
Appeal Decision

Site visit made on 10 January 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 6th February 2017

Appeal Ref: APP/T0355/W/16/3154153

9 Llanvair Close, Ascot SL5 9HX

- 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 Mr Martin Brebner, Wentworth Homes, against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/0117, dated 11 January 2016, was refused by notice dated 16 May 2016.
 - The development proposed is erection of three detached, two storey dwelling houses and new access driveways following the demolition of 9 Llanvair Close. Revision to application 14/03801.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of three detached, two storey dwelling houses and new access driveways following the demolition of 9 Llanvair Close at 9 Llanvair Close, Ascot SL5 9HX in accordance with the terms of the application, Ref 16/0117, dated 11 January 2016, subject to the condition set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Mr Martin Brebner, Wentworth Homes, against Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate decision.

Procedural matters

3. The applicant 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) to deliver a payment of £20,342 towards the cost of the provision and maintenance of the Allen's Field Suitable Alternative Natural Greenspace (SANG) together with a Strategic Access Management and Monitoring Contribution (SAMM) payment of £2,204, part of the wider mitigation strategy for the Thames Basin Heaths Special Protection Area (TBHSPA). I address these matters below.
4. The appellant has submitted a further revised plan No. DP1258.P.010-D showing a minor revision to the location of the boundary line between plots 2 and 3, locating this line further to the north of plot 2. As this represents a minor amendment to the scheme, it has had the benefit of public consultation,

and no person's interests would be prejudiced by my acceptance of it, I have determined to take it into account in my determination of the appeal.

5. A different Inspector determined an appeal on the same site for three dwellings in October 2015¹. Given the continuity in both proposals, objections and key main issues, I have taken this decision into account as a material consideration of substantial weight in my determination of this case.

Main Issues

6. These are a) the effect of the proposed development on the character and appearance of the area and b) The effect of the proposed development on the living conditions of occupiers of dwellings in Hurstwood, with specific regard to outlook.

Reasons

Local character

7. The appeal site in fact comprises two dwelling plots on the northern side of a curving spur road off Llanvair Drive which, with Woodlands Ride and Coronation Road, encompass a large residential suburban enclave, aptly described in the Council's comprehensive townscape assessment as part of 'The Leafy Residential Suburbs' that characterise much of the borough. Although this is an appropriate moniker for the enclave, it summarises an area of in fact quite considerable variety of architectural and urban form. This in turn reflects the chronology of its development, with some examples of quite grand later C19 and early C20 villas, sub-enclaves of inter-war residential development and phases of post-war development, some recent, as plots and modest areas of the former heath have been identified and approved for development.
8. Thus even within the environs of the appeal site, distinct sub-enclaves can be identified; Llanvair Close itself, the later 'Octagon' at its head, and to the north Hurstwood, a later C20 development along a sinuous main drive with a series of four spurs running off it. Nevertheless, and despite this apparent chronology of development, there is a sense of organic cohesiveness about its character that readily lives-up to its definition in the appraisal.
9. The site itself, on the northern radius of the Close, comprises two dwelling plots, No 11, a substantial rectangular dwelling that will be retained, and No.9, a 'T' shaped dwelling set at an acute angle to the Close, which is to be demolished. The greater plot comprises the garden of No 9 and a element of No 11's. Consistent with the bosky, or leafy character of the area, the combined gardens have a number of mature trees within them supplemented by established shrub planting.

The proposals

10. Although the number of dwellings proposed is the same as in the previous appeal scheme, their individual scale and location, both within their plots and in relation to each other and the site boundaries, has been altered. The driveway approach, notwithstanding alterations in respect of plot 1 to address the previous Inspector's concerns, remains broadly the same: an arterial drive with entrance drives and turning heads off it. The architectural language remains

¹ Appeal Ref: APP/T0355/W/15/3074181.

unchanged, expressing a confident Stockbroker English Revivalism readily found consistent with the houses of the enclave.

