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## Appeal Decisions

Hearing held on 21 October 2015

Site visit made on 21 October 2015

**by Karen L Ridge LLB (Hons) MTPL**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 08 December 2015**

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**Appeal Ref: APP/G3110/W/15/3129805 (Appeal A)**  
**Canterbury House, 393 Cowley Road, Oxford OX4 2BS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Paragraph O of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Cantay Estates Limited against the decision of Oxford City Council.
  - The application, Ref. 15/00360/B56 dated 2 February 2015, was refused on 30 March 2015.
  - The prior approval sought is for the change of use from office (Use Class B1) Use to a use falling within Use Class C3 (Dwellinghouse).
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**Appeal Ref: APP/G3110/W/15/3129809 (Appeal B)**  
**Rivera House and Adams House, Reliance Way, Oxford OX4 2FQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Cantay Estates Limited against the decision of Oxford City Council.
  - The application, Ref. 14/03204/OUT, dated 20 November 2014, was refused on 23 April 2015.
  - The development proposed is the removal of existing buildings and the erection of new buildings up to 4 storeys for student accommodation (up to 98 student study rooms) and ancillary facilities.
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**Appeal Ref: APP/G3110/W/15/3130865 (Appeal C)**  
**Land adjoining Canterbury House, 393 Cowley Road, Reliance Way Oxford OX4 2FQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Cantay Estates Limited against the decision of Oxford City Council.
  - The application, Ref. 15/00597/OUT, dated 20 February 2015, was refused on 26 June 2015.
  - The development proposed is the outline application for the erection of a four storey building containing 8 flats, together with car parking, cycle storage and storage of waste and recycling.
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## Decisions

### Appeal A- APP/G3110/W/15/3129805

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Paragraph O of the Town and Country Planning (General Permitted Development)(England) Order 2015 for the change of use from office (Use Class B1) Use to a use falling within Use Class C3 (Dwellinghouse) at Canterbury House, 393 Cowley Road, Oxford OX4 2BS.

### Appeal B- APP/G3110/W/15/3129809

2. The appeal is dismissed.

### Appeal C- APP/G3110/W/15/3130865

3. The appeal is dismissed.

## Procedural Matters

4. The three appeals are brought by the same appellants and relate to land and buildings which overlap to a certain extent. Canterbury House, Rivera House and Adams House are existing buildings grouped on a parcel of land on Cowley Road.

### *Appeal A*

5. Appeal A was made in relation to a refusal to grant prior approval for a change of use from class B1(a) (offices) to 16 dwellings (class C3). The appeal site in appeal A comprises Canterbury House, which fronts onto Cowley Road, and an access strip leading to Reliance Way.
6. Since the date of refusal the Town and Country Planning (General Permitted Development) Order 1995 has been replaced by the Town and Country Planning (General Permitted Development)(England) Order 2015<sup>1</sup> (hereinafter referred to as the GPDO). The new GPDO contain provisions allowing the change of use from B1 use to residential at Schedule 2, Part 3, Paragraph O. These provisions replace those found in the 2013 Order<sup>2</sup> to which both parties have referred. The current provisions, insofar as relevant to this appeal, are unchanged and all of my references are to the 2015 Order (the GPDO).

### *Appeal B*

7. Appeal B is against a refusal to grant outline planning permission to allow the demolition of two blocks of office accommodation at Rivera House and Adams House and the construction of up to 98 student study bedrooms. The appeal site comprises land on which the existing two blocks are situated, together with vacant land to the front of the site onto Cowley Road.
8. The application in appeal B was made in outline form with all matters (access, appearance, landscaping, layout and scale) reserved for future determination.

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<sup>1</sup> Statutory instrument 2015/596

<sup>2</sup> The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013, SI 2013/1101

To the extent that any of the submitted plans contain information relevant to these matters I shall treat the details as being indicative only.

9. The determination in relation to appeal B contained five reasons for refusal. The fifth reason related to a lack of information on sustainable design and on-site renewable energy generation. At the Hearing the Council confirmed that it considered that, if all other matters were acceptable this issue could be dealt with by condition. In the circumstances it did not wish to rely on this reason for refusal. I agree that this would be an appropriate course of action and therefore there is no need for me to examine this matter.

#### *Appeal C*

10. Appeal C is a proposal for the erection of a 4-storey building containing 8 flats. The application in appeal C was made in outline form with some matters (appearance and landscaping) reserved for future determination. To the extent that any of the submitted plans contain information relevant to the two reserved matters I shall treat the details as being indicative only. Matters of access, layout and scale, in relation to appeal C, are before me for consideration.
11. Two separate Unilateral Undertakings have been submitted in appeals B and C respectively. Each undertaking secures a commuted sum payment in relation to off-site affordable housing. I shall return to this matter at the end of my deliberations.

