

## **Development Control Committee** **2 March 2022**

### **Planning Application DC/20/2115/FUL – 26 Angel Hill, Bury St Edmunds**

**Date registered:** 26 February 2021      **Expiry date:** 4 March 2022

**Case officer:** Dave Beighton      **Recommendation:** Approve application

**Parish:** Bury St Edmunds Town Council      **Ward:** Abbeygate

**Proposal:** Planning Application - a. ground floor retail unit; b. four flats on first and second floor. (Revised submission to DC/18/0068/FUL to allow for amended window details, including for bedroom windows on the rear elevation to be fixed shut, provision of external ventilation grilles, and retention of first floor external maintenance door on the rear elevation). As amended by details received on 22 and 29 November 2021.

**Site:** 26 Angel Hill, Bury St Edmunds, IP33 1UZ

**Applicant:** Mr Julian Thake

#### **Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and associated matters.

#### **Recommendation:**

It is recommended that the committee determine the attached application and associated matters.

#### **CONTACT CASE OFFICER:**

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## **Background:**

**The application is referred to Development Control Committee following consideration by the Delegation Panel. The application was referred to the Delegation Panel following a request from Councillor Jo Rayner as Ward Member (Abbeygate).**

**Planning permission was originally granted in 2019 for a ground floor retail unit and 4 no. first and second floor flats above following the demolition of an existing shop on the site that was destroyed in a fire. Both the shop and the residential units have been completed and are understood to be occupied. Openable windows have been installed to the bedrooms of the flats, contrary to a condition on the original permission requiring them to be fixed shut for noise mitigation purposes. A first-floor external door has also been installed without planning permission.**

**Permission has previously been sought for the retention of the door under application DC/19/2189/VAR, which was refused on 8 April 2020. No appeal was lodged against that refusal.**

**The Town Council raise no objection and the application is recommended for approval.**

## **Proposal:**

1. Planning permission was initially sought for the development as built, seeking to retain the unauthorised openable bedroom windows and first floor door.
2. Extended negotiations have since taken place and amended plans have been secured which show the fixing shut of the rear facing bedroom windows, in order to protect the internal noise environment within the properties. It has not been considered necessary to require the fixing shut of bathroom or living room windows, and neither is it considered necessary to require the fixing shut of the windows on the front elevation of the building facing Angel Hill. The requirement to fix shut the windows arises from the proximity of the site to The One Bull public house, and to ensure that an acceptable noise environment is provided within the bedrooms, and to ensure that The One Bull is not then subject to further restrictions on its operation. There are bedroom windows on the front elevation, but the significant issue from a noise perspective is noise from the adjoining The One Bull public house, which affects the rear facing windows, not these to the front.
3. The consequence of the fixing shut of these windows is that this element of the proposal is now identical to that previously approved, with the difference therefore being the provision of the first floor access door to the flat roofed area.

## **Site details:**

4. The site is located between The One Bull public house and Crescent House on Angel Hill in the Town Centre of Bury St Edmunds and was previously occupied by a cycle sales and repair shop. Both The One Bull and Crescent House are Grade II listed buildings and the properties opposite the site are also listed. The site backs onto the Abbey Gardens, with the adjacent precinct wall being Grade I listed and forming part of the Bury St Edmund's Abbey

Scheduled Monument. The Abbey Gardens is also a Grade II listed Historic Park and Garden, a site of Nature Conservation Interest, and is designated as Recreational Open Space within the local plan. The site is within the Town Centre Conservation Area which is subject to an Article 4 Direction, and is also within the defined Housing Settlement Boundary for Bury St Edmunds.

