



Appeal Decision

Site visit made on 24 August 2021

by Tom Gilbert-Wooldridge MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 September 2021

Appeal Ref: APP/Y0435/W/20/3255492

Galleon Wharf, Old Wolverton Road, Old Wolverton, Milton Keynes MK12 5NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Suisse PHL (Propco) Ltd against the decision of Milton Keynes Council.
- The application Ref 19/02631/REM, dated 4 October 2019, sought approval of details pursuant to condition No 2 of a planning permission Ref 16/01451/OUT, granted on 31 August 2017.
- The application was refused by notice dated 9 January 2020.
- The development proposed is the construction of 14 No. dwellings, landscaping, car parking and associated works (pursuant to Outline Permission 16/01451/OUT).
- The details for which approval is sought are appearance, landscaping, layout and scale.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amended and additional plans were submitted as part of the appeal documents which propose to insert additional windows on the side elevations of the first 13 dwellings and provide greater details on the proposed landscaping. The Council has been given the opportunity to comment on these plans as part of the appeal process. Given the limited nature of the amendments, I am satisfied that interested parties would not be prejudiced on this occasion. Therefore, I have taken these plans into consideration as part of my decision.
3. A heritage statement has also been submitted at the appeal stage. While it would have been helpful to have such a statement at the application stage, the statement seeks to respond to some of the reasons for refusal. The Council has also had the opportunity to respond to the statement at the appeal stage. Therefore, I have taken the statement into account.
4. A new version of the National Planning Policy Framework (NPPF) was published on 20 July 2021. The parties were given the opportunity to comment on any relevant changes and I have taken these comments into account.

Main Issues

5. The main issues are the effect of the development on:
 - a) the significance and setting of the Grade II* listed Church of the Holy Trinity and the scheduled monument known as motte and bailey castle, deserted village and monastic grange at Old Wolverton;

- b) the character and appearance of the surrounding area;
- c) the living conditions of future occupiers of the proposed dwellings;
- d) the risk, fear or perception of crime;
- e) biodiversity;
- f) flood risk; and
- g) carbon offsetting.

Reasons

Listed building and scheduled monument

6. The appeal site comprises a long and narrow piece of land immediately adjacent to the Grand Union Canal on the edge of Old Wolverton. The Ouse Valley Park and wider countryside surrounds most of the site. There are a series of tall buildings along the site's south-west edge that are constructed from modern materials and used for a variety of commercial and storage purposes. The buildings form an almost continuous built frontage when viewed from within the site, along the footpath on the opposite side of the canal, and from the park to the south-west. Much of the remainder of the site is hardsurfacing for access and parking, with a vehicle compound at the north-west end of the site surrounded by metal fencing.
7. The Grade II* listed Church of the Holy Trinity is located to the south-west of the site on high ground within the park. The significance and special interest of the church is informed by its architectural and historic qualities as an early 19th century stone building with earlier medieval features. There are detailed gables to the transepts and chancel, along with a prominent tower above the building.
8. The scheduled monument is bisected by the site and the canal and covers a large area of parkland. The north-east portion contains earthworks associated with a monastic grange as well as remains from the Roman and Saxon periods. The south-west portion contains the earthworks of a deserted medieval village and a Norman motte and bailey castle. The significance of the scheduled monument is informed by its archaeological and historic interest as a well preserved medieval landscape with a number of surviving features. While the canal cuts through this landscape and existing vegetation makes it difficult to see between the two portions of the scheduled monument, it nevertheless remains an important and complex heritage asset.
9. The significance of both the listed church and the scheduled monument are also influenced by their setting. Despite the proximity of the urban edge of Old Wolverton and overhead power lines, both heritage assets have a strong green and open setting as part of the surrounding park, with extensive views across the wider countryside. This setting makes a distinct and positive contribution to the significance of the two heritage assets as part of the surroundings in which they are experienced.
10. Due to changes in levels and vegetation screening, the site and its existing buildings are largely hidden from the north-east portion of the scheduled monument. Even in winter months, the density of the vegetation buffer to the canal would make it difficult to see the site clearly. The site is also lower than the parkland to the south-west with some vegetation along the boundary. This

means that only the upper parts of the existing buildings can be seen from the listed church and nearest part of the scheduled monument that contains the castle. It is also possible to see the vehicle compound from both heritage assets, although the structures are much less prominent than the larger buildings. From the northern end of the site and from the canal footpath, there are clear views of the church and castle part of the scheduled monument across the hardsurfacing and compound.

