

Appeal Decisions

Hearing held on 29 September & 3 November 2016

Site visit made on 3 November 2016

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 04 January 2017

Appeal A Ref: APP/T0355/W/16/3147515

Woodlands Lodge, Heathfield Avenue, Ascot, Windsor and Maidenhead, SL5 0AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Millgate against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/01500, dated 7 May 2015, was refused by notice dated 4 March 2016.
 - The application sought planning permission for erection of 8 apartments plus basement parking, access and landscaping following demolition of the existing dwellings without complying with condition 15 attached to planning permission Ref APP/T0355/A/13/2198655 (LPA Ref 13/00731/FUL), dated 25 March 2014.
 - The condition in dispute is No 15 which states that: *"No part of the development hereby approved shall commence until details of a scheme for widening of Heathfield Avenue to a minimum of 4.8 metres for the first 15 metres from its junction with King's Road and in the vicinity of the proposed access scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the arrangements for securing any necessary powers and/or rights to undertake the works, details of how the works are to be funded and a timetable for implementation. The scheme shall be implemented in accordance with the approved details and timetable".*
 - The reason given for the condition in paragraph 50 of the decision is that: *'....there is the risk of vehicles having to stop on King's Road until an emerging one has completed its turn at the junction, or worse, needing to reverse back into King's Road to allow the emerging vehicle to pass. Widening the first 15m of Heathfield Avenue to 4.8m...would obviate the potential danger and inconvenience from such a situation.'*
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Appeal B Ref: APP/T0355/W/16/3147514

Woodlands Lodge, Heathfield Avenue, Ascot, Windsor and Maidenhead, SL5 0AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Millgate against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/01501, dated 7 May 2015, was refused by notice dated 4 March 2016.
 - The application sought planning permission for erection of 10 apartments plus basement parking, access, and landscaping following demolition of the existing dwellings without complying with a condition attached to planning permission Ref APP/T0355/A/13/2198658 (LPA ref 12/02854/FUL), dated 25 March 2014.
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- The condition in dispute is No 16 which states that: *"No part of the development hereby approved shall commence until details of a scheme for widening of Heathfield Avenue to a minimum of 4.8 metres for the first 15 metres from its junction with King's Road and in the vicinity of the proposed access scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the arrangements for securing any necessary powers and/or rights to undertake the works, details of how the works are to be funded and a timetable for implementation. The scheme shall be implemented in accordance with the approved details and timetable".*
 - The reason given for the condition in paragraph 50 of the decision is that: '....there is the risk of vehicles having to stop on King's Road until an emerging one has completed its turn at the junction, or worse, needing to reverse back into King's Road to allow the emerging vehicle to pass. Widening the first 15m of Heathfield Avenue to 4.8m...would obviate the potential danger and inconvenience from such a situation.'
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for erection of 8 apartments plus basement parking, access and landscaping following demolition of the existing dwellings without complying with condition 15 attached to planning permission Ref APP/T0355/A/13/2198655 (LPA Ref 13/00731/FUL), dated 25 March 2014 at Woodlands Lodge, Heathfield Avenue, Ascot, Windsor and Maidenhead, SL5 0AL in accordance with the application Ref 15/01500, dated 7 May 2015 subject to the conditions in Annex A.

Appeal B

2. The appeal is allowed and planning permission is granted for erection of 10 apartments plus basement parking, access, and landscaping following demolition of the existing dwellings without complying with a condition attached to planning permission Ref APP/T0355/A/13/2198658 (LPA ref 12/02854/FUL), dated 25 March 2014 at Woodlands Lodge, Heathfield Avenue, Ascot, Windsor and Maidenhead, SL5 0AL in accordance with the application Ref 15/01501, dated 7 May 2015 subject to the conditions in Annex B.