Effect on character and appearance

11. Although the previous Inspector took no issue with the principle of the location and layout of the development as a whole, many others have expressed concern over the amended scheme's effect on the wider character of the area. This is therefore an appropriate point to start this consideration. Such concerns are wide ranging, from the principal of a 'Close within a Close' to the precise dimensions of the proposed dwellings in relation to plot size and those adjacent.
12. It is the case that Llanvair Close is at present a single continuous sinuous drive with one single point of ingress and egress. However, it is apparent that this configuration is capable of accommodating later forms of development. The Octagon at the head demonstrates this and there is general acknowledgement this development visually engages with the character of the area without ill-effect. This form of development is not the same a single spur of development as proposed in the case of this appeal. Indeed, these proposals would be unique within the Close itself as a form of development of this type.
13. However, the character of the appeal site is defined by more than just the very narrow parameters of the Close, as the character area defined as 'The Leafy Residential Suburbs' of the Townscape Appraisal readily accepts and identifies. Hurstwood to the north, by common acknowledgement populated by neighbouring properties, is comprised of an arterial drive with as many as four spurs leading off it. This serves to illustrate the organic variety and pattern that characterises the neighbourhood, and thus allows a sufficient degree of freedom to accommodate differing development types. Although lesser in scale, the arrangement proposed, though at variance with its very immediate context, would be broadly consistent with the surrounding area generally and a significant element of neighbouring properties in particular.
14. There is a similar view expressed in respect of plot sizes and the scale of the dwellings proposed within them. It is the case that the revisions to the scheme have resulted in a different relationship here. The realignment of plot 3 away from the northern boundary has necessitated a reduction in the size of the dwellings but also a reconfiguration of the plot sizes. Again, whilst detailed analysis of these ratios in relation to the adjacent plots in Llanvair Close may reveal a sense of plot compression, this is not so when the proposed plots are compared to those of Hurstwood, where the established plot ratios are significantly smaller.
15. This is in my view no 'spurious' comparison, as suggested by others, who argue that the houses of Hurstwood pre-date the Neighbourhood Plan and so should therefore be discounted. To apply such a premise should also surly require the exclusion of comparison with the dwellings in Llanvair Close itself, which also pre-date the plan. Moreover, it cannot be right to assert that the Hurstwood dwellings do not constitute 'neighbouring properties' when the asserted deleterious effect of the proposed development is so forcefully argued in respect of other matters in relation to them.
16. When the character of the area is taken in the round, there is significant variety in proportion of plot ratios and indeed such that modest variations with

sub areas can be accommodated without material harm to the character and appearance of the area. In my professional objective opinion, the proposed dwellings and their plots defined by the latest revision to drawing DP1258.P.010-D can be reasonably held to express a similar density, footprint, scale and bulk of the buildings of the surrounding area generally and those of neighbouring properties. Moreover, given the essentially visually discreet nature of the enclave as perceived from the Close, there would be no material erosion of the spacious character of the area.

17. I now turn to the specific matter of the access to Llanveir Close, the previous area of concern for the Inspector and which continues to be one for the Council. The revised layout provides a wider access drive bordered by footways and grass verge which combine with structural planting and refuse storage on the approach to plot 1. This serves to much more effectively visually integrate the access with the existing arrangement of path and verge on Llanvair Close itself, a character attribute specifically identified in the Townscape appraisal. This also allows a clearer differentiation between the approach and Plot 1, giving greater visual resolution to both.
18. For all of these reasons therefore, I conclude the proposals would be broadly similar in terms of form, density and separation to buildings in the surrounding area. They would therefore avoid the erosion of the spacious character of the area identified as a Leafy Residential Suburb. As such they would accord with policies DG1 DG2 and ENV3 of the made Ascot, Sunninghill and Sunningdale Neighbourhood Plan (ASSNP), which seek collectively to safeguard the specific character and appearance of the area, with policies H11 and DG1 of the Royal Borough of Windsor and Maidenhead Local Plan, which also seek the same objectives, and with paragraph 64 of the National planning Policy Framework, which also anticipates a high level of design in development outcomes.

Effect on living conditions

19. The key concern of the Council here, and the Inspector in the previous case, is the effect the development would have on occupiers of No 47 Hurstwood with respect to outlook, though other residents in Nos 51, 49 and 45 have also expressed concern in this regard.
20. The building line of plot 3 has been drawn back further from the boundary and realigned at an oblique angle, allowing degrees of separation of approximately 9m at the closer western point and approximately 12m at the more distant easterly extent. This also makes provision for a greater degree of structural planting on the boundary between the plot and Nos 47 and 45. However, the flank elevation has been reconfigured and the stepped, graduated model of the previous scheme replaced by a simplified more sheer elevation rising to approximately 6m at the eaves and 9m approximately at the ridge.
21. Although the flank elevation is less modulated than that previously presented, the increased distance, in combination with the higher ground levels of the Hurstwood properties, in conjunction with a programme of enhanced structural planting on the boundary secured through condition, would in my view sufficiently mediate between plot 3 and these properties. Indeed, the degree of mediation achieved would be such that, whilst not eliminating the visual presence of the development, it would reduce its apparency to a degree that would avoid material harm to the outlook of occupiers of Nos 45 and 47 Hurstwood.