### Planning history:

<b>Reference</b>	<b>Proposal</b>	<b>Status</b>	<b>Decision date</b>
DC/18/0068/FUL	Planning Application - (i) Ground floor retail unit; (ii) 4 no. flats on first and second floor (following demolition of existing building). As amended by plans and documents received on 14 August 2018 removing garden areas.	Application Granted	11 February 2019
DCON(A)/18/0068	Application to Discharge Conditions 3 (Archaeological investigation), 4 (Archaeological reporting), 5 (Foundation design) and 6 (Piling) of DC/18/0068/FUL.	Application Granted	16 September 2019
DC/19/0739/ADV	Application for Advertisement Consent - Replacement signage - 1no. non-illuminated fascia sign	Application Granted	8 August 2019
DCON(B)/18/0068	Application to Discharge Conditions 11 (Materials) and 13 (Door details) of Planning Permission DC/18/0068/FUL.	Application Granted	16 September 2019
DC/19/2189/VAR	Planning Application - Variation of Conditions 2 and 9 of Planning Permission DC/18/0068/FUL (for a ground floor retail unit and 4 no. flats on first and second floor following demolition of existing building) to allow revisions to internal layout of bin store and provision of 1 no. external door at first	Application Refused	8 April 2020

	floor level for maintenance use only.		
DCON(A)/19/0739	Application to Discharge Condition 3 (Submission of material samples) of DC/19/0739/ADV	Application Granted	12 August 2020

**Consultations:**

5. The application has been subject to a reconsultation following the receipt of amended plans that detailed the fixing shut of the windows. Where subsequent responses have been received from the same consultee this is indicated below.

6. Town Council  
No objection based on information received subject to Conservation Area issues and Article 4 issues.

The Town Council restated these comments in relation to the revision consultation.

7. Public Health and Housing  
The concerns originally raised regarding the potential adverse impact from noise of existing established sources, particularly as those noise sources are more likely to occur late at night, remains. The original recommendations to have those bedrooms that are more likely to be affected, designed with fixed windows and other forms of ventilation provided still stand.

However it is vital that in such circumstances the dwellings can be shown to comply with Approved Document F of the building regulations, to ensure these rooms are adequately ventilated. It is not suitable to have background ventilators only as the source of fresh air. They will need to place some mechanical system into the dwellings and these can be acoustically treated and designed so as not to allow noise from the external into the rooms or for there to be any mechanical plant noise likely to disturb the residents inside when it is being used or for impacts externally, for other neighbouring occupiers. We assume that fire precautions with fixed windows were considered as appropriate at application stage, if this is not the case this must be considered to ensure adequate means of escape.

Revised Comments – 30 December 2021 - It is noted that provision for mechanical ventilation has been made for the dwellings as per our recommendations on the 7th of April 2021. I recommend that prior to occupation, written confirmation that the mechanical ventilation units have been acoustically treated and designed so as not to allow noise from the external into the rooms or for there to be any mechanical plant noise likely to disturb the residents inside when it is being used or for impacts externally, for other neighbouring occupiers be submitted for approval to the planning authority.

8. Conservation Officer  
This application includes the retention of opening windows for ventilation. This would create conflict with the neighbouring pub due to noise, which is why fixed windows were originally approved. The retro-fitting of acoustic trickle

vents may be an acceptable solution and I would have no objection to these being fitted.

A new door has been installed to enable access to the flat roofed section of the building and is located very close to the rooflight of the pub. This arrangement was previously refused permission because of the adverse impact access to the roof area would have on the amenity of the neighbouring property. Unless the door can be properly secured and its use limited strictly for maintenance purposes to avoid any adverse impact to overcome these concerns, I would not support the retention of this door.

The original development was designed to take account of the pub use of the neighbouring listed building so the two could comfortably co-exist. This continues to be necessary and I would not support changes which could potentially adversely affect the viability of the listed building.

Revised Comments – 16 December 2021

This application is for the provision of windows which are fixed shut and the installation of ventilation grilles on the rear elevation, together with the retention of the maintenance door on the first floor. The window details have also been amended.

The window details submitted are diagrammatic and do not provide a sufficient level of detail as required by the condition on the planning approval. In particular, the depth of the external meeting rail and beading/putty profile are not provided. Drawn details of the new windows, as specified by the condition, are therefore required.