### **Main Issues**

#### *Appeal A*

12. It is agreed by the parties that the lawful use of Canterbury House falls within Class B1(a). The GPDO is permissive of changes of use from class B1 to class C3 provided certain conditions are met. The issue between the parties is whether or not permitted development rights can be exercised in this case given the planning history of the building.

#### *Appeals B and C*

13. The main issues common to appeals B and C are as follows:
- whether or not the proposals are acceptable in terms of their effects upon the supply of employment accommodation;
  - the effect of each of the proposals upon the character and appearance of the surrounding area, including any non-designated heritage assets;
  - whether or not the living conditions of future occupants would be satisfactory having regard to parking and outdoor amenity space.

#### *Appeal B*

14. There is one additional main issue in appeal which is the effect of the proposal on the living conditions of existing residents having regard to noise and disturbance and other matters.

## Reasons- Appeal A

### Planning History

15. The longstanding use of Canterbury House has been for office accommodation and the parties are agreed that the current lawful use falls within Class B1.
16. On 17 March 2010 outline planning permission<sup>3</sup> was granted for the redevelopment of land which included Canterbury House, the land within appeal sites B and C and other adjoining land. The permission was for 2092 square metres of B1 floorspace, the provision of 106 student study bedrooms in 5 blocks (to include the retention of Canterbury House). The approved layout included the new buildings Adams House and Rivera House (referred to as building C and building B), plus one other building (building A on the plan) which has not yet been constructed.
17. The outline planning permission contained a condition which purported to ensure that *'the Class B1 business accommodation was available for 'start-up' and 'move-on' businesses at all times'*.<sup>4</sup> The condition reads as follows:

*'(6) Buildings A, B and C fronting Cowley Road and Glanville Road shall be used for Class B1 Business Use as 'start up' and 'move on' business units, supported by office accommodation located within the retained Canterbury House. Details of the layout of the buildings for their intended purpose shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be constructed strictly in accordance with the approved details and shall be retained as such at all times thereafter unless otherwise agreed in writing beforehand by the Local Planning Authority'*
18. The above planning permission was subsequently varied<sup>5</sup> on 1 June 2012 to enable revisions to the car parking layout. Condition (6) of the original outline planning permission was carried across to the new permission in similar form.
19. Subsequently an application<sup>6</sup> seeking prior approval for the change of use of Adams House, Rivera House and Canterbury House from offices to flats was submitted to, and refused by, the Council. A further application<sup>7</sup> for prior approval was refused on 13 November 2013. Part of the reason for refusal concerned the application of condition (6) restricting prior approval rights. This decision was appealed and allowed on appeal<sup>8</sup>.
20. The Inspector determining the appeal granted approval under the provision of Schedule 2, Part 3, Paragraph J of the previous Order. His conclusions were predicated on a finding that if the Council had intended to remove permitted development rights as existed at the time of its decision, this would need to have been expressly stated.
21. Subsequently the Council challenged the appeal decision in the High Court. The challenge was made on the basis that the Inspector has misdirected

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<sup>3</sup> Oxford City Council reference 09/01201/OUT.

<sup>4</sup> As set out in the REASON following the condition.

<sup>5</sup> Oxford City Council, reference 12/00457/VAR.

<sup>6</sup> Oxford City Council, reference 13/10925/T56

<sup>7</sup> Reference 13/02673/B56

<sup>8</sup> Appeal reference APP/G3110/A/14/2215751

himself in relation to the law and the application of condition (6) and more particularly his conclusion that condition (6) did not operate to exclude permitted development rights under the GPDO as it was then.

22. The Council's claim was based upon the operation of article 3(4) of the previous GPDO. This specifically provided that nothing in the Order permits development contrary to any condition imposed upon a planning permission granted or deemed to be granted under Part III of the Act (otherwise than by the Order itself). The same provisions have been carried forward into article 3(4) of the 2015 GPDO. The Secretary of State consented to judgment and the decision was quashed by consent and the matter remitted for redetermination. The matter was withdrawn before it was listed for redetermination.