22. Moreover, whilst there would remain a degree of filtered inter-visibility between plot 3 and Nos 49 and 51 Hurstwood, particularly from first floor rear bedrooms, this would be at greater distance still and no material harm to outlook would result in respect of these properties. This outcome would therefore also avoid material harm to their living conditions in this regard and so avoid conflict with policy DG2.2 of the ASSNP, which seeks to safeguard the privacy and amenity of adjacent occupiers. It would also avoid conflict with the expectations of the fourth bullet point of paragraph 17 of the Framework, which too seeks to achieve a high standard of amenity for existing occupiers.
23. A condition requiring that the stair window in the flank elevation of plot 3 requiring it to be fixed and obscure glazed would also fully safeguard any concerns in regard to loss of privacy to these properties and I address this below more specifically.

Other matters

24. The Council present no evidence to suggest that the housing land supply position set out in the previous appeal decision has significantly changed. The position therefore remains that the Council is unable currently to demonstrate a five year supply of housing land. Whilst the Framework would suggest this renders the policies relevant to the supply of housing not up to date, the appellant does not suggest any of those policies referred to by the Council in this appeal, which are qualitative rather than expressly restrictive of development, are indeed out of date.
25. Nevertheless, in the face of a shortfall in housing supply, and the clear expectations set out in paragraph 47 of the Framework anticipating a significant boost to such supply, the provision of two additional houses does merit modest weight being afforded to it in the planning balance. Although I have found no harm in respect of the proposals, this provision of two additional houses militates further in support of the scheme being allowed.

Section 111 Agreement

26. The Council advise that the TBHSPA, was established in order to provide protection to the Woodlark, Dartford Warbler and Nightjar species of bird, a number of primary species of ground nesting birds and their habitats that comprise the special interest features of the TBHSPA as a site of international nature conservation importance.
27. The Section 111 Agreement is signed by both the Council and the appellant and is bi-lateral in nature. It also includes a chain of covenants and provides the freehold owner's consent to the entry of a restriction on the title of the land preventing transfer until the chain 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.
28. 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 adverse effect on the TBHSPA. The agreement is also therefore necessary to make the development acceptable in planning terms.

Conditions

29. The appeal being allowed I attach a condition requiring the development be carried out in accordance with the approved plans, in order to assure certainty. I also attach conditions requiring the submission of details of materials used in the construction of the dwellings, details of all new walling, fencing and other means of enclosure, details of both hard and soft landscaping and details of all tree protection measures, all to safeguard the character and appearance of the area. For the same reasons I also attach conditions requiring the safeguarding of trees and hedgerows indicated as being kept on the site and the submission of a management plan for the maintenance of the access drive, verges, footpath and landscaping.
30. I also attach conditions requiring precautionary measure be undertaken to safeguard the presence of bats on the site during demolition and the submission of details of bird and bat boxes on the site, both to safeguard protected species and enhance the biodiversity of the site.
31. Conditions are also attached requiring that the stairwell window in the north facing elevation of plot 3 is permanently fixed shut and is non-openable and fitted with obscure glass, that there be no further windows in the first floor side elevations of any dwelling without the prior written approval of the local planning authority and that prior to commencement of any works, a construction management plan be submitted to and approved by the local planning authority, all in the interests of safeguarding the living conditions of adjacent occupiers both during and after development has taken place.
32. I attach conditions requiring that the proposed access and driveways are made of porous materials and that each dwelling is equipped with a specified water butt, both to mitigate the effects of surface run-off and local surface water management.
33. I also attach two further conditions requiring adherence to the provisions of the submitted Design and Access Statement in respect of water and energy efficiency and the adaptability of the dwellings to accommodate changing living needs, both in the interests of delivering a sustainable form of development.
34. Finally I also attach conditions securing the prior provision of the access drive way, parking provision and turning areas, refuse and recycling storage and requiring the stopping-up of the existing access, all in the interests of highway safety and the appropriate provision of waste management facilities.
35. I have omitted the condition suggested by the Council to secure a scheme of mitigation to safeguard the TBHSPA as this is appropriately facilitated through the submitted section 111 agreement.

(continues over)

Conclusion

36. I have given careful consideration to the representations made in this case and ensured due account has been had to the policies of the ASSNP, which are rightly cited, applied and defended by local residents and the Council. However, I conclude the proposals before me would accord with those policies and those others of the development plan. For the reasons given above therefore, I conclude that the appeal should be allowed.

