55. Accordingly, the evidence before me does not provide sufficient certainty regarding what would need to be mitigated and how this would be achieved. A precautionary approach is therefore reasonable and appropriate where living conditions are at issue. The occupiers of the developments proposed in both schemes would be students, so would not likely always live at the site. Nevertheless, occupiers of any accommodation over a lengthy period would still have reasonable expectations of being able to open their windows, notably on hotter days, without being harmed by odours emanating from nearby.
56. At the Hearing, I was also referred to the possibility of utilising charcoal filters in the proposed Mechanical Ventilation with Heat Recovery (MVHR) systems for the appeal schemes. However, I have not been provided with any further details about how effective this would be in addressing odour from the existing extraction system serving the restaurant. Windows would remain openable and occupants could prefer them open, which would render any such mitigation ineffective.
57. Noise would be a byproduct of any extraction system and the existing background noise would need to be considered to determine whether a new system could operate successfully in the context of the proposed developments. Despite my findings in relation to odour, I am mindful that the approved redevelopment of the Multi-Storey Carpark opposite included planning conditions to secure details of noise mitigation, including to ensure that MVHR did not reduce its effectiveness against noise from the nightclub operating at the appeal site. While the permission for the scheme opposite has since lapsed, it was determined in relation to the same development plan. This is therefore material to my consideration of the noise environment surrounding the proposals. In the context of other homes nearby, the proposals would also remove a noise generating use in the local environment. Accordingly, I am satisfied that similar noise conditions could be employed in relation to the appeal schemes.

58. In conclusion, despite my findings in relation to noise, acceptable living conditions would not be provided for the future occupiers of the proposed developments in relation to odour nuisance. I must therefore take a precautionary principle and find that the proposals would fail to accord with LP policy BE3, which indicates that development will not be permitted that does not provide acceptable living conditions for future users and occupiers of the development. I have not found in relation to LP policies HS4 and DM1, as they respectively refer to the provision of open space and infrastructure, which are not relevant to this main issue.

Provision for Local Services (Appeals A and C)

59. The requirement for residential developments to contribute towards local green spaces offsite is based on the increased demand on existing spaces from additional occupants of dwellings. At the Hearing, the appellant referred me to the Council's Public Open Space Supplementary Planning Document (April 2019). This is referred to in and must be read in conjunction with LP policy HS4, and states public open space provision should be made for residential development of 11 or more dwellings. Furthermore, the LP Glossary indicates "each HMO cluster (self-contained unit) within a student accommodation block needs to be counted as one dwelling unit". Given that Scheme 1 is for ten and Scheme 2 for nine student apartments, it would not be necessary to provide contributions for local green space as part of either scheme. While a UU includes contributions for offsite POS, these would not be compatible with the tests set out for planning obligations in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations). The appellant is therefore entitled to disregard these contributions.
60. A further UU also includes a contribution of £50/dwelling towards road safety initiatives within the community. The evidence indicates that this includes education for schools and training for other vulnerable road users. This would be a modest yet important request of the development, which would meet the CIL Regulations, including being fairly and reasonably related in scale and kind to the proposed schemes.
61. Consequently, despite my finding in relation to local green space, the proposed developments would make suitable provision for local services. Hence, the road safety initiative funding secured through the proposals would comply with the requirements of LP policy DM1, which refers to the provision of mitigation measures to support the objectives of the Plan. This includes the aims of LP policy TR1 regarding highway safety. Conversely, provision of open space has been shown not to be required in accordance with LP policy HS4, so there would not be conflict with it. I have not found in relation to LP policy BE3 on this main issue, as it relates to the effects of developments on living conditions.

Heritage and Planning Balance

62. The Council accepts that its housing land supply position currently stands at 2.34 years. As such, the schemes would provide ten or nine homes, with 48 and 47 bedrooms respectively for students. In the context of Framework paragraph 61, this would be a specific housing requirement but, at the Hearing, neither party was able to provide any clarity regarding the current supply of student accommodation in relation to the overall amount required of this specific housing type. Nevertheless, as the developments would cater for many individuals, I afford this

considerable weight as a social benefit of the Schemes. In addition, while the proposal could result in some existing housing stock in the district becoming available for family housing, on the basis on the above and the absence of any controls to ensure this would take place, I am not able to afford this anything greater than very limited weight.