Background and Main Issue

3. The appellants gained conditional planning permission for two schemes. In Appeal A condition 15 and in Appeal B condition 16 a scheme for the widening of part of Heathfield Avenue was required to be submitted. The condition was precise stipulating that this should be a widening to a minimum of 4.8m over a distance of 15m from the junction with Kings Road.
4. The appellants now submit that these works cannot be carried out. This follows lengthy discussions with the Council. One reason for this is that the land required for the widening would not be adopted highway land. This point is not disputed by the Council. The condition included arrangements to secure the 'necessary power or rights' to undertake the works. The Council explained that it undertook 'due diligence' but that the 'powers/rights' are not available. This is confirmed by the documentation relating to the discharge of condition¹.
5. The reason for the condition identifies the potential conflict of vehicles at the junction and the need to prevent this in order to ensure that there are not highway safety issues arising. Accordingly the main issue for both appeals is

¹ LPA Ref 14/01863

whether the disputed condition is necessary and reasonable, having regard to highway safety.

Reasons

Appeals A & B

6. The previous appeals and decisions focussed on the movement of vehicles turning into Heathfield Avenue and meeting another coming in the opposite direction. They specifically considered the incidence of a car meeting a 'large vehicle'. This situation could arise for vehicles associated with the existing dwellings using the road. Therefore the correct approach is to consider the impacts of the increase in vehicles that would directly result from the appeal schemes and therefore whether the condition remains necessary. There have been submissions made that the existing junction is 'substandard'. At the hearing the junction was described by the Council as being 'complex'. However, there is no substantive evidence that suggests the junction is in fact substandard. I understand residents consider that the previous inspector's assessment was correct. Nevertheless the appellants have applied to undertake the schemes without compliance with the conditions in question. I have considered the individual circumstances of the current proposals in the light of current national policy and guidance.
7. The crux of the issue is the likelihood of a conflict of vehicles occurring at the junction of Kings Road and Heathfield Avenue and whether there would be resultant highway safety issues. There are a number of substantial properties already on Heathfield Avenue. The Council identify 15. The residents point out that not all of the properties are occupied. Nevertheless, the appeal site is located within a residential environment where there are already a number of movements. In addition the previous decision noted that a direct comparison between the proposed units and the larger existing dwellings would not be appropriate, I have no reason to disagree. Further, the previous appeal decision noted that the low wooden posts along the verge allow pedestrians and cyclists to use it for refuge if required. This remains the case.
8. Heathfield Avenue is described as a private street with variable width. Kings Road is described as a busy non-classified road with a speed limit of 40 mph. The Council set out that trip levels on Kings Road will be high. The appellants do not dispute this but point out that the frequency of movements along Kings Road would be such that vehicles entering or exiting Heathfield Avenue would be able to make the turn into or out of Kings Road.
9. The site currently contains two large dwellings. The appellants submit that the 10 unit scheme would generate 8 vehicles per hour and that this could be reduced by 2 to take account of the existing properties on site. More specifically, they consider that the figures that led to the conditions being imposed are too high. Therefore they consider that a realistic average for the 3 bed flats from the scheme would be 1 vehicle every 20 minutes.
10. The Council relies on the Planning Obligations and Developer Contributions Supplementary Planning Document (SPD) (2014). This suggests that an average residential dwelling (3 bed including flats) would generate 8 trips per day. This is expressed as an additional (net) 45 (8 unit)-61 (10 unit) vehicle trips per day from the appeal scheme over and above the existing situation, which the Council estimate to be about 143 trips per day. Overall the Council submitted that the trips along Kings Road at peak times would be high with a

higher frequency of vehicle movements at the junction across the day if the development were to go ahead.