David Morgan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall be commenced within three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the plans listed below:

DP1258.P.101, version no.: Rev D
DP1258.P.102, version no.: Rev B
DP1258.P.104, version no.: Rev B
DP1258.P.105, version no.: Rev B
DP1258.P103, version no.: Rev C
DP1258.P.011, version no.: n/a
WENT19437-03, version no.: Rev B
DP1258.P.012, version no.: Rev A
DP1258.P.304, version no.: Rev B
DP1258.P.302, version no.: Rev B
DP1258.P.303, version no.: Rev B
DP1258.P.305, version no.: Rev D
DP1258.P.205, version no.: Rev D
DP1258.P.201, version no.: Rev C
DP1258.P.203, version no.: Rev D
DP1258.301, version no.: Rev C
DP1258.P.101, version no.: Rev C
DP1258.P.204, version no.: Rev D
DP1258.P010, version no.: Rev C
WENT19437-11, version no.: n/a
DP1258.P011, version no.: A
DP1258.P.202, version no.: Rev C

- 3) No development shall take place on the external surfaces of the buildings or finished surfaces of the development until samples/details of the

materials to be used on the external surfaces of the building and hard surfacing have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

- 4) In accordance with the advice of the Ecologist report submitted with application 14/03801, the small areas of weatherboarding on the existing dwelling should be sensitively removed by hand only during the bat winter hibernation period and when temperatures are above 5 degrees Centigrade. In the unlikely event that a bat should be found during this procedure, sheltering material should be placed over the bat and the advice of an ecologist should be sought immediately.
- 5) The window to the stairwell in the side (north facing elevation) of plot 3 shall be of a permanently fixed, non-opening design, with the exception of an opening toplight that is a minimum of 1.7m above the finished internal floor level, and fitted with obscure glass and the window shall not be altered without the prior written approval of the Local Planning Authority.
- 6) No further windows shall be inserted at first floor level or above in the side elevations of the dwellings without the prior written approval of the Local Planning Authority.
- 7) The hard surfaces of the access and driveways 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.
- 8) No buildings shall be occupied until details of the siting and design of all new wall, fencing or any other means of enclosure (including any retaining walls) have been submitted to and approved in writing by the Local Planning Authority. Such walls, fencing or other means of enclosure as may be approved shall be erected before first occupation of the development unless the prior written approval of the Local Planning Authority to any variation has been obtained.
- 9) No buildings shall be occupied until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its prior written consent to any variation.
- 10) The erection of fencing for the protection of any retained tree and any other protection specified shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or

materials are brought on to the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently 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 consent of the Local Planning Authority.

- 11) No tree or hedgerow shown to be retained in the approved plans shall be cut down, uprooted or destroyed, nor shall any retained tree be lopped or topped other than in accordance with the approved plans and particulars and without the written approval of the Local Planning Authority, until five years from the date of occupation of the building for its permitted use. Any pruning approved shall be carried out in accordance with British Standard 3998 Tree Work Recommendations. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted in the immediate vicinity and that tree shall be of the size and species, and shall be planted at such time, as specified by the Local Planning Authority.
- 12) 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 may be agreed in writing by the Local Planning Authority.
- 13) No other part of the development shall commence until the access and driveway (including footways and verges) have been constructed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The details shall include details of pedestrian crossings across the verges. The access and driveway shall thereafter be retained.
- 14) No dwelling shall be occupied until full details of the management arrangements for the maintenance of the access drive, verges, footpaths and landscaping areas alongside the access driveway have been submitted to and approved in writing by the Local Planning Authority. The maintenance of these areas shall be carried out in accordance with the approved details, unless otherwise agreed in writing beforehand by the Local Planning Authority.
- 15) No part of the development shall be occupied until vehicle parking and turning space has been provided and surfaced in accordance with a layout that has first been submitted to and approved in writing by the Local Planning Authority. The space approved shall be kept available for parking and turning in association with the development.
- 16) 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.

- 17) The existing access to the site of the development shall be stopped up and abandoned immediately upon the new access being first brought into use. The footways and verge shall be reinstated before the development is first occupied in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.
- 18) The measures set out in Design and Access Statement accompanying the application shall be implemented in accordance with the statement prior to the first occupation of any unit, unless otherwise agreed in writing by the Local Planning Authority prior to the commencement of the development.
- 19) The measures detailed in the applicant's Design and Access Statement, showing how the buildings would be adaptable to the needs of an ageing population, shall be provided in accordance with the submitted details and subsequently retained.
- 20) Prior to the substantial completion of the development a water butt of at least 120L internal capacity shall be installed for each house to intercept rainwater draining from the roof. The water butts shall subsequently be retained.
- 21) The internal garage door in plot 3 shall open into the hallway and away from the parking area.
- 22) Prior to the initial occupation of the dwellings hereby approved full details of the location and design of bird/bat boxes to be installed at the application site, shall be submitted to and approved by the Local Planning Authority. The bird/bat boxes shall be installed and retained in accordance with the approved details.