

Appeal Decision

Site visit made on 16 August 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 28th October 2016

Appeal Ref: APP/T0355/W/16/3145589

The Little House, Charters Road, Sunningdale, Ascot SL5 9Q5

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Kebbell Homes Ltd against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/03090, dated 12 August 2015, was refused by notice dated 25 January 2016.
 - The development proposed is the redevelopment of the site to provide 6 x 3 bedroom apartments (alternative scheme to that approved under reference 12/02720).
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Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of the site to provide 6 x 3 bedroom apartments (alternative scheme to that approved under reference 12/02720) at The Little House, Charters Road, Sunningdale, Ascot SL5 9Q5, in accordance with the terms of the application Ref 15/03090, dated 12 August 2015, and subject to the conditions set out in the Schedule to this decision.

Procedural matter and main Issues

2. The site is located within close proximity to the Thames Basin Heath Special Protection Area. Although not forming part of the Council's reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the ecological integrity of the Special Protection Area. In this case a number of mechanisms have been put forward to mitigate any potential adverse effects and for this reason it is necessary to consider this matter as a main issue.
3. The main issues are therefore the effect of the proposal on:
 - the character and appearance of the area; and
 - the Thames Basin Heaths Special Protection Area (TBHSPA).

Reasons

Character and appearance

4. Drawing number FD 15 – 1312 – 53 (Removal Plan) indicates the buildings and trees to be removed. However, by the time of my site visit, all buildings had already been removed.
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5. There is a significant amount of recent planning history for this site, including three previous appeals. Two were considered together in 2013. One was dismissed¹ and one was allowed². The approved scheme (planning permission 12/02720) is for the erection of a building to provide 6 x 3 bedroom apartments together with basement parking. The currently proposed apartment building would be sited as per this approval but would be slightly smaller in footprint and largely in accordance with the prevailing building line in this area. The design appears to be largely the same.
6. However, in the absence of evidence of the scheme being implemented, I have assumed that planning permission reference 12/02720 expired on 12 June 2016 and as such does not represent an extant fallback position. Nevertheless, the relatively recent approval of the scheme at appeal remains a material consideration, albeit with reduced weight.
7. The third appeal³ granted planning permission for two semi-detached buildings (4 dwellings) with garaging and associated amenity space (planning permission reference 14/01846). The approved garaging comprises two detached double garages positioned in front of the approved dwellings largely corresponding in terms of siting with that currently proposed, although designs differ. This represents an extant fall-back position to which I have given substantial weight, not least because unlike the previous scheme, this includes the built mass arising from the 4 semi-detached dwellings and two, double garage blocks.
8. With regard to the residential accommodation, the appellant has produced a plan which demonstrates that in overall terms, planning permission reference 14/01846 for four houses would have greater bulk than that currently proposed. I accept that the pair of semi-detached dwellings are separated by a gap, however, this would be relatively narrow and would only provide limited mitigation in direct facing views. In terms of the detailed design, both include third floor accommodation within the roof form and both schemes have a substantial amount of openings and embellishments such that I do not envisage that there would be a material difference between the two in terms of attention arising to their design and form.
9. Overall therefore, I find the apartment building to be consistent with the character and appearance of the area which is generally that of relatively large scale residential development set back from the road, within spacious and deep plots with mature vegetation.
10. Whilst the proposed garage blocks show a parapet wall detailing which increases its bulk between the top of the doors and the top of the parapet compared to that previously approved, in overall terms this is balanced through the use of a pyramid hip roof rather than a hipped roof which would add more bulk. Furthermore, garages prominently sited in front of the various types of residential buildings in this part of the street scene are part of the character of the area and therefore their inclusion within this scheme would not stand out as a departure from this pattern of development.