11. The existing site buildings are standard nondescript structures that have no positive effect on the setting of the two heritage assets. Nevertheless, due to the topography and vegetation they are not overly dominant in views from either heritage asset except close to the boundary between the site and the scheduled monument. The more open northern end of the site and the views it affords to and from the heritage assets and the wider countryside is a positive aspect of the assets' setting that contributes towards their significance.
12. The development would clear the existing site and erect 14 detached dwellings. 13 of them (known as the type A2 and B2 dwellings) would be tall three storey properties located next to the canal at regular intervals. The 14th dwelling would be mostly two storeys on a larger footprint and plot at the north end of the site. The overall height of the dwellings would not be dissimilar to the existing buildings, with a curved roof and contemporary boathouse design and materials that would not look out of keeping next to the canal. The spaces between dwellings would break up the current continuous built form. The larger gap between the 5th and 6th dwellings would enable views to the church and scheduled monument.
13. However, the dwellings would extend beyond the existing built footprint into the more open northern part of the site. The openness of views from the listed church and scheduled monument to the wider countryside would be reduced while both heritage assets would be obscured in views from within the site and the canal footpath. As a result, the green and open setting of the heritage assets would be diminished.
14. The appellant notes that the northern part of the site has an unfettered consent for external storage. It is possible that this end of the site could be used for the storage of items and machinery much taller than the existing vehicles and fencing. However, there is a lack of information to demonstrate that there is a real prospect of this fallback position being implemented, or that it would result in harm greater than the proposed development. Therefore, I afford little weight to this fallback.
15. The removal of the existing buildings and their replacement with a more broken up series of dwellings would represent a positive improvement to the setting of both heritage assets. However, the loss of the open part of the site and the views to and from the heritage assets would markedly detract from their setting. Consequently, the overall effect on the significance of both heritage assets would be harmful.
16. The harm would be less than substantial, but still of a reasonable magnitude given the contribution made by the parkland setting. NPPF paragraph 202 of requires such harm to be weighed against the public benefits of the proposed development. NPPF paragraph 200 states that any harm to the significance of a designated heritage asset should require clear and convincing justification. Policy HE1 of Plan:MK 2016-2031 only seeks to grant permission for proposals

that cause less than substantial harm where the harm is demonstrably outweighed by the public benefits, with the overarching aim to sustain and, where possible, enhance the significance of heritage assets.

17. The development would provide 14 dwellings on the edge of Old Wolverton with good access to services and facilities. There would be investment in the local economy from the construction phase. These economic and social benefits are tempered by the relatively limited number of dwellings proposed but nevertheless can be afforded moderate weight. While the design of the dwellings would incorporate a range of sustainability measures as promoted by NPPF paragraph 126, it has not been shown that it would be outstanding or innovative. Therefore, it would not be appropriate to afford this significant weight as advocated by NPPF paragraph 134.
18. The reuse of previously developed land is a benefit but in this case the development would result in harm from the reuse of such land. Therefore, the benefit only carries modest weight. It is likely that the development would result in a biodiversity net gain with the scope for additional planting, but in the absence of any details I can only afford this modest weight. In summary, the public benefits would not provide clear and convincing justification for, or demonstrably outweigh, the harm that the development would cause to the significance of the two designated heritage assets.
19. Concluding on this main issue, the development would harm the significance and setting of the listed church and scheduled monument with insufficient public benefits to outweigh that harm. Therefore, it would conflict with Plan:MK Policy HE1 and NPPF paragraphs 200 and 202.