I have no objection to the other aspects of the application, providing access to the flat roofed area can be successfully prevented.

Further Comments – 12 January 2022

Thank you for your message and photos of the windows installed in the flats above Cycle King. I have also been and looked at them and confirm that they are acceptable.

9. Historic England  
No comments.

Revised Consultation – 9 December 2021

Thank you for your letter of 7 December 2021 regarding further information on the above application for planning permission. On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

It is not necessary for us to be consulted on this application again, unless there are material changes to the proposals. However, if you would like detailed advice from us, please contact us to explain your request.

10. Environment & Transport – Highways

No comments regarding the window and door revisions being sought. Reference is made to revising the bin storage condition however the nature of the change is unclear. It is important that bin storage is provided as it reduces the prospect of bins being stored on the highway. This facility should be available before first occupation.

11. Suffolk Fire and Rescue Service

Advisory comments provided regarding access and firefighting facilities. No additional water supply for firefighting purposes is required in respect of this planning application. Recommend consideration is given to provision of automatic fire sprinkler system.

12. Environment Team

No comments.

13. Strategy and Enabling Officer, Housing

No comments.

14. Waste Management Operations Manager

No comments.

**Representations:**

15. A letter of objection has been received from Evolution Planning on behalf of the One Bull public house, making the following summarised comments:

- Acoustic safeguards are essential as the One Bull is a large and busy pub with a licence to operate into the early morning and a licence to hold live music events. Noise from pub will disturb flats and appropriate mitigation is needed.
- Securing the roof and bin store is important to stop residents accessing the roof and using it as a recreation space, which has already occurred. Use of the roof in this way would have an adverse impact in terms of overlooking the roof garden of the One Bull and also an adverse impact on the Abbey Gardens.
- The noise report referred to in the application is inadequate.
- Enclosed bin store is important to stop smells from bins reaching the pub via the nearby rooflight.

16. Ward Councillor – Jo Rayner

Please can I lodge my objection to the most recent application for the cycle king building.

In my opinion nothing has changed since this was considered under the initial application during which access to the roof and opening windows were refused.

There is evidence that the roof area was in fact used during the most recent snow fall when residents were having snowballs fights on the roof. This means the door was not locked and therefore this mitigation is not reliable. The residents of the One Bull have the right to privacy in their home and as such the roof access should continue to be refused. To have built the door after it was not approved and not appealed I believe was not an oversight but an attempt to flout the planning process and should not be rewarded with a retrospective planning application but in fact the original application should be enforced.

The One Bull is an operational pub, with associated pub noise. For many years this local business has operated with no detriment to the community in fact provides benefit to the community as an employer to a number of local people. However residential properties in such close proximity to the pub will inevitably cause friction in the future if mitigations are not put in place now. As such and very sensibly the original planning application takes account of this and ensures the windows should remain closed and positive ventilation to be installed. This is not uncommon or unreasonable.

Given the scale and financial benefit from this development I believe it is reasonable for the developer to be expected to take sensible actions to ensure the new development works in its surroundings and should adhere to the planning application that was granted and not be allowed to apply for retrospective planning for elements that were not approved (but installed anyway) in the initial process.

I am supportive of sensible and sustainable development in the town and I am positive about the improvement this development has made to the street scene but this cannot come at the detriment of existing residents and put businesses at risk. There must be a way for both to work together in harmony and I believe it is to enforce the original planning decision and reject this retrospective application.

**Policy:**

17. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by regulation. The development plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies Document (which had been adopted by both councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.

18. The following policies of the Joint Development Management Policies Document and the St Edmundsbury Core Strategy 2010 & Vision 2031 have been taken into account in the consideration of this application:

Core Strategy Policy CS1 - St Edmundsbury Spatial Strategy

Core Strategy Policy CS2 - Sustainable Development

Core Strategy Policy CS3 - Design and Local Distinctiveness

Core Strategy Policy CS4 - Settlement Hierarchy and Identity

Core Strategy Policy CS5 - Affordable Housing

Core Strategy Policy CS7 - Sustainable Transport

Core Strategy Policy CS9 - Employment and the Local Economy

Core Strategy Policy CS10 - Retail, Leisure, Cultural and Office Provision

Vision Policy BV1 - Presumption in Favour of Sustainable Development

Vision Policy BV2 - Housing Development within Bury St Edmunds

Policy DM1 Presumption in Favour of Sustainable Development

Policy DM2 Creating Places Development Principles and Local Distinctiveness

Policy DM7 Sustainable Design and Construction

Policy DM14 Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards

Policy DM15 Listed Buildings

Policy DM17 Conservation Areas

Policy DM20 Archaeology

Policy DM22 Residential Design

Policy DM35 Proposals for main town centre uses

Policy DM38 Shop Fronts and Advertisements

Policy DM46 Parking Standards

### **Other planning policy:**

#### 19. National Planning Policy Framework (NPPF)

The NPPF was revised in July 2021 and is a material consideration in decision making from the day of its publication. Paragraph 219 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provision of the 2021 NPPF that full weight can be attached to them in the decision making process.

- Planning Practice Guidance
- West Suffolk Shop Front and Advertisement Design Guidance (2015)
- Bury St Edmunds Town Centre Masterplan (2017)
- Bury St Edmunds Town Centre Conservation Area Appraisal and Management Plan (2007)
- Suffolk Guidance for Parking (2019)

## **Officer comment:**

20. The issue to be considered in the determination of the application is:

- Principle of Development

21. The changes to the previously approved scheme sought to be regularised by this application solely concern the windows serving the bedrooms of the flats approved and the bin store area on the first floor of the development including the introduction of an external door in this location. It should be noted that the proposals have been revised to include the fixing shut of the windows to the bedrooms on the rear elevation of the building. This is consistent with the detail previously approved.

### **Non-compliance with condition requiring bedroom windows to be fixed shut:**

22. Condition 2 of planning permission DC/18/0068/FUL lists the plans and documents approved under that permission for this mixed-use development. The approved plans include drawing number F982/08 which shows a typical window elevation for the first-floor front and rear windows, with second floor windows being similar with a reduced upper sash. Where windows serve the bedrooms of the flats, condition 10 requires these to be fixed shut with acoustic vents, provided in accordance with details that shall first have been submitted to and approved in writing by the LPA.

23. The condition was imposed to ensure that future residents of the flats would not be subjected to unacceptable levels of noise from the neighbouring public house, which is a Grade II listed building. In the absence of appropriate mitigation, it was determined that the development would not provide an adequate standard of amenity for occupants as a result of noise impacts. This in turn would have the potential to harm the operation of the adjacent established public house as a result of noise complaints. No details were submitted pursuant to condition 10, and the windows installed for the bedrooms of the flats are openable windows. The windows, whilst being acceptable visually, have not been fixed shut and do not have acoustic vents, and the flats are now occupied. The fixing shut of the windows itself is relatively straightforward, but the installation of the acoustic vents to both the affected bedrooms will require works to the exterior of the building to install the necessary pipework, ducting, and vents.

24. Policy DM2 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (February 2015) states that proposals for all development should not adversely affect residential amenity and paragraph 127 of the NPPF requires planning decisions to ensure that developments create places with a high standard of amenity for existing and future users. Policy DM2 further states that proposals should not site sensitive development where its users would be significantly and adversely affected by noise from existing sources unless adequate and appropriate mitigation can be implemented.