11. The appellants consider Heathfield Avenue to be 'lightly trafficked'. Furthermore they point out that there are two routes in and out of the road which would split the traffic flow. There is dispute about the use of the different access points to Heathfield Avenue. The Council and residents consider that the use of the Kings Road junction is likely to be greater than Larch Avenue. Even if there would be more use of the Kings Road junction there would be some split in movements. Any split in vehicle movements by future residents making a choice to use the alternative would lead to some reduction in overall frequency of movement at the Kings Road junction.
12. I was also referred to the 'Lynwood' development that is under construction opposite Heathfield Avenue. I was told that eventually this site would have more than one access point. The Council's concerns relate to the impact that these factors have on the movements at the junction. I appreciate that the 'Lynwood' development would add to the complexity of movements at the junction. However, it was agreed at the hearing that the number of 'straight over' movements would be likely to be low and the development would eventually have a second access point. Therefore, whilst I understand that there is a high frequency of movements along Kings Road of which the 'Lynwood' development is part these trips are not directly linked to the appeal scheme.
13. Heathfield Avenue widens at the mouth of the junction. The previous decisions note that *'It is about 4.8m wide immediately adjacent to the junction with Kings Road, but generally in the range 3.65-4.1m and narrowing to a minimum of 3.0m midway along the site frontage'*. A vehicle approaching the junction along Kings Road to turn left or right would have to slow down on approach to enter the Avenue. In doing so from both directions the mouth of the junction would be visible. Heathfield Avenue itself has a straight stretch close to the junction which would allow intervisibility. There are also passing places along the Avenue. I have been provided with an extract from MfS regarding street dimensions. This refers to the design of new streets or the improvement of existing ones. It is clear that carriageway width should be appropriate for the particular context and use of the street. It also illustrates what various carriageway widths can accommodate. Based on this information it I am satisfied that there would not be an issue with two cars meeting.
14. The remaining issue related to the 'large vehicles'. The available survey information is from 2013. This indicates that the amount of HGVs recorded was low. In addition the reported accidents did not involve HGVs. The appellants submit that given the low number of HGVs that would be likely to use the junction they consider that paragraph 6.8.1 of Manual for Streets (MfS) is applicable. In particular that in this case it is not unreasonable to expect that the full width of the carriageway could be used for larger vehicles to manoeuvre.
15. The only baseline for existing frequency provided to me was the Council's estimate of current vehicle movements of about 143 per day, which is more than double the appellants' survey figure. Using the 10 unit scheme the appellants estimate an increase of about 31 trips per (12hr) day at the junction whereas the Council suggest 61. The other focus is the peak hour where the

increase in vehicles would increase the number of turning movements at the junction. Therefore, overall, there is no dispute that the development would increase the number of vehicles using the junction. There is disagreement about whether that increase would lead to highway safety issues.

16. The appellants have demonstrated that the rate of flow on Kings Road could accommodate vehicles turning in and out. The junction is wider at the top of the Avenue. The extract from MfS demonstrates that the current width could accommodate two cars passing. This would remain the case even with an increase in use. The available information suggests that the frequency of HGV traffic relatively infrequent in a typical day. The approaches to the junction would allow drivers to be aware of vehicles exiting. Therefore, it would not be unreasonable, as the appellants suggest, for the full width of the carriageway to be used for a manoeuvre. Drivers also have the option of two ways in and out.
17. Therefore, noting that there would be an increase in vehicle movements on the Avenue, I have had significant regard to the likely frequency of the potential conflict. In addition overall I have no evidence that the appeal proposal would directly increase the number of large vehicles or the instance when such conflict between cars and large vehicles would arise to an unacceptable level that would lead to a severe impact. Therefore the conditions as imposed are not necessary in this case.
18. I therefore conclude that the disputed conditions would not be reasonable or necessary, having regard to highway safety. Therefore the proposals would not be in conflict with saved local plan policy T5 which amongst other things seeks new development that does not compromise highway safety and the Framework which is clear that development should only be prevented on transport grounds where the residual cumulative impacts would be severe.

Other Matters

19. I was provided with information regarding a scheme at Brockenhurst House and a comparison with the appeal site. I have carefully considered this information. However, the unit sizes are not directly comparable. Furthermore, I do not have all the detailed information regarding this scheme. Therefore, I attached only very limited weight to it. I have in any event judged the scheme before me on its individual merits.

Conditions and Conclusion

20. Section 73 allows the decision maker to attach new conditions, to not attach conditions that were previously imposed or to attach modified versions of them. In this case the decision relates to two separate conditions on two separate decisions. In light of this, it is appropriate to review the conditions in their entirety. This is based on the discussion of a comprehensive list of conditions at the Hearing with conditions that the parties agreed were discharged omitted as appropriate. In addition section 73 is not a mechanism to extend time limits. This was discussed at the hearing and a condition attached accordingly.
21. For the above reasons and having regard to all other matters raised I conclude that the appeals should be allowed.