*Legislative provisions*

23. Paragraph O of the GPDO confirms that development consisting of a change of use of a building, and any land within its curtilage, from a use falling within Class B1(a) to a use falling within Class C3 is permitted development. Paragraph O.1 sets out conditions, all of which are satisfied by the appeal proposal. If the change of use has been specifically precluded by the imposition of a condition on an earlier grant of planning permission (not granted by permitted development rights) then article 3(4) of the GPDO operates to ensure that permitted development rights do not apply.
24. In this case the appellants contend that condition (6) only identifies approved buildings A, B and C as to be retained for 'start up' and 'move on' business units (and supported by the office accommodation within Canterbury House). It is alleged that the condition does not require Canterbury House itself to be retained for office use. The appellants have submitted Counsel's Opinion in relation to this matter in support of their claims.
25. The issue in this appeal is therefore quite straightforward and turns on the interpretation of condition (6). If the appellants' interpretation is correct then Canterbury House will benefit from permitted development rights in Paragraph O and, in the absence of other objections from the Council, approval should be granted. On the other hand the Council contend that condition (6) effectively restricts the future use of Canterbury House ensuring that it is retained as office accommodation. If this proves to be case then the building will not benefit from the permitted development rights relied upon.
26. Before looking into the interpretation of condition (6) it is necessary to for me to examine the basis on which the previous appeal decision was challenged and the extent to which I am bound by the decision to submit to judgment. The prior approval application which led to the previous appeal decision was made in relation to Adams House, Rivera House and Canterbury House as one appeal site. The conclusions of the Inspector relied upon an interpretation of condition (6) as it applied to all 3 buildings as a single entity or appeal site. The Secretary of State submitted to judgment on the basis that the Inspector had erred in law in misinterpreting the provisions of article 3(4) which effectively precluded the operation of permitted development rights in relation to the appeal site, namely all 3 buildings.

27. The application which led to appeal A was made in relation to Canterbury House only. It is not in dispute that condition (6) effectively precludes the operation of permitted development rights in relation to Adams House and Rivera House. The dispute is whether or not condition (6) operates to place a similar restriction on Canterbury House. This is materially different to the issue in the High Court challenge and as such I do not consider myself bound by that judgment.
28. At the Hearing both parties agreed that the planning permission which had been implemented was the 2012 permission which varied matters. I therefore turn condition (6) on planning permission 12/00457/VAR which is set out below:
- '(6) Commercial buildings A, B and C shall be used for Class B1 Business use as 'start up' and 'move on' business units, supported by office accommodation located within the retained Canterbury House, and shall be retained as such at all times thereafter unless otherwise agreed in writing beforehand by the Local Planning Authority.'*
29. The reason given for imposition of the condition was stated to be *'to avoid doubt and to ensure that the Class B1 Business accommodation is available for 'start up' and 'move on' businesses at all times in accordance with Policies EC7 of the Adopted Oxford Local Plan 2001-2016 and Policies CS28 of the Core Strategy'*.
30. The case-law regarding the interpretation of planning permissions is clearly set out in the papers and has not been disputed by either party. A planning permission which is clear, unambiguous and valid on its face must be interpreted having regard to the contents and wording of the document, including the conditions and the express reasons for imposing the conditions.
31. In this case the most common sense and reasonable reading of condition (6) is that the condition requires buildings A, B and C to be used for Class B1 business use and more particularly for 'start up' and 'move on' businesses. The condition states that these uses will be supported by office accommodation within Canterbury House. The difficulty lies in the interpretation of the third clause. Does the requirement .....*'shall be retained as such at all times thereafter'* apply just to buildings A, B and C or does the requirement also include Canterbury House?
32. I conclude that the requirement *'shall be retained as such at all times thereafter'* applies only to buildings A, B and C and not to Canterbury House. I have come to this conclusion for two reasons. Firstly the placement of two commas in the condition effectively separates the words *'supported by office accommodation located within the retained Canterbury House'* from the first and third clauses of the condition. The second clause is merely a description as to how the relationship between buildings A, B and C and Canterbury House is to work. The most logical consequence of the operation of the two commas is that the third clause relates only to the first clause of the condition.
33. The Council contends that the application site in this permission included buildings A, B and C as well as Canterbury House and this is clear from the description of development. Therefore it is claimed that condition (6) applies

to all parts of the site. This brings me on to the second reason for my conclusion which is to be found in the reason for imposition of the condition.

34. The reason states that the condition has been imposed to ensure that the class B1 business accommodation is available for 'start-up' and 'move on' businesses at all times. It is not expressed to be merely for the retention of the B1 use or the office use of Canterbury House but more particularly for the B1 use which is for 'start up' and 'move on' businesses. Given that these uses were to be accommodated in buildings A, B and C (and not Canterbury House) it follows that the purpose of the condition is to retain this type of use within buildings A, B and C.
35. I conclude that the above analysis represents the most logical interpretation of the planning permission and is an interpretation which the reasonable reader would place upon it. It follows that I conclude that Canterbury House falls outside the ambit of condition (6) and therefore is able to benefit from permitted development rights given that article 3(4) does not apply.
36. Since there are no other objections to the grant of prior approval it follows that the appeal shall be allowed. In granting approval I note that the permitted development right is time limited which means that the residential use of the building approved under the provision will need to commence before 30 May 2016 because any use begun after that date will not be permitted<sup>9</sup>.

## **Reasons- Appeals B and C**

### ***Employment Land Supply (both appeals B and C)***

37. Appeal B would result in the loss of employment space by virtue of the demolition of Rivera House and Adams House. Appeal C would result in the loss of the vacant employment land fronting onto Cowley Road which is subject to an extant planning permission for an office building and the loss of car parking space in connection with Canterbury House.
38. In the past, as a bus depot the wider site provided significant employment opportunities. Redevelopment of the site included the now built student accommodation to the rear which the Council intended would subsidise the development of employment land and help to deliver jobs on the site. This planning permission was implemented to the extent that Adams House and Rivera House were built.
39. The wider site is not allocated in the local plan and no part of either appeal site is designated as a protected key employment site. However both appeal sites have an authorised employment use and policy CS38 of the Oxford Local Plan Cores Strategy 2001-2016 (LP) is relevant. Policy CS38 resists the loss of employment sites (not key employment sites) to other uses. It provides that permission for a change of use will only be granted subject to specified criteria. The relevant criteria in this case are that; no future occupier can be found despite substantial evidence to show that the premises have been marketed for its present use and for alternative employment generating use AND the loss of jobs would not reduce the diversity and availability of job opportunities and it would not result in the loss of small and start-up business premises, unless alternative provision is made in Oxford.

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<sup>9</sup> Planning Practice Guidance paragraph 33.

40. The National Planning Policy Framework (the Framework) seeks to build a strong, competitive economy and stimulate economic growth. Development needs should be planned and catered for. It also confirms that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. It goes on to state that where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.
41. Adams House and Rivera House are modern, three-storey office buildings granted reserved matters approval in August 2011. Adams House was occupied as office accommodation from 25 May 2013 to 7 September 2013 under a licence agreement. Rivera House was occupied for a similar period under a licence from 23 May 2013.
42. Carter Jonas were responsible for marketing both Rivera House and Adams House between 2012 and 2014. Their two reports<sup>10</sup> set out in detail the marketing efforts during this period including the circulation of particulars via mailing lists, use of the website, use of hoardings and publicity in the local press. The site was offered on flexible terms ranging from disposal of the whole site down to letting the property on a floor by floor or part floor basis. Interest was limited, with few viewings.
43. During this period of marketing the terms of occupancy and rates were not advertised to potential occupiers. I accept the evidence of Carter Jonas to the effect that it is common practice when marketing a new build premises not to quote terms or an exact specification. Whilst the premises were marketed without being directed specifically at 'start up' and 'move on' business enterprises, I do not see this as a failure to target a specific sector of the market but as an understandable commercial desire to optimise the chances of securing a tenant. I conclude that this is a reasonable strategy to enable flexibility and not to constrain any future negotiations, whilst optimising the opportunities for occupation.
44. The Council also expressed concerns regarding the finish of the two buildings which were 'core and shell' and essentially needed further fitting out and the poor state of the external circulation areas. Carter Jonas explains that the exact specification of the finish was not included in the marketing materials to enable flexibility because different occupiers may have varying requirements.
45. Again I accept that this is a reasonable approach to the letting of the premises for a number of reasons. Firstly it ensures that money is not wasted by fitting out and then having to re-fit for a particular occupier. Secondly, on my inspection the buildings appear to have services and are water-tight and the amount of fitting out required for various operators would be unlikely to be so time-consuming as to unduly delay occupation. Thirdly, the Council's own *Starter-Unit Review Report* of 2013 refers to an increasing requirement for serviced office accommodation to be in shell condition. Finally there is evidence that the buildings have already been partially occupied for short periods in any event.

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<sup>10</sup> Dated 27 October 2014 and 9 February 2015