25. The site is within a sensitive location in terms of heritage assets, being within the Conservation Area, between The One Bull public house and Crescent House which are both Grade II listed buildings, and with the Abbey Gardens (a Scheduled Monument) and its Grade I listed precinct wall located directly

behind. These designated heritage assets are afforded a high degree of protection under the NPPF and Policies DM15, DM17 and DM20. There is also a statutory duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings and their settings and to preserving or enhancing the character or appearance of conservation areas. Policy DM15 requires developments affecting the setting of a listed building, as is the case here, to have regard to the present and future economic viability or function of the listed building.

26. Application DC/18/0068/FUL was accompanied by a Noise Assessment to evaluate whether future occupiers of the flats would be exposed to unacceptable levels of noise from the pub, which in turn could foreseeably lead to complaints that may as a direct consequence affect the operation of this established business. This was a key point in terms of ensuring that the listed pub remains in its optimal viable use as a designated heritage asset. The Noise Assessment and supplementary information provided was the subject of extensive discussions between officers and Public Health and Housing officers as the Council's technical advisors on noise matters.
27. Officers noted that the assessments submitted assumed the windows and rooflight of the neighbouring pub would be closed. Restrictions cannot however be placed upon The One Bull via an application on this site regarding the opening of its windows and rooflights. Officers therefore held further discussions with Public Health and Housing to clarify their position based on a 'worst case' scenario. These discussions confirmed the following:
- The calculations based on noise from the pub going through the pub walls and through the proposed flat walls indicated that the predicted noise levels in the flats would be acceptable.
  - The calculations based on the windows at the front of the pub being closed, the rooflight being closed, and the flat windows being closed with trickle vents open indicated that the predicted noise levels in the flats would be acceptable.
  - The calculations based on the above scenario but with the pub's rooflight open indicated that whilst the noise levels in the flats would increase, they would remain at an acceptable level.
  - In the event that the pub windows and rooflight are closed but the proposed flat windows are open, the noise levels in the flats became borderline acceptable (25-35 dB LAeq).
  - If the pub windows and the flat windows were both open, the noise levels in the flats were likely to be unacceptable.
28. Following on from the above, it was agreed with the agent that the bedroom windows to the proposed flats were to be fixed shut with acoustic vents provided to ensure that the noise levels within the flats would be at an acceptable level. It was highlighted to the agent at that time that this would need to be taken into account by the developer when subsequently seeking approval for the development under the Building Regulations. Officers' discussions with the Council's Building Control Team indicated that there was no reason why the scheme could not be designed to comply with the Building Regulations whilst having some fixed shut windows. Building Control officers advised that a mechanical ventilation system may be required and the means of fire escape would need to be appropriately designed, but this was not anticipated to be an issue that would preclude the development being successfully delivered.

29. The Public Health and Housing Team has been consulted on this current application, which originally sought to retain the openable bedroom windows, and have again reviewed the Noise Assessments previously provided under application DC/18/0068/FUL. The concerns originally raised regarding the potential adverse impact from noise from the adjacent The One Bull public house remain, particularly as the noise sources are more likely to occur late at night. The Public Health and Housing Team's original recommendation to have the bedrooms designed with fixed windows and other forms of ventilation provided still therefore stands. As outlined above, this application cannot impose restrictions on the opening of windows and other openings at the adjacent premises, and if the windows to the public house and to the adjacent flats are both open the noise levels in the flats are likely to be at an unacceptable level. In addition to the harm this would cause to the amenities of the residents of the flats, this noise issue would foreseeably in turn also adversely impact the operation of the public house as a result of noise complaints and a subsequent restriction on business operations through Environmental protection legislation.
30. Following extended further negotiation the applicant has provided details of the windows that are now proposed to be installed, including detailing those which are to be fixed shut and how otherwise the bedrooms will be mechanically ventilated. The method of mechanical ventilation involves a modest external grille / vent to the affected room. These are small in scale and are not visually prominent within the otherwise generously scaled rear elevation. They are considered acceptable therefore having regard to Policies DM2 and DM17 relating to their effect on the character of the building, and the wider area, including the Conservation Area, as well as their effects upon the setting of nearby Listed Buildings.
31. The Public Health and Housing Team highlight the importance of ensuring the bedrooms of the flats are adequately ventilated by other means, as required under the Building Regulations. This will be achieved by the provision of a mechanical system. Systems can be acoustically treated and designed so as not to allow noise from the external source into the rooms, or for there to be any mechanical plant noise likely to disturb the residents inside when it is being used, or external impacts for neighbouring occupiers.
32. As such, officers are satisfied that there are readily achievable solutions available to provide the residents of the flats with appropriately ventilated accommodation that will not be subjected to unacceptable noise impacts from events at the adjacent established public house. This is subject to the imposition of a condition that requires the implementation of the fixing shut and the mechanical ventilation within a period of three months following the grant of planning permission.