Character and appearance

20. The site has a strong commercial character and appearance given the existing buildings, hardsurfacing and use. This is best appreciated from the canal footpath and contrasts markedly with the surrounding green and open landscape of the Ouse Valley Park. The urban edge of Old Wolverton is only particularly apparent from the road access. There are extensive views across the park and wider countryside, and the more open northern end of the site contributes towards such views. The site and its buildings are largely hidden in medium to long-distance views across the park due to vegetation and topography.
21. As noted above, the design and materials of the new dwellings would be sympathetic to their waterfront location. The height would be broadly similar to the existing buildings and the gaps between dwellings would reduce the overall bulk. The canalside elevation of the A2 and B2 dwellings would be mostly blank even with the amended plans, but due to the orientation, the highly glazed rear elevation would also be visible from the footpath and would provide surveillance and activity along the canal edge. The new access road through the site would allow for greater permeability especially if a pedestrian link could be provided into the park as indicated on the proposed site plan.
22. However, the built footprint of the development would extend into currently more open parts of the site and would reduce the extent of views across the park and wider countryside. While there would be some improvement from the replacement of the existing nondescript buildings, there would be overall harm to the character and appearance of the surrounding area.

23. Therefore, the development would conflict with Plan:MK Policies D1 and D2 which require, amongst other things, proposals to respond appropriately to the site and surrounding context, with the layout of a development exhibiting a positive character or sense of place.
24. There would be no conflict with Plan:MK Policy D3 as the design of the buildings would not be contrary to any of the policy objectives. There would also be no conflict with Plan:MK Policy D7 regarding canalside development which requires, amongst other things, new buildings to present active frontages to the canal and be in keeping with local character in terms of scale, design and materials. Nevertheless, the lack of conflict with these two policies does not diminish the conflict with Policies D1 and D2.

Living conditions

25. The A2 and B2 dwellings would be sited in a regular and staggered building line along the canalside. The rear elevation of each of these dwellings would face east and, in most cases, would be close to the north elevation of the adjoining dwelling to the south. As a consequence, the internal spaces at the rear would be in shade from late morning onwards depending on the time of year.
26. However, in terms of average daylight levels to the rear elevation, the appellant's daylight assessment indicates that the second floor spaces would be substantially lit while first floor spaces would be above levels considered to be dull. Moreover, the first floor would contain the main living, dining and kitchen spaces with an open plan and light from the front as well as back. The rear ground floor spaces would fall within average daylight levels considered to be dull but would be occupied by bedrooms where light levels are generally not expected to be as high. Notwithstanding the general lack of sunlight, I consider that the rear elevations would receive sufficient daylight.
27. The rear gardens of the A2 and B2 dwellings would be relatively small for some properties, although the designs incorporate balconies at the front and rear on the first floor. In most cases, the gardens would abut the north elevation of the dwelling to the south. There is little specific analysis of light levels to the rear gardens. However, the images contained in the appellant's daylight assessment suggest that most of the garden space would be in shade from late morning onwards depending on the time of year. As the principal outdoor area for each dwelling, this would diminish the quality of the space for future occupants. The front balconies due to their orientation and the building line would receive more sunlight from late morning onwards but they are smaller and less private spaces. In the absence of further analysis, I cannot be certain that the levels of light to the rear gardens would be acceptable.
28. Concluding on this main issue, it has not been demonstrated that the development would have an acceptable effect on the living conditions of future occupants with regard to light to rear gardens. Therefore, it would not accord with Plan:MK Policy D5 which seeks to ensure satisfactory levels of sunlight and daylight within buildings and open spaces including garden areas.

Crime

29. The ground floor space for the A2 and B2 dwellings would contain bedrooms or studies and not the main living space. There would only be a single window on the front elevation and none on the roadside based on the determined plans.

The carport beneath the first floor side terrace would not be overlooked and the windows above the terrace would be opaque. As such, someone could stand close to the front and side of these dwellings without being detected. However, the first and second floor front windows are full height which would allow reasonable surveillance of the ground floor approach to the property. Moreover, the orientation of the dwellings would allow angled views from first floor across the front and side elevations of neighbouring properties. There would also be some activity and movement along the new access road. The amended plans propose a ground floor hallway window next to the carport that would assist with overlooking.