D J Board
INSPECTOR

Annex A – Conditions Appeal A Ref: APP/T0355/W/16/3147515

- 1) The development hereby permitted shall begin not later than 25 March 2017.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12-P748-200C ;12-P748-201C; 12-P748-202; 12-P748-203; 12-P748-204; 12-P748-205; 12-P748-206; 12-P748-207; 12-P748-208; 12-P748-209; 12-P748-210 12-P748-211; 12-P748-212; 12-P748-214; 12-P748-215; 12-P748-LP01A; 12-P748-CP01A; 4417.100; 4417.101; 4417.102; TMC-11089-L A; TMC-11089-S A
- 3) No development shall take place within the site until written scheme for a phased programme of archaeological investigation to determine the archaeological potential and mitigate against any impact that the development might have on surviving deposits has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out as approved.
- 4) Prior to the commencement of any works of demolition or construction a management plan showing how demolition and construction traffic, (including cranes), materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall be implemented as approved for the duration of the works.
- 5) Prior to the commencement of any works of demolition or construction an arboricultural method statement including details of provision for fencing and other relevant protection for the retained trees on or adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall then be implemented in accordance with a timetable to be approved as part of the arboricultural method statement.
- 6) Prior to the commencement of any works of demolition or construction a wildlife survey of the existing ponds shall be submitted to and approved in writing by the Local Planning Authority. The survey shall include details of any mitigation measures including protection during construction, and the approved measures shall then be implemented in accordance with a timetable to be approved as part of the survey report.
- 7) No development shall take place until samples of the materials to be used on the external surfaces of the development 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 and retained as such thereafter.
- 8) No development shall take place until full details of both hard and soft landscape works, boundary treatment, hard surfacing, trees to be retained including measures for their protection in the course of development, measures to contain vehicles within the designated parking and manoeuvring areas and external lighting have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

- 9) All planting, seeding and turfing in the approved details pursuant to condition 8 above shall be carried out in the first planting and seeding season following the substantial completion of the development or occupation of the building, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development or any replacements die, are removed or become seriously damaged or diseased shall be replaced no later than the following planting season with others of similar size and species, unless the Local Planning Authority gives its prior written consent to any variation. All hard landscaping, including boundary treatment, shall be provided before the first occupation of the development.
- 10) No part of the development shall commence until details of how the development will provide for the needs of an ageing population have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the first occupation of the development, and retained as such.
- 11) No development shall take place until evidence that the development will provide on-site renewable energy generation capacity to provide the equivalent of at least 10% on-site energy for the whole development has been submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved details and retained as such thereafter.
- 12) No development shall take place until a drainage strategy based on the principles of a sustainable urban drainage system (SUDS) and including a rainwater harvesting system has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 13) No development shall take place until details of the sustainability measures have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate how the development would be efficient in the use of energy, water and materials in accordance with the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document. The development shall be carried out and subsequently retained in accordance with the approved details.
- 14) No part of the development hereby approved shall commence until details of the access to the site have been submitted to and approved in writing by the Local Planning Authority. The access shall be constructed in accordance with the approved details before any of the apartments hereby approved is first occupied and retained as such thereafter.
- 15) No part of the development shall be commenced until minimum visibility splays of 2.4 x 33m have been provided at the revised access in both directions. The areas within these splays shall be kept free of obstructions to visibility over a height of 0.6 metre above carriageway level.
- 16) No part of the development shall be occupied until vehicle parking and turning spaces and the access ramp to the basement car park have been provided, surfaced and marked out in accordance with the approved plans.

- 17) The parking and turning spaces and the ramp shall thereafter be retained and kept available for parking and manoeuvring of vehicles in association with the development.
- 18) No part of the development shall be occupied until further details of the covered and secure cycle parking facilities have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided in accordance with the approved plans prior to the initial occupation of the flats and shall thereafter be kept available for the parking of cycles in association with the development at all times.
- 19) Any gates to the vehicular access shall be provided only in accordance with further elevational details that have first been submitted to and approved in writing by the Local Planning Authority. The gates shall open away from the highway and be set back a distance of at least five metres from the nearside edge of the carriageway of the adjoining highway, and retained as such.
- 20) No part of the development shall be occupied until further details of a refuse bin storage area and recycling facilities have been provided submitted to and approved in writing by the LPA. These facilities shall be provided in accordance with approved details prior to the initial occupation of the flats. Thereafter, these facilities shall be kept available for use in association with the development at all times.
- 21) The recommendations of the submitted AA Environmental Ltd bat survey and mitigation strategy (dated August 2013, ref. WML-A13.2 (09/12)) shall be fully implemented in the development of the site.
- 22) No part of the development shall be occupied until the privacy screens for the rear balconies shown on the submitted drawings have been installed. The screens shall then be permanently retained.