**Changes to the bin store including provision of first-floor external door:**

33. The bin store is located on the first floor of the building and serves all four flats, three of which are on the first floor and the fourth being on the second floor. The bin store itself has been reduced in size, with a corridor introduced between the store and the communal hallway for the flats. An external door has also been added between the communal corridor and the flat roof to the rear of the flats to provide access to the roof for maintenance.

34. The overall footprint of the building is unchanged as a result of the proposals and the door will not be visible within the street scene. The reduced bin store can also accommodate the same number of bins as before. As such the main consideration is the impact of the changes made on the amenities of neighbouring properties.
35. Policy DM2 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (February 2015) states that proposals for all development should not adversely affect the amenities of adjacent areas. The One Bull public house to the immediate east of the site has associated residential accommodation at first floor level including a private roof garden, and this is the sole domestic property affected by the proposals. Adjacent to the site to the west is Crescent House, the nearest part of which (No. 27 Angel Hill) has a restaurant at ground floor level. The first and second floors directly above the restaurant are understood to be commercial offices.
36. The scheme originally proposed under application DC/18/0068/FUL for the development included a roof garden at first floor level for the proposed flats. This raised a number of concerns including the impact on the adjacent flat at the One Bull. The proposed roof garden was at a higher level relative to the neighbouring roof garden, resulting in an unacceptable degree of overlooking of this private area. This was subsequently removed from the scheme, as were the associated accesses to the flat roofed area from the proposed flats. A revision was also made to the internal layout of the second floor flat to move the living areas further away from the shared boundary with The One Bull, and a privacy screen was added near the eastern boundary of the site to further reduce overlooking of its garden from the first-floor flats. Following these amendments to the scheme and careful consideration of the impacts upon the neighbouring property, planning permission was granted for the redevelopment of the site.
37. The amendments now proposed introduce an external door on the east elevation of the building at first floor level, in close proximity to the boundary with the neighbouring property and providing access onto the large expanse of flat roof immediately behind the first-floor flats. As outlined above, this is an area that was originally proposed to serve as garden areas to the flats but was omitted due to the materially harmful impact that would arise from its use by residents on The One Bull's private rear garden which sits at a lower level.
38. Given the relationship between the site and the adjacent property outlined above, the potential impact of the door upon the privacy of the neighbouring occupiers has been carefully considered. The door provides access from a communal part of the flats to the large flat roofed area behind the building and adjacent to The One Bull flat. The communal corridor and bin store will be used by all the occupants of the flats on a regular basis. For the reasons outlined above, the use of the flat roofed area for amenity purposes would result in significant harm to the occupants of the neighbouring flat given the lower level of their garden.
39. The Supporting Statement submitted with the application states that the door is required for maintenance purposes and is locked when not in use for such purposes. The door is also marked with a sign reading 'No admittance Authorised personnel only' and it is stated that there is an alarm linked to the

retail unit below. The Statement suggests that access to the flat roof area except for building maintenance purposes can be adequately controlled by condition, with any breach of such reported to the Authority by third parties and acted upon if necessary by the taking of enforcement action.

40.