63. One of the two UUs submitted with the appeals includes a Carbon Offsetting Contribution required to demonstrate compliance with LP policy CC1 and the Council's Net Zero Carbon Development Plan Document, as neither scheme can demonstrate that it would qualify as net zero carbon. This contribution would meet the tests for planning obligations set out in the CIL Regulations, as it would be necessary to make the development acceptable in planning terms. However, along with the road safety initiative funding, these would be requirements of the developments to make them acceptable in planning terms, so they would neither weigh for nor against the schemes.
64. The existing nightclub has capacity for 600 persons and has been subject of complaints as more residential accommodation has been introduced. However, at the Hearing, the appellant confirmed that most stem from attenuation not being installed correctly where it was required by the Council. Given this, none are understood to have subsequently continued or been substantiated. The proposals would remove this use, and the accommodation would be managed to avoid students causing similar problems, as at the appellant's scheme at Bedford Street. Nevertheless, given the above, I am only able to afford the removal of a bad neighbour use limited weight, as a social and environmental benefit.
65. Brownfield land or Previously Developed Land is defined in the Glossary of the Framework. The appeals concern an existing building, so would meet this definition. I am mindful of the content of Framework Paragraph 125(c), but guidance on effective use of land in the PPG is clear this needs to be considered alongside other policies within the Framework, taken as a whole. The Framework confirms that heritage assets are an irreplaceable resource which should be conserved in a manner appropriate to their significance and that development should create places with a high standard of amenity for existing and future users. Both schemes would respectively result in harm and not satisfactorily demonstrate these matters. Accordingly, in considering the Framework as a whole, the harm in respect of these matters would result in substantial harm from the appeal schemes. As such, Paragraph 125(c) does not direct that either should be approved.
66. The proposal would also add further residential accommodation into a street in the town centre that formerly was residential and could be a catalyst for further regeneration. Such accommodation would also bring greater activity to the street and additional spending into the town and there would be shorter term benefits associated with the construction phase. Furthermore, the site is accessible for students given the availability of public transport nearby. However, given the magnitude of the development, these would amount to social, economic and environmental benefits of moderate weight.
67. The proposals would also help to mask the imposing blank southern façade of The Space, but would do so with a scheme I have found to be harmful. This would

therefore amount to a heritage or environmental benefit of no greater than very limited weight.

68. Framework Paragraph 212 states when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
69. Taking the stated benefits in connection with each of the appeal schemes together, I am not persuaded there would be public benefits of sufficient magnitude to outweigh the great weight to the assets' conservation and considerable importance and weight to the less than substantial harm identified to their significance. Accordingly, within the context of my duties under sections 16(2), 66(1) and 72(1) of the Act, I conclude that Schemes 1 and 2 would fail to preserve the listed building or features of special architectural or historic interest which it possesses; and it would fail to preserve the character and appearance of the CA. Hence, they would conflict with the design and heritage aims of LP policies BE1 and HE1, and Policy RLS3 of the Royal Leamington Spa Neighbourhood Development Plan 2019-2029.
70. Despite my findings in relation to the provision for local services and noise, Schemes 1 and 2 would fail to preserve the listed building and features of special architectural or historic interest which it possesses, and would also fail to preserve or enhance the character and appearance of the CA. Acceptable living conditions would also not be provided for the future occupiers of the proposed developments in relation to odour nuisance. These harms would result in the stated conflict with the development plan, which would cumulatively attract substantial weight against the appeal schemes. Accordingly, I conclude that the appeal schemes would conflict with the development plan, and the stated benefits would not amount to material considerations of such significance to lead me to conclude that the appeals should be decided other than in accordance with it.

Conclusion

71. For the reasons given above the appeals should be dismissed.

Paul Thompson

INSPECTOR

APPEARANCES

For the Appellants

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Steve Smith

Jack Smyth

Neil Warner

Nicholas Worlledge

BPN Architects; ARB, RIBA, and Elmhurst Accredited Energy Assessor.

Appellant

No5 Chambers (Barrister)

JPPC (Planning); MRTPI

Worlledge Associates (Heritage); BSc, PG Dip Arch Cons; MRTPI, IHBC.

For the Council

Nigel Bell	Interim Team Leader (Solicitor) – Planning and Regulatory, Legal Services, Stratford DC
Robert Dawson	Principal Conservation Officer; BA (Hons), MA; IHBC
Anna Stein	No5 Chambers (Barrister)
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Adam Walker	Principal Planning Officer (Interim) Development Management; BSc, MSc

DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE HEARING

- The signed Unilateral Undertakings relevant to the appeals.
- An agreed list of planning conditions for each of the appeals.