46. On my site visit I noted that there is still hoarding around the site giving a somewhat unfinished appearance to the development. However parking is still possible and I consider it likely that the surfacing and landscaping of the car-parking areas would not unduly deter potential occupants since these matters are essentially cosmetic and should not affect operations within the buildings.
47. Irrespective of these attempts to appeal to the widest possible range of occupiers, Carter Jonas reported only '*preliminary and unproductive discussions with potential investors*' and confirmed that quoted terms were not provided to potential occupiers. Their professional opinion is that the sites are not in a popular location given that demand for office floorspace in Oxford is concentrated at the business parks adjacent to the Eastern bypass or within the city centre.
48. A second set of agents, Cluttons, were engaged to market the property in January 2015. Cluttons took a slightly different approach by quoting rents, indicative running costs and rates. They had no greater success than their predecessors. During a five month period there were limited enquiries. Cluttons support the view of Carter Jonas that the site is in a secondary office location given that it is in a predominantly residential/student area. Cluttons point to the feedback which they received from the handful of potential occupiers who made enquiries and by evidence of two other commercial premises in the vicinity which were unsuccessfully marketed by Cluttons<sup>11</sup>.
49. I note that the site is well served by bus services linking Cowley Road to the city centre and other areas and is clearly accessible by other modes of transport. Its sustainable location on the frontage of an arterial road is an attractive factor in terms of the intended employment use. However there are drawbacks as well. The appeal site is located some 2.7 kilometres south-east of the city centre albeit on a main route.
50. It is in a mixed use area in that there are a number of commercial and other uses scattered along this part of the Cowley Road frontage and student accommodation to the rear of the site. Residential properties run along the length of Cowley Road opposite the site and the hinterland of the site, with the exception of the student accommodation, is mainly residential. The overall impression of the area around the site is that it is predominantly residential in character. For these reasons I accept the assertion that the site is in a secondary location for commercial premises.
51. In terms of employment land supply issues the Council's Strategic Employment Land Availability Assessment identifies a deliverable supply of around 69 hectares of employment land. The appellants estimate that this equates to land capable of delivering some 517,000 square metres of floorspace. They contrast this figure with the Council's latest Annual Monitoring Report records which indicate the provision of around 3,800 square metres floorspace per annum over a 5 year period to 2014. I have also seen some evidence regarding the amount of vacant general office floor space provided by Cluttons. There is evidence of a generous amount of general employment floorspace across the district.

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<sup>11</sup> Cluttons letter 12 May 2015.

52. The Council is concerned to protect employment space for fledging businesses as evidenced by the *Starter Unit Review Report* of 2013. The study looked into the amount, type and range of start-up business accommodation within the city. Appendix 1 of the report identifies the occupancy rates of the total 20,800 square metre floorspace for starter-unit accommodation. With a couple of notable exceptions, such as the Music Centre, most of the accommodation is located either within the city centre or district centres or on business parks.
53. It is notable that the appeal site is not included within the floorspace detailed in the above report. At the Hearing it was agreed that Appeal sites B and C comprise some 750 square metres of floorspace.
54. Other factors in support of the proposals: The Council confirms that the provision of student accommodation in this location would be acceptable in principle and it would conform to policy HP5 of the Council's Sites and Housing Plan. In addition CS policy CS2 encourages the use of brownfield sites.
55. The appellants contend that the proposal would make an important contribution to student accommodation which in turn would free up market housing for families which is currently occupied by students.
56. I note that the Council already have a 5 year supply of housing land. I have also heard arguments about housing land supply and evidence about the direction of travel indicated by the, untested, Strategic Housing Market Assessment and the Strategic Housing Land Availability Assessment. However I do not consider that these appeals turn on findings in relation to these matters. I say this because I acknowledge that 5 student bedrooms would release one family home which would make a relatively small (20 homes) indirect contribution to supply, irrespective of whether or not there is a 5 year supply. I accord this matter some weight.
57. Conclusions on employment land use matters: the sites are not allocated as a key protected employment sites but both are an authorised B1 user and should be measured against CS28 which seeks to maintain a balance between employment uses and housing.
58. The existing buildings on site B are vacant and on the evidence I am satisfied that there is little or no demand for their use as offices in this location. In terms of policy CS28 I accept that the proposal in appeal B would not result in the loss of existing jobs although I acknowledge that the potential of the site to offer future office jobs would be lost. However having regard to market signals, the location and type of the accommodation and the availability of other accommodation, I conclude that the proposal would not materially affect the diversity and availability of job opportunities in Oxford. It would not result in a material or unacceptable loss of small or start-up business premises.
59. Site C is somewhat different in that it comprises vacant land. The Council assert that site C has not been separately marketed for use as an employment site catering for start-up and move-on businesses. Such businesses are most unlikely to be interested in a vacant site themselves since they are unlikely to have the means to develop a vacant site. That leaves commercial investors. However given the lack of success in attracting occupiers to Adams House and Rivera House I conclude that the prospect of ploughing capital into developing the adjoining vacant site is highly unlikely to attract any investors. I therefore

conclude that there is no reasonable prospect of appeal site C being used for its intended purpose. I adopt the other conclusions in relation to appeal B set out above.

60. Policy CS28 also requires that alternative, replacement provision of office accommodation is made and that is clearly not the case here in either appeal B or C. To that extent each proposal is contrary to development plan policy. However this requirement is not to be found in national policy which confirms that applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support a sustainable local community.
61. I am satisfied that there is no reasonable prospect of the buildings or land on each of the sites being used for the purposes for which they were intended. In addition the proposals would provide student accommodation in an appropriate location and have the benefit of releasing family housing back into the supply pot. I conclude that the loss of the employment use on sites B and C is acceptable in these circumstances.
62. In coming to the above conclusion I have had regard to other decisions both by the Council and at appeal. The grant of planning permission at Littlemore Park by the Council involved other factors and different policy considerations. My conclusions in relation to the application of policy CS28 are broadly consistent with my colleague who determined the appeal decision in relation to Innovation House<sup>12</sup>.

***Effect on Character and Appearance- Appeals B and C***

63. Saved policies CP1, CP6, CP8, CP9 and CP10 of the Oxford Local Plan (LP) seek, amongst other things, to ensure development has a high standard of design, at an appropriate scale, height and massing which relates to its context. These objectives were carried forward into policy CS18 of the Council's CS and policy HP9 of the Council's Sites and Housing Plan (SHP). The Framework also attaches great importance to the design of the built environment.
64. The immediate context of the site is essentially the block of development on the Cowley Road frontage running between Glanville Road and Reliance Way. The 4-storey block of student accommodation, Mansion Mews, forms the backdrop to the appeal sites, seen in oblique views from along Cowley Road and in more direct views from Glanville Road.
65. Canterbury House is a two-storey, red-brick Victorian building located close to the corner of Cowley Road and Glanville Road. It is associated with the early twentieth century photographer Henry Taunt. Canterbury House forms an integral part to this block of land and any development on the appeal site would need to ensure that Canterbury House was successfully assimilated.
66. Paragraph 135 of the Framework sets out the position in relation to non-designated heritage assets. It confirms that the effect of development upon the significance of such assets should be taken into account and a balanced judgment is required having regard to the scale of harm or loss and the significance of the asset. In this case the significance of the asset is largely

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<sup>12</sup> Reference APP/G3110/A/12/2181878.

derived from its association with Henry Taut. Nevertheless Canterbury House is an attractive example of Victorian architecture. Its handsome façade and elegant proportions provide a sense of character and place to this part of Cowley Road.

67. The slightly wider context is made up of two storey houses running along the opposite side of Cowley Road and on the Cowley Road frontage to the north of Glanville Road. To the south-east of the appeal site, and separated by Reliance Way, is a four-storey development of flats which wrap around Reliance Way. These flats mark a departure from the domestic scale development on Cowley Road to the north-west. I agree with the Council that the appeal site, and the block between Glanville Road and Reliance Way, is a transition site between the larger scale development and the predominantly two-storey development further along. As such the appeal site is effectively a buffer between the large mass of the flats adjacent to Reliance Way and the smaller scale development further north on Cowley Road.
68. It follows that as a transition site I consider that it is important that any buildings on this part of the Cowley Road frontage need to address the change in massing within a relatively short block. This is all the more important because of the existence of Canterbury House sited on the corner of the block. Any development on the site would sit in close proximity to this non-designated heritage asset which makes a positive contribution to the streetscene.
69. The proposals in each of the two appeals are however different and I shall deal with them separately.
70. Appeal B: it is relevant to note that the proposal in appeal B is in outline form with all matters reserved. Therefore whilst there is an indicative scheme before me I shall treat this as an example of what could be achieved. The proposal is for the demolition of the existing building and the erection of new buildings up to four storeys in height, to accommodate up to 98 student study bedrooms. Policy requirements also include the provision of two disabled parking spaces, open space and cycle storage as well as bin enclosure.
71. Whilst the development is in outline form only, I must have regard to the quantum proposed, up to 4 storeys and up to 98 student bedrooms. In addition there are the other elements which are necessary to a scheme of this nature, private amenity space, parking and cycle spaces and must be included on this constrained site.
72. Given the quantum of development proposed I consider that the height and massing of development would be such that it would have an unsatisfactory relationship to Canterbury House. In order to accommodate the amount of development proposed it is apparent that the buildings would have to be ranged around the site frontages and would have to be predominantly four storey. There would be little latitude to step down or step back any building and this would result in massing of built development close to the Reliance Way frontage and wrapping around Canterbury House.
73. Whilst the indicative plan is merely an illustration of what could be achieved, it demonstrates the above points quite neatly. The buildings shown are visible behind and to the side of Canterbury House and would swamp its smaller scale,