41. It is accepted at this point that the need for some form of roof access is, on reflection, reasonable, noting the location of the roof and the lack of ready access otherwise due to surrounding buildings and the Abbey Gardens wall. It is also accepted that access through the roof itself from the ground floor unit would be problematic. It would affect the space internally and might otherwise be difficult to access through what would in effect be a loft type access arrangement.

42. Flat roofs by their very nature do from time to time require maintenance, not least in a location such as this to clear leaves, for example from nearby trees in the Abbey Gardens, or to repair the roof covering and guttering. Without the ability to access this readily from a door such as this then obvious access challenges do otherwise arise. So, very much as a matter of balance, the officer view is that approval, albeit with carefully worded conditions is appropriate.

43. It is also material to the consideration of this proposal that the previously approved and currently implemented permission does not currently include any restriction of the use of the flat roof. Whilst it is not formal garden area, and whilst no formal resident access exists, there are openable first floor rear windows within the bathroom and living room that would, in theory, and if a resident was so inclined, allow someone to access the flat roofed area through that window. Doing so, and thereafter using the flat roof, for example for leisure purposes, would not technically be a breach of planning control. It is noted and accepted that the likelihood of such happening is perhaps at the lower end of the scale given the awkwardness of using a window otherwise to access this space, but the potential for such use does nonetheless exist. This current application therefore does in theory offer an opportunity for further consideration to be given to restricting this possibility, and that is a factor that further weighs in support.

44. Accepting the need therefore for some form of access, consideration must be given to how roof access could otherwise be controlled, and in further discussions with Legal and Enforcement officers it is considered that a condition as so drafted below would be reasonable and enforceable. Any such breach would be readily apparent noting the strict requirement for any presence on the roof to be part of a maintenance function. The remedy would be a Breach of Condition Notice, against which there is no right of appeal. As explained, this would also have the added benefit of preventing access to the roof otherwise through openable windows, which however unlikely, is still possible and at present would not be a breach of planning control. On this basis the following condition is recommended:

*There shall be no access to the first floor flat roof area, apart from for the purposes of essential building maintenance.*

*Reason: To prevent overlooking of and nuisance to the adjoining property, in accordance with policy DM2.*

45. Officers have carefully considered whether any additional controls could be imposed, for example, requiring the door to be locked, or otherwise linked to an alarm, but the imposition of such controls may be difficult to enforce and monitor, and noting in any event that it is the presence of people on the flat roof area that needs to be controlled, not the opening or otherwise of the door.
46. Officers' considered view therefore, reflecting on the current position plus the benefits of restricting access to the roof through the openable windows, is that to maintain a refusal on the grounds of adverse amenity impact from the door would be very unlikely to withstand the scrutiny of an appeal.
47. With the issue of the windows now otherwise having been addressed officers are satisfied that approval is reasonable.

**Consideration of Conditions:**

48. Noting that this is a resubmission of the entire application, but also respecting that the works have largely been completed, consideration must be given to the need, or not, for conditions to be re-imposed.
49. The proposal has elements of operational development that have not yet been implemented, and it is therefore necessary to reimpose the three year time period for the implementation of these.
50. Applications have been made, and approved, for the discharge of the following conditions on the original DC/18/0068/FUL permission –
- 3 (Archaeological investigation),
  - 4 (Archaeological reporting),
  - 5 (Foundation design)
  - 6 (Piling) of DC/18/0068/FUL
  - 11 (Materials)
  - 13 (Door details)
51. Details of the archaeological investigation and the post investigation reporting have been satisfactorily submitted, and no further conditional control in this regard is needed. Likewise, the details of the foundation design and piling details have been agreed, and the building has been completed.
52. Furthermore, details of the external materials and the details of external door have been submitted and agreed and have been implemented. The requirement to meet the enhanced water efficiency measures within the Building Regulations will have been complied with at the construction stage.
53. Conditional control of these matter is therefore no longer needed.
54. Further conditions related to the potential for contamination to be found at the site, and in relation to the hours of construction. Noting the circumstances of this site no conditions in either regard are therefore required.
55. Conditional control was previously required to ensure the provision of bin storage areas for both the residential and the retail elements of the site, as well as in relation to cycle storage and the provision of the first floor glazed

screen to protect the amenity of the neighbouring garden areas. These are reimposed.