Annex B - Appeal B Ref: APP/T0355/W/16/3147514

- 1) The development hereby permitted shall begin not later than 25 March 2017.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12-P748-01C; 12-P748-02A; 12-P748-03; 12-P748-04B; 12-P748-05B; 12-P748-06A; 12-P748-07B; 12-P748-08B; 12-P748-09A; 12-P748-10; 12-P748-11C; 12-P748-12A; 12-P748-13B; 12-P748-14B; 12-P748-15; 12-P748-LP01; 4414.001A; 417.002A; 4417.003A; TMC-11089-L; TMC-11089-S;
- 3) All planting, seeding and turfing in the approved details shall be carried out in the first planting and seeding season following the substantial completion of the development or occupation of the building, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development or any replacements die, are removed or become seriously damaged or diseased shall be replaced no later than the following planting season with others of similar size and species, unless the Local Planning Authority gives its prior written consent to any variation. All hard landscaping, including boundary treatment, shall be provided before the first occupation of the development.
- 4) Within 3 months of the completion of the final dwelling a Building Research Establishment (BRE) issued Final Code Certificate confirming that each residential unit built has achieved a Code for Sustainable Homes rating of Code Level 3 or above shall be submitted to the Local Planning Authority.
- 5) No part of the development shall be commenced until minimum visibility splays of 2.4 x 33m have been provided at the revised access in both directions. The areas within these splays shall be kept free of obstructions to visibility over a height of 0.6 metre above carriageway level.
- 6) No part of the development shall be occupied until vehicle parking and turning spaces and the access ramp to the basement car park have been provided, surfaced and marked out in accordance with the approved plans. The parking and turning spaces and the ramp shall thereafter be retained and kept available for parking and manoeuvring of vehicles in association with the development.
- 7) The recommendations of the submitted AA Environmental Ltd bat survey and mitigation strategy (dated August 2013, ref. WML-A13.2 (09/12)) shall be fully implemented in the development of the site.

APPEARANCES

FOR THE APPELLANT:

Nick Jackson	Millgate Homes
Douglas Bond	Woolf Bond Planning
Graham Bellamy	Bellamy Roberts

FOR THE LOCAL PLANNING AUTHORITY:

Claire Pugh	Royal Borough of Windsor and Maidenhead
Chris Saunders	Motion
Calum McGoff	Motion
Councillor David Hilton	Royal Borough of Windsor and Maidenhead

INTERESTED PERSONS:

Peter Swift	Heathland Avenue Residents Association
Peter Stanley	Society for the Protection of Ascot and Environs
Chris Ryder Richardson	Local resident
Jillian Ryder Richardson	Local resident
Penelope Winstanley	Local resident
Mary Sibley	Local resident
Jim Sibley	Local resident
Mr L Kimber	Local resident
Norman Tetchner	Local resident
Julia Tetchner	Local resident
James Foster	Local resident
Marlene Swift	Local resident
Mary Findler	Local resident
Lesley Hall	Local resident
Charles Salkield	Local resident
Rachel Willcock	Local resident
Michael Veail	Local resident
Sonya Lippold	Local resident
John Edge	Local resident
John Palmer	Local resident
Naomi Agius	Newsquest

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement by Society for the Protection of Ascot and Environs dated 29.09.16
- 2 Countsequential surveys at Kings Road/Heathfield Avenue, Sunninghill, Wednesday 16 & Thursday 17 October 2013
- 3 Comparison of Brockenhurst House and the appeal site submitted by Cllr Hilton
- 4 Decisions relating to discharge of conditions on 14/02118 dated 29 August 2014, 14/02950 dated 27 November 2014 and 14/01863.

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1 Deed of variation dated 26 October 2016 for APP/T0355/W/16/3147514
- 2 Deed of variation dated 26 October 2016 for APP/T0355/W/16/3147515