¹ Appeal Ref: APP/T0355/A/12/2186964

² Appeal Ref: APP/T0355/A/12/2188923

³ Appeal Ref: APP/T0355/A/14/2226543

11. I do not therefore find there to be a material difference to the combined bulk to that which has already been approved under planning permission 14/01846. This is a material consideration of significant weight.
12. The site is located within the townscape area described as 'Leafy Residential Suburb'. In this regard, I do accept that the extent of surface car parking in combination with the garage blocks would be greater than that previously approved and would result in three spaces immediately adjacent to the south eastern side boundary, thereby precluding any landscaping in this area. However, the plan produced by the appellant demonstrates that the scope for landscaping across the site frontage to a depth equal to the front elevations of the garages would be marginally increased over that approved for planning permission 14/01846, even with the proposed cycle store.
13. Accordingly, I do not find that the scope to reduce the visual impact of the development and to protect the site's contribution to the attractive verdant character of the area would be materially diminished beyond that previously approved and capable of being implemented.
14. This materially differs from the scheme dismissed at appeal in 2013 which included a more prominent and centrally located parking court flanked by larger triple garages, which would have dominated views of the site.
15. I therefore find that the extent of development within the site and its effect on spaciousness would be similar to that previously approved under planning permission 14/01846 and would not result in an overdevelopment of the site.
16. Accordingly, I conclude that the proposal would not be harmful to the character and appearance of the area and would comply with Saved Policies H10, H11, and DG1 of The Royal Borough of Windsor and Maidenhead Local Plan Incorporating Alterations, Adopted June 2003. These seek, amongst other matters, to ensure that new residential development displays high standards of design and is compatible with its surroundings.
17. It has been stated that at the time of the application in 2014 the Ascot, Sunninghill & Sunningdale Neighbourhood Plan 2011 – 2026 (NP) was in its infancy and the weight given to its Policies had yet to be tested. However, the Inspector for the appeal relating to planning permission 14/01846 makes clear that as a recently adopted document, it attracted a significant degree of weight in his decision. Nevertheless, the Inspector found the development to be acceptable in respect of the main issues and thereby in accordance with the relevant policies of the NP. I too have attributed significant weight to this part of the development plan but for the reasons explained I find no conflict with Policies NP/DG1, DG1.3, NPDG2.1 and NP/DG3.3. These seek, amongst other matters, to protect the character and distinctiveness of the area, to retain and enhance the sylvan, leafy nature of the area and require new development to be similar in density, footprint, separation, scale and bulk of the buildings to the surrounding area generally and of neighbouring properties in particular and that parking should be designed so that it fits in with the character of the proposed development.
18. My attention has been drawn to three appeal decisions⁴ where it is stated the importance of the above referenced NP Policies have been supported.

⁴ Appeal References: APP/T0355/W/15/3074181; APP/T0355/W/15/3006407 and APP/T0355/A/14/2229014.

However, in reaching my conclusions, I have attributed significant weight to the appeal decision relating to 14/01846, which is specific to the characteristics and material considerations of the appeal site.

Effect on the SPA

19. The Council's Development Control Panel report states that mitigation towards the TBHSPA, which was established in order to provide protection to the Woodlark, Dartford Warbler and Nightjar species of bird, will need to be secured by way of condition. This condition essentially requires that no development takes place until a scheme for the mitigation of the effects of the development on the SPA has been agreed. It is stated that the scheme shall make provision for the delivery of a Suitable Alternative Natural Greenspace (SANG) and for provision towards Strategic Access Management and Monitoring (SAMM).
20. In this regard, Planning Practice Guidance⁵ makes it clear that negatively worded conditions such as the one proposed should only be used in exceptional circumstances, in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. I do not consider that the appeal proposals for six apartments would fall within this exception.
21. Moreover, I cannot be certain, on the basis of the evidence before me, that the mitigation to be agreed at a later date would ensure that the appeal proposal, along with other plans and projects, would not cause significant harm to the special interest features of the TBHSPA as a site of international nature conservation importance.
22. The appellant however has submitted an agreement pursuant to Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and Section 62 of the Berkshire Act 1986 (the Section 111 Agreement) as well as a Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 to deliver a payment of £42,407 towards the cost of the provision and maintenance of the Allen's Field SANG together with a SAMM payment of £3,618. The provisions of these documents duplicate each other and have been submitted as alternative mechanisms in the event one is found to be deficient in some way.
23. Dealing firstly with the UU, I cannot be certain on the basis of the evidence before me that any SAMMS payment would not be used to fund infrastructure projects and as such would not be subject to the pooling restrictions of Regulation 123 of the Community Infrastructure Levy Regulations 2010. Moreover, neither has any evidence been submitted that confirms that the Allen's Field SANG remains below the five contribution threshold set by the Regulations. In the absence of clarification on this matter I am unable to take the UU into account in my decision.
24. The Section 111 Agreement is however signed by both the Council and the appellant and is bi-lateral in nature. It also includes a chain of covenants securing the contributions and provides the freehold owner's consent to the entry of a restriction on the title of the land preventing transfer until the chain

⁵ Paragraph: 10 Referenced ID: 21a010-20140306

of covenants is in place for the recipient of the transfer. This has the effect of ensuring that the Agreement to pay the above contributions runs with the land.

25. On this basis I am able to conclude that the required mitigation would be properly secured and that the proposals would be unlikely to have a significant effect on the TBHSPA. The agreement therefore has the effect of making the development acceptable in planning terms.

Other matters

26. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up-to-date. However, the policies referred to in the Council's reason for refusal do not amount to policies relevant to the supply of housing and should not therefore be treated as out-of-date for the purposes of this appeal. Nevertheless, paragraph 47 of the Framework anticipates a significant boost to the supply of housing and therefore the provision of six additional units is a matter which weighs in favour of the proposal.
27. Whilst concerns have been expressed regarding the car parking, I agree with the Highway Authority that the provision of 8 surface parking spaces and 4 spaces within two double garages is sufficient for 6 apartments of the size proposed. In my view, there is also sufficient space to accommodate trade or delivery vehicles for a short period of time. I do not therefore find conflict with NP Policy NPT1.1 which requires development proposals to make adequate provision for parking and access.
28. Concern is also expressed regarding highway safety, however, I have no evidence to support such concerns and I note that no objection has been received from the Highway Authority, subject to conditions.
29. Concern has been expressed regarding the protection of existing hedge and trees, cycle parking provision and bin storage and recycling facilities. However, I am satisfied that these are matters which could be resolved by way of condition.
30. With regards to the effect on the living conditions of neighbouring properties, I do not find that there would be any material difference beyond that which has previously been approved.

Conditions

31. I have had regard to the conditions that have been suggested by the Council. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
32. The Planning Practice Guidance advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. However, it is appropriate that matters relating to materials and landscaping, which are necessary to protect the character and appearance of the area, should be approved prior to the commencement of development.

33. With respect to archaeological matters, the site is located within 70m of the Devil's Highway, the line of a Roman road linking London and Silchester and as such there is potential for associated Roman settlements to lie close to the line of the road. I have therefore included a condition requiring a scheme of investigation to be approved and implemented and given timing of such matters this is also required prior to the commencement of development.
34. The Council has suggested conditions requiring details to be agreed prior to commencement of the sustainability measures and the measures to be used in the construction of the building to address the Borough's ageing population. However, I have not been provided with the policy justification for the inclusion of such conditions. I cannot therefore be certain that the conditions would be necessary, precise and relevant to planning having particular regard to the new system of housing standards which commenced on 26 March 2015, following the Written Ministerial Statement of the previous day.
35. I have included a condition to ensure that the proposed protection measures for the protected trees on the site are implemented throughout the duration of the demolition and construction works.
36. Conditions relating to the provision of appropriate bin and recycling storage and the secure cycle parking facilities are necessary to ensure that the development is adequately serviced and provides appropriate facilities.
37. For reasons of highway safety, conditions are necessary in respect of access, parking, garaging, entrance gates and a construction management plan. The latter condition is necessary at pre-commencement stage as it relates to the construction phase. A condition relating to hard surfaces is necessary to reduce the risk of flooding and pollution.
38. Given the separation and boundary screening and the inclusion of kitchen windows in the side elevation, I am not convinced that a condition is necessary to ensure the windows to the bathrooms are obscure glazed. For a number of the conditions I have amended the wording to ensure compliance with the provisions of paragraph 206 of the National Planning Policy Framework.

Conclusion

39. For the reasons given above, and taking into account all other matters raised, I conclude the appeal should be allowed.

Richard S Jones

Inspector

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: FD15 1312-50; FD 15-1312-51; FD 15-1312-52; FD 15-1312-53; FD 15-1312-55 Revision: B; FD 15-1312-100; FD 15-1312-101; FD 15-1312-102; FD 15-1312-103; FD 15-1312-110; FD 15-1312-111; FD 15-1312-112; FD 15-1312-113; FD 15-1312-600; FD 15-1312-700 and FD 15-1312-701.
3. No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
4. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
5. No development shall take place and no trees or hedging shall be removed until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. All hard and soft landscape works shall be carried out in accordance with the approved details and prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
6. No part of the development shall be occupied until a refuse bin storage area and recycling facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. These facilities shall be kept available for use in association with the development at all times.
7. No part of the development shall be occupied until covered and secure cycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.
8. No entrance gates shall be installed unless they are set back a minimum distance of at least five metres from the highway boundary or seven metres from the nearside edge of the carriageway of the adjoining highway and hung so that the gates can only open inwards.

9. No part of the development shall be occupied until vehicle parking spaces have been provided in accordance with the approved drawing. The spaces shall be retained for parking in association with the development.
10. No part of the development shall be occupied until the access has been constructed in accordance with the approved drawing. The access shall thereafter be retained.
11. The garages hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the apartments and for no other purpose.
12. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - I. the parking of vehicles and necessary facilities for site operatives and visitors
 - II. manoeuvring of vehicles (including cranes) within the site; and
 - III. storage of plant and materials used in constructing the development.
13. No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
14. The hard surfaces shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.