56. Finally, as discussed above, conditional control is needed to restrict access to the flat roofed area, and also to ensure that the changes to the windows and the provision of the mechanical ventilation are provided within three months from the date of approval.

### **Conclusion:**

57. The development has introduced noise sensitive development in close proximity to an established Grade II listed public house. The mitigation measures previously secured by condition to ensure that occupants of the flats are not subjected to unacceptable levels of noise, and that the provision of residential accommodation in this location does not adversely affect the present and future economic viability and function of the neighbouring listed pub, are now shown to be provided.

58. The introduction of a door at first floor level noting the benefit of being able to now restrict all access to the roof (albeit respecting that access could now be so restricted even if the door were to be removed), is considered to be reasonable, noting the acknowledged requirement for access to the roof for routine maintenance purposes. The use of a condition is considered a reasonable and effective way to ensure that the amenities of nearby dwellings is adequately protected.

59. With the inclusion of mitigation and a further condition, the proposals are now considered to be compliant with Policy DM2(h), Policy DM14, Policy DM15(i) and paragraph 130 of the NPPF.

### **Recommendation:**

60. It is recommended that planning permission be **APPROVED** subject to the following conditions:

1. The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents (approved plans and documents to be listed).

2140-M-01 P1  
F982/01 A  
F982/03C  
F982/04 C  
F982/08  
F982/10 A  
F982/14 K  
F982/20 B  
MEVDC2  
C/23410/T01

Reason: To define the scope and extent of this permission.

3. The installed cycle storage shown on drawing nos. F982/10 A and F/982/14 K shall be retained thereafter as installed.

Reason: To protect the amenity of the area and to ensure that refuse and recycling bins are not stored on the highway causing obstruction and dangers for other users.

4. Within three months of the date of this permission the rear windows serving the bedrooms of flat 2 and flat 3 shall be fixed shut with acoustic vents provided in accordance with the submitted details. The windows and acoustic vents shall thereafter be retained as so installed. At no time shall the bedroom windows for flat 2 or flat 3 be opened.

Reason: To protect the amenity of future occupants in respect of noise levels.

5. The installed cycle storage shown on drawing nos. F982/10 A and F/982/14 K shall be retained thereafter as installed.

Reason: To ensure that sufficient space for cycle storage is provided and maintained.

6. The ground floor bin storage area for the retail unit shown on drawing F982/14 Revision K shall be provided and thereafter retained.

Reason: In the interests of providing sufficient space for the storage of bins, in the interests of amenity and highway safety.

7. There shall be no occupation of any of the flats hereby permitted unless and until the glazed screen shown on drawings F982/04C and F982/15 M has been provided in accordance with the details shown on these drawings, with a finished height at least one metre taller than the parapet wall between the application site and The One Bull Public House. Thereafter, the screen shall be retained as so installed.

Reason: in the interests of the residential amenities of nearby dwellings in accordance with the provisions of Policy DM2 of the Joint Development Management Policies Local Plan.

8. The dwelling(s) hereby approved shall not be occupied unless and until the requirement for water consumption (110 litres use per person per day) in part G of the Building Regulations has been complied with and evidence of compliance has been obtained.

Reason: To ensure that the proposal meets with the requirements of sustainability, in accordance with policy DM7 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 14 of the National Planning Policy Framework and all relevant Core Strategy Policies. The higher standards for implementation of water efficiency measures set out in the Building Regulations are only activated if they are also a requirement of a planning condition attached to a planning permission.

**Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online [DC/20/2115/FUL](#)