- demonstrating little respect for this existing building and detracting from its setting.
74. The development would also fail to make the successful transition between the 4 storey flatted development on the other side of Reliance Way and the domestic scale development a short distance to the north-west. I say this because the four storey development along the frontage would extend the existing run of large bulky buildings which would then abruptly end immediately adjacent to Canterbury House. The relationship between the elegant Canterbury House and the new development would be an awkward and uncomfortable one.
75. The appellants have referred me to the 2010 outline planning permission and the indicative elevation which accompanied it. However I attach only very limited weight to this as a material consideration for a number of reasons. It was an indicative plan only and the appellants accept that it does not represent a fallback position. In addition there seems to be little prospect of the permission being completed.
76. In this case the amount of development to be accommodated on site would result in buildings of such scale and massing, in close proximity to the frontage and to Canterbury House so as to be harmful. In other words there would be little latitude to provide relief from the massing by virtue of stepping buildings down or leaving respectful distances for example between the buildings and Canterbury House and the Cowley Road and Reliance Way frontages.
77. Neither do I accept that the quantum of development on the site proposed would provide a benefit in that it would soften views of the 'timber-clad, monolithic Mansion Mews'. Mansion Mews is not a significant factor in the Cowley Road frontage, it acts as a backdrop and any development in the foreground needs to address the frontage and be respectful to Canterbury House.
78. For all of the above reasons I conclude that the proposal would be harmful to the character and appearance of the area contrary to the design objectives set out in the development plan policies listed above and contrary to national objectives within the Framework.
79. Appeal C: whilst made in outline form, only matters of appearance and landscaping are reserved. This means that matters of layout, scale and access are before me for my approval. Plan PO1B depicts the height and bulk of buildings proposed.
80. Compared to the proposal in appeal B this proposal would involve a smaller quantum of development on a smaller site. To that extent there would not be any change to the development which sits behind Canterbury House. However I still have concerns about the arrangement of the scale and mass of the building and its relationship with Canterbury House and the wider frontage. The building proposed would also have a tall north-eastern flank elevation adjacent to Canterbury House. This would accentuate the sudden change in relative heights of the two adjoining building and would be particularly incongruous when travelling north-east to south-west along Cowley Road.

81. In addition the undercroft parking likely to be necessary due to the constraints of the site, would appear as a gaping hole in the front of the building which would further harm the frontage. I also agree that the outside cycle parking racks in front of the building would be uncharacteristic of this part of the Cowley Road frontage and at odds with the prevailing form of development.
82. For the above reasons I conclude that the proposal scheme in appeal C would also be harmful to the character and appearance of the area contrary to development plan and national policy design objectives.

### ***The Living Conditions of Future Occupiers***

#### ***Appeal B only***

83. SHP policy HP5 requires the design includes some indoor and outdoor communal space for developments of more than 20 bedrooms. The Council expresses concerns about the quality of private outdoor amenity space. As I have previously stated the proposal requires a significant amount of development on a relatively small site. The logical arrangement would be for the private amenity space to be located within the interior of the site. This is the layout depicted upon the illustrative plan.
84. Having regard to the requirements of the scheme I share the Council's concerns regarding the quality of the outdoor space. The likely arrangement would lead to a modest amount of amenity space surrounded by tall buildings on all sides which would materially reduce sunlight and daylight received into the spaces. It would also be close to the car parking bays and cycle parking racks which would further reduce its quality. On the illustrative scheme I am satisfied that the disabled parking bays would be adequate and would be served by sufficient manoeuvring space. However the impetus to satisfy these requirements, as well as to accommodate the quantum of built development necessary to provide up to 98 student bedrooms, would lead to compromises with regard to the provision of open space.
85. Whilst I have noted the location of playing pitches and sports facilities in the vicinity of the site, given the proposed number of students I consider it reasonable to expect a reasonable amount of private amenity space of a suitable standard. On balance I am not satisfied that the scheme would produce private amenity space of sufficient quality to cater for the intended student occupiers. As such it is contrary to SHP policy HP12 which requires good quality living accommodation.

#### ***Appeal C only***

86. The scheme in appeal C would contain 8 flats, 4 would have one bedroom and 4 would have 3 bedrooms. SHP policy HP13 sets out requirements in relation to outdoor space for flats and maisonettes of 3 or more bedrooms there should be a private balcony or terrace or direct access to a private or shared garden in the case of ground floor flats.
87. Two of the 3 bedroom flats would have a 3 metre by 3 metre balcony on the third floor. I note that this satisfies the Council's minimum standards but I have concerns about the arrangement given that the flat has 3 bedrooms and is likely to be more affordable for young families looking to acquire a home. The other two 3-bedroom flats would be served by 2 separate balconies but the

same concerns would apply. I have noted the location of parks within the vicinity of the site but given the nature of the accommodation and the number of bedrooms proposed I agree with the Council that, in these particular circumstances the amenity space would be inadequate.

88. In coming to the above conclusion I have noted that the flats within nos. 125-195 on the eastern side of Reliance Way have no associated private amenity space but I have no information regarding the number of bedrooms within the flats. In this particular instance it is the ability of the balconies to cater for the needs of the likely occupants of the 3 bedroomed flats which I am particularly concerned with.