30. The visitor parking and public open spaces would be located between the 5th and 6th dwellings as well as between the 13th and 14th. The adjoining side elevations would have limited visibility over these spaces due to the lack of windows. This could increase the risk of crime and anti-social behaviour. The amended plans propose additional upper floor windows on the roadside elevation of the 6th dwelling and ground floor windows on the canalside elevation of the 5th and 13th dwelling. Although these windows would serve stairwells and utility rooms, they would act as a deterrent as the spaces can be overlooked from within. In addition, the new access road would provide some activity and movement to monitor behaviour.
31. The additional landscaping plans propose hedging and living green screens to separate publicly accessible areas from private gardens at the rear. They would also prevent public access along the canal to the rear of dwellings. The gardens would be open to the canal itself, although this is not uncommon for waterside properties. Additional formal screening here could result in an overly hard edge to the canal, although low level planting could provide a softer barrier.
32. Overall, the development would have an acceptable effect on the risk, fear or perception of crime. Therefore, it would accord with Plan:MK Policies D1(4) and EH7(8) which seek to maximise the surveillance of the public realm, prevent crime, and create safe residential environments that address the fear and perception of crime.

Biodiversity

33. The Council has acknowledged that condition 8 of the outline permission requires a biodiversity enhancement and management scheme to be approved prior to commencement of the development and implemented before first occupation. Therefore, the absence of information with the reserved matters application could be addressed via the discharge of that condition. Given the lack of green space within the existing site other than boundary vegetation, it seems possible that a biodiversity net gain could be achieved.
34. Thus, subject to details to be approved via condition, the development would have an acceptable effect on biodiversity and would accord with Plan:MK Policies NE2 and NE3. These policies seek to avoid negative effects on species and habitats and achieve biodiversity enhancements. The development would also comply with NPPF paragraph 180(d) which seeks to improve biodiversity.

Flood risk

35. The Council has also acknowledged that condition 5 of the outline permission requires a detailed design and plan for a foul and surface water discharge

scheme to be approved prior to commencement of the development and implemented as approved. Therefore, the absence of information with the reserved matters application could be addressed via the discharge of that condition.

36. The lead local flood authority (LLFA) has identified concerns regarding the proximity of the dwellings to the canal. Plan:MK Policy FR3 requires all new development to be set back at least 9m from ordinary watercourses which cannot be achieved here. The LLFA note that the canal is not an ordinary watercourse but they state that the 9m buffer is still required. Given that canals are not subject to the same changes in water levels as rivers are, it is not clear why the same requirement applies. In the absence of any justification, I am satisfied that there would be no conflict with the policy.
37. In conclusion, subject to details to be approved via condition, the development would have an acceptable effect on flood risk and would accord with Plan:MK Policies FR1 and FR2 which seek to manage flood risk and provide suitable drainage systems. The development would also comply with NPPF paragraph 167 which seeks to avoid increasing flood risk elsewhere.

Carbon offsetting

38. Plan:MK Policy SC1(K) requires developments of 11 or more dwellings to provide a financial contribution towards the Council's carbon offset fund to enable residual carbon emissions to be offset by other local initiatives. The amount of contribution is not disputed but the absence of a Section 106 agreement to secure the funds was a reason for refusal.
39. Two executed Section 106 agreements have been provided at the appeal stage, dated 30 March 2021 and 8 July 2021, which seek to provide the financial contribution. The July version was submitted in response to comments made by the Council on the March version to clarify requirements and definitions.
40. Given my overall conclusion on the development, it has not been necessary for me to reach a finding on the submitted agreements and whether the obligations meet the 3 tests in NPPF paragraph 57. Nevertheless, it would seem that the July version would ensure greater clarity and effectiveness. On that basis, the development would have a positive effect on carbon offsetting.

Conclusion

41. The development would result in harm to the significance of designated heritage assets and the character and appearance of the surrounding area, while it has not been demonstrated that the development would have an acceptable effect on the living conditions of future occupants. The benefits of the development are insufficient to outweigh the harm I have identified. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR