
Appeal Decision

Site visit made on 6 January 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 31 January 2017

Appeal Ref: APP/T0355/W/16/3158792

Part of Former Windsor Ex Services Club 107, St Leonards Road, Windsor, Windsor and Maidenhead SL4 3BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms G Spiero against the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/00695/FULL, is dated 24 February 2016.
 - The development proposed is erection of a two-storey development with roof accommodation comprising five flats and provision of refuse and secure cycle storage facilities.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a two-storey development with roof accommodation comprising five flats and provision of refuse and secure cycle storage facilities at Part of Former Windsor Ex Services Club 107, St Leonards Road, Windsor, Windsor and Maidenhead SL4 3BZ in accordance with the terms of the application, Ref 16/00695/FULL, dated 24 February 2016, subject to the conditions set out in the attached Annex.

Procedural Matter

2. As this appeal relates to a failure of the Council to give notice within the prescribed period of a decision on an application for planning permission, I have treated the Council's appeal statement as being what its reason for refusal would have been. Had it been in a position to determine the application, the Council states that it would have refused planning permission on the following grounds:

The applicant has failed to provide additional rental/freehold information required for the Local Planning Authority to adequately assess whether the rate the unit was being marketed at was reasonable. It has not therefore been demonstrated to the satisfaction of the Local Planning Authority that there is no longer a need for the community facility. As such the proposal fails to comply with Local Plan Policy CF1.

Main Issues

3. The main issues are:
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- i) The effect of the proposed development on the supply of community facilities in the area in terms of whether or not there remains a need for such a facility on the site;
- ii) The planning balance, having regard to housing provision.

Reasons

- 4. The former Ex Services Club that was on the site was re-provided elsewhere pending the implementation of a previous planning permission for the site, Ref 13/00832/FULL, which was for six townhouses and a new services club. However, the club subsequently disbanded and so there remained no specific requirement for the proposed new club. As such, the appellant took the decision to implement that previous permission but without the club element on the end fronting onto St Leonards Road.
- 5. Policy CF1 of the Royal Borough of Windsor and Maidenhead Local Plan (the Local Plan) sets out that the loss of existing community facilities and buildings will not be permitted unless there is no longer a need for them or an acceptable alternative provision is to be made elsewhere.
- 6. Although a private club when in existence, it was nevertheless a community facility in the sense that it provided a leisure and social facility to those members of the community who belonged to it. The Council did not impose any conditions on that previous permission to ensure that the club was built. However, I have received no substantive evidence to indicate that the Council would have had any cause to consider, at that time, that that part of the development, fulfilling the requirements of policy CF1 in terms of retaining the community facility, would be unlikely to be constructed.
- 7. It is clear that marketing has occurred over a significant period of time in respect of seeking a potential occupier for the community use element of the approved scheme, to which I have given some weight. Furthermore, the appellant states that some interest was shown without any take-up, although I do not have any substantive documentary evidence relating to those enquiries and the reasons for them not going through.
- 8. I have also not received conclusive justification for setting the value of rent to the equivalent of £15.00 per square foot other than a comparison with rates for other nearby but different types of properties, making such comparison difficult. Neither have I received any substantive case from the Council to demonstrate that such a rate would not be appropriate, albeit that an independent study was sought, with funding from the appellant which was not forthcoming.
- 9. I acknowledge that without a building in place that might make marketing more difficult in terms of generating interest. However, in light of the clear removal of demand for the use originally intended, as a replacement Ex-Serviceman's club, I consider that it was a reasonable course of action to be wary of building it without any firm interest.
- 10. The evidence is therefore inconclusive as to whether there would be a demand for a community facility on this site, based on the submitted evidence. I have applied some weight to the situation whereby there is no longer a need in respect of the specific occupier it was originally intended for, and that the

appellant has undergone a marketing exercise over a significant period of time without success.

11. Nevertheless, I conclude on this issue that in having regard to policy CF1 of the Local Plan, for the above reasons, I cannot be completely satisfied that there is no longer a need for a community facility on this site.

Other matters

12. I have had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Inner Windsor Conservation Area (the CA) within which the site is located. The CA is characterised by a variety of buildings of varying designs. Those relating to St Leonards Road in the vicinity of, but excluding, the site all have clear frontages onto that road, demonstrated by their high degree of fenestration and architectural detailing. The proposed development, like that previously approved for this part of the site, would provide an appropriate frontage onto that road in terms of the design, scale, level of fenestration and detailing so as to preserve the character and appearance of the CA.
13. The part of the original planning permission that has been built leaves a finished, but large, expanse of blank side wall that fronts onto St Leonards Road. Although set back to some degree from the front building line on that road, it is nevertheless in a prominent location, clearly visible and a dominant feature of the streetscene in that vicinity. Furthermore, it appears in stark contrast to the other nearby buildings fronting that road with their significant frontage fenestration and architectural detailing. The covering of that elevation with either the remainder of the extant permission or that proposed would therefore be a material benefit to the existing streetscene and the CA.
14. Although the approved building could still be built to overcome this, there can be no guarantee. On the other hand, the proposed development would provide an additional opportunity for that end of the building to be completed in a similar manner to originally envisaged, providing a clear frontage onto the street with corresponding detailing and fenestration.
15. I have had regard to the concerns raised by local residents about the scheme making no provision for parking cars off-street, such that cars associated with it would exacerbate existing on-street parking problems. I note that local restrictions are in place in order to control on-street parking including provision for resident permit parking. However, I have not received any substantive information, such as in the form of survey data, to clearly demonstrate that there would be insufficient on-street parking in the area.
16. Furthermore, the proposed dwellings would be in a highly sustainable location in terms of proximity to the full range of services and facilities for everyday needs such as shops, schools, leisure and health facilities, being within a fairly short walk of the town centre and train station. Additionally, from the evidence submitted by the Council, the proposed development would be likely to generate less traffic and parking demand than that of the previous club on the site or that approved but not implemented. The proposals would also include provision for cycle parking which could be secured by condition, and which would be likely to encourage the use of alternative modes of transport to the car.

17. I note that the Highway Authority recommends that a planning obligation is completed to ensure that future occupants would be ineligible from obtaining parking permits, in order not to increase the demand for on street parking. No such planning obligation has been submitted. However, having regard to paragraph 204 of the National Planning Policy Framework (the Framework), in light of the sustainable location, provision for cycle parking, and lack of any substantive evidence to demonstrate that obtaining permits for this small number of dwellings would be likely to reduce the availability of on-street spaces to an unacceptable level, such an obligation would be unnecessary to make the development acceptable in planning terms.

Planning balance

18. The Framework sets out that there should be a presumption in favour of sustainable development and indicates that to achieve that, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
19. It is not disputed that the Council cannot demonstrate a five year supply of deliverable housing sites (5 year HLS). Under paragraph 49 of the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year HLS. Having regard to paragraph 14 of the Framework, this states that the presumption in favour of sustainable development means, where relevant development plan policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. Such policies include those relating to designated heritage assets although in this case I have found that the proposal would at least preserve the character and appearance of the CA.
20. I have found that I cannot be completely satisfied that there is no longer a need for a community facility on this site, which weighs against the proposal. However, I have also applied some weight to the situation whereby there is no longer a need in respect of the specific occupier it was originally intended for, and that the appellant has undergone a marketing exercise, over a significant period of time, in an attempt to attract another community use, without success. That situation therefore lessens the amount of weight against the proposal.
21. Importantly, the proposal would, in light of the lack of a 5 year HLS, provide a fairly small but important boost to the supply of housing in the Borough to which I have applied substantial weight. Furthermore, it would provide a greater opportunity to enhance the existing character and appearance of the CA in terms of adding a St Leonards Road frontage to the part implemented scheme previously granted planning permission on the site. That would be a significant benefit. I have also found it unlikely that there would be any other unacceptable harm in respect of the demand for on-street parking in the area.
22. Therefore, and in also taking account of all other matters raised, there would be no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It would therefore be a sustainable form of development for which

there is a presumption in favour. This is a material consideration which outweighs any conflict with the development plan.

Conditions

23. The Council has suggested eleven conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the Government's Planning Practice Guidance and amended some of the wording and omitted one. The standard time condition is required in this case and for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would also be required.
24. In the interests of the character and appearance of the CA, conditions to secure the following would be necessary: details of all external finishing materials on hard surfaces and on the external surfaces of the building, including windows and doors for which scaled section drawings would also be required; and details of all external rainwater, drainage and ventilation goods.
25. A condition is also suggested to prevent the erection of any means of enclosure on the site. However, I note that the submitted site plan shows provision for 1.2 metre high black steel railings around the site boundary. I consider that these would be an appropriate and unobtrusive feature that would preserve the character and appearance of the CA. Furthermore, the Council, in its submissions, has not identified those proposed railings as being unacceptable. I have therefore amended the suggested condition to secure details of the design of the railings in the interests of the character and appearance of the CA, as well as preventing any other different means of enclosure.
26. To ensure acceptable living conditions for prospective occupiers, a condition to secure details and provision of measures to acoustically insulate habitable rooms against aircraft noise and of ventilation measures would be necessary.
27. In the interests of highway safety and the free flow of traffic, conditions to secure the following would be necessary: the submission and implementation of a management plan to control activity relating to works of demolition or construction; and provision and retention of the proposed refuse and recycling storage area, following the approval of full details of that facility to ensure that it would be fit for purpose. Furthermore, in order to encourage alternative modes of transport to the private car, a condition to ensure the provision and retention of the proposed cycle storage would be required, again following the approval of full details of that facility to ensure that it too would be fit for purpose.
28. The Council's fifth suggested condition relates to sustainability measures in respect of the efficient use of energy, water and materials. In this respect, I have had regard to the Written Ministerial Statement of 25 March 2015 (the WMS). This sets out provision for applying new additional optional Building Regulations (the new national technical standards) in respect of water efficiency and for tighter energy performance standards than those otherwise required by the Building Regulations. The WMS states that where there is an existing plan policy which references the Code for Sustainable Homes, authorities may continue to apply a requirement for a water efficiency standard equivalent to the new national technical standard, or in the case of energy, a standard consistent with the WMS policy, concerning energy performance. In

relation to energy performance the Building Regulations Part L 2013 is already equivalent to the former Code level 3 on energy.

29. In respect of energy performance, the WMS states that policies requiring compliance with energy performance standards that exceed the energy requirements of Building Regulations can be applied until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill 2015. At this point the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Requirements above a Code level 4 equivalent should not be set until the amendment is commenced. In this case, I have not received details of any development plan policy relating to a requirement for measures that exceed those of the Building Regulations, nor is any such policy referred to in the suggested condition. Such a condition would therefore be unnecessary in terms of securing the equivalent to the former Code 3 level on energy and unreasonable in terms of any greater requirements.
30. In respect of water efficiency, the WMS sets out that existing Local Plan policies relating to water efficiency should be interpreted by reference to the nearest equivalent new national technical standard. It also makes it clear that the new national technical standards can only be applied where there is a relevant current local plan policy. In this case, I have not been informed of any development plan policy in respect of this nor again is there any reference to such in the Council's reason for the suggested condition. The suggested condition would therefore be unreasonable in respect of this issue also.

Conclusion

31. For the above reasons, I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR

Annex – Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1489/101 B; 1489/102 C; 1489/103.
3. No development shall take place until samples and/or a specification of all the finishing materials to be used in any hard surfacing on the application site 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/samples.
4. No development shall take place until samples of the materials to be used on the external surfaces of the development and scaled section drawings of the windows and doors, along with details of the materials to be used for the windows and doors, 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.
5. No development shall take place until design details for the proposed site boundary railings, shown on drawing no. 1489/101B, have been submitted to and approved in writing by the Local Planning Authority. The railings shall be installed in accordance with the approved details. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other means of enclosure, other than the boundary railings relating to the first part of this condition, shall be erected on the site.
6. No development shall take place until details of the measures to be taken to acoustically insulate all habitable rooms of the development against aircraft noise, together with details of measures to provide ventilation to habitable rooms, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be carried out and completed before the development is first occupied for residential purposes and retained as such thereafter.
7. 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 plan shall be implemented as approved and maintained for the duration of the works or as otherwise agreed in writing by the Local Planning Authority.
8. Full details of all external rainwater, drainage and ventilation goods shall be submitted to and approved in writing by the Local Planning Authority prior to

their installation. The goods concerned shall be installed in accordance with the approved details.

9. No part of the development shall be occupied until the proposed covered and secure cycle parking facilities have been provided in accordance with full details of those facilities that shall have first been submitted to and approved in writing by the Local Planning Authority. Those facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.
10. No part of the development shall be occupied until the proposed refuse bin and recycling storage area has been provided in accordance with full details that shall have first been submitted to and approved in writing by the Local Planning Authority. That facility shall thereafter be kept available for use in association with the development at all times.