***The Living Conditions of Existing Occupiers-Appeal B only***

89. LP policies CP19 and CP21 direct that planning permission for development proposals which cause unacceptable noise will be resisted. The closest residential occupiers would be those in the flats on the other side of Reliance Way. I bear in mind the existing student population resident in Mansion Mews. I also bear in mind my decision in appeal A which may result in the introduction of a residential use in Canterbury House.
90. Cowley Road is a main thoroughfare and noise levels in the vicinity of Cowley Road are higher due to the volumes of traffic along the road frontage. Any private amenity space servicing the students' rooms would be in the interior of the site and as such noise levels emanating from this space and audible to the Reliance Way residents would be reduced by virtue of the intervening buildings. Other noise sources such as from students walking to and from the buildings would generally be around the frontage and of shorter duration. For these reasons I conclude that the likely levels of noise and disturbance would not materially harm the living conditions of the occupiers on Reliance Way.
91. The situation in relation to Canterbury House is a different matter entirely. Any building would sit in close proximity to Canterbury House. The floor plans accompanying the prior approval application show living rooms and bedrooms at ground floor and first floor in the rear and side elevations of Canterbury House facing the appeal site B. Given the likely location of amenity space and the likely pathway of students entering and accessing their buildings I conclude that this would bring numbers of students in close proximity to the residential use in Canterbury House. I do not consider that a management strategy could adequately control the behaviour of students outside the building so as to overcome these concerns. It is the proximity of the uses which would cause the harm to living conditions.
92. In conclusion, I am satisfied that there would be sufficient separation between the Reliance Road occupiers and the student accommodation so as not to materially harm the living conditions of these existing residents. However, in the event that the permitted development rights were implemented in Canterbury House, I conclude that the proposal in scheme B would bring students into such close proximity with these residential occupiers (given the quantum of development proposed) that it would cause material harm to their living conditions by way of noise and disturbance.

## **Other Matters**

93. The fourth reason for refusal in appeal B related to the proposal resulting in inadequate car parking provision for Canterbury House which would prejudice its suitability for office accommodation. Firstly I am not satisfied that this is necessarily the case given the amount of office accommodation within the building and the availability of some on-street parking. In any event I have found in favour of the appellants in relation to appeal A which means that the change of use of Canterbury House is approved. Whilst this does not necessarily mean that the change of use will be implemented it is a factor I must bear in mind.

## **Overall Conclusions**

94. In both appeals I have concluded that the loss of employment land would be acceptable.

### ***Appeal B***

95. In appeal B I have concluded that the proposal would cause harm to the character and appearance of the surrounding area, that I could not be satisfied that it would provide private amenity space of sufficient quality given the likely numbers of students and that it would cause harm to the living conditions of future occupiers of Canterbury House in the event that permitted development rights are exercised.
96. In support of the proposal I acknowledge that it would result in the re-use of previously developed land and would provide student accommodation in an appropriate location. It would also make a relatively small contribution to housing supply by releasing some 20 units of family housing back into the supply chain. I have not examined the conformity of the unilateral undertakings against policy requirements and the Community Infrastructure Levy Regulations. However even if I take into account the small financial contribution to off-site affordable housing, when all things are considered I conclude that the harm which I have identified clearly outweighs any benefits of the scheme. The appeal shall be dismissed.

### ***Appeal C***

97. In appeal C I have concluded that the proposal would cause harm to the character and appearance of the surrounding area and that the private amenity space in relation to the 3 bedroom flats would result in unsatisfactory living conditions for future occupiers. In support of the proposal I acknowledge that it would result in the re-use of previously developed land. I have not examined the conformity of the unilateral undertakings against policy requirements and the Community Infrastructure Levy Regulations. However even if I take into account the small financial contribution to off-site affordable housing, when all things are considered I conclude that the harm which I have identified clearly outweighs any benefits of the scheme. The appeal shall be dismissed.

*Karen L Ridge*

INSPECTOR



FOR THE APPELLANT:

Mr Nik Lyzba	JPPC Town Planning Consultancy
Mr Simon Sharp	JPPC
Mr Middleton	Chartered Surveyor, Cluttons

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nik Smith	Town Planning Consultant
Miss Felicity Byrne	Planning Officer, Oxford City Council

INTERESTED PERSONS

Mr Tony Joyce	Vice President, Oxford Civic Society
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**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Notification of hearing date and list of persons notified, submitted by the Council.
- 2 LDF Annual Monitoring Report April 2013-March 2014, submitted by the Council.
- 3 Extracts from Oxford Local Plan 2001-2016, submitted by the Council.
- 4 Copy plan attached to 2009 Outline Planning Permissions, submitted by the Council.
- 5 Set of suggested conditions in relation to appeal B, submitted by the Council.
- 6 Set of suggested conditions in relation to appeal A, submitted by the Council.