



Appeal Decision

Hearing held on 11 July 2017

Site visits made on 10 & 11 July 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 2 August 2017

Appeal Ref: APP/T0355/W/16/3165223

The Boatyard, 105 Straight Road, Old Windsor, Windsor SL4 2SE

- 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 Mr S Rye of Simon Rye Pension Fund against Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/04081, is dated 07 December 2015.
 - The development proposed is the demolition of the existing office and flats and the erection of a block of eight residential units with semi-basement parking and landscaping.
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Decision

1. The appeal is dismissed and planning permission for the demolition of the existing office and flats and the erection of a block of eight residential units with semi-basement parking and landscaping is refused.

Preliminary Matters

2. The Council's evidence states that they would have refused the planning application for the following reasons:-
 - The proposed development would constitute inappropriate development within the functional flood plain of the River Thames, increasing the quantum of residential accommodation (more vulnerable development) on land which is designated Flood Zone 3b. Moreover it has not been demonstrated that there are no reasonably available sites within the Borough that are appropriate for the proposed development in areas with a lower probability of flooding, and consequently the Sequential Test is not passed. The proposed development would be in conflict with guidance set out in the National Planning Policy Framework (the Framework) 2012 and with the terms and objectives of Policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 incorporating Alterations adopted June 2003 (LP).
 - The proposed development would be likely to cause damage to and possible loss of trees situated immediately adjoining the site which make a positive and significant contribution to the character of the area, the importance of which have been acknowledged in the placing of Tree Preservation Orders on two specimens. The proposed use by vehicles of the footpath 6, comprising part of the trees' normal root spread, would be likely to cause damage to the trees through fine root compaction and, if hard surfaced, prevention of irrigation. The position of the proposed building would necessitate the trimming of the crowns of the trees, and would likely create pressure for

further cutting back or removal of the trees in the future. Such diminution or loss would be harmful to the pleasant character and appearance of the area, and to the setting of the Thames. The impacts of the proposed development would therefore conflict with advice contained within the Framework and in LP Policies H10, N2, N6 and DG1.

- The proposed development would, by its form, scale and design, and by its close proximity to existing dwelling units to the immediate north of the site, comprise an unacceptable reduction in the outlook from habitable rooms of dwellings in Lime Tree Court, and associated diminution to the degree of privacy currently afforded to this residential property. The proposed development would conflict with advice contained within the Framework 2012 and with the terms and objectives of LP Policy DG1.
 - The scheme does not provide adequate arrangements for access and car parking given the flood risk, public footpath and protected tree constraints relevant to the site. No alternative arrangements for vehicle parking, in the event of flooding, are provided, and in such flooding event the retention of vehicles on the site would be likely to impede the flow of water, increasing flood risk elsewhere, and would add to the danger to persons and property presented by flood waters carrying debris. The proposals for access to the car parking provision for the development would be likely to damage significant and valued trees adjacent to the site and would bring pedestrian users of the public footpath no 6 into conflict with vehicular movements. The proposed development would not therefore meet the requirements of LP Policies DG1, H10, T8 and P4, and would not accord with the advice contained within section 4 of the Framework 2012.
3. The appellant submitted 2 amended plans¹ before the Hearing opened. These plans involve revisions that are of a minor nature and as such I consider that no party would be prejudiced by my consideration of their content. Therefore, I have taken them into account in the determination of this appeal.
 4. The appellant also submitted a number of other documents before and at the Hearing. The Council and third parties had the opportunity to comment on these items during the Hearing. I consider that due to the circumstances of this case that the appellant would not have been in a position to provide these documents with his Statement of Case. Consequently, I have taken them into account in the determination of this appeal.
 5. It was agreed by both parties at the Hearing that the tree protection plan should be renumbered 1249 PL37e for reasons of clarity. It was also agreed by both parties that the additional and further information cited in the Statement of Common Ground's matters of agreement related to a series of emails (Document 10), the bat survey report dated 10 November 2016 and the RMTTree Consultancy report dated 2 November 2014.

Main Issues

6. In light of all of the above the main issues are:-
 - Whether the proposal represents an acceptable form of development having regard to its flood zone location, the provisions of local policy and the National Planning Policy Framework;
 - The effect of the development on the character and appearance of the area including the long term effect on the protected trees.

¹ Plan Nos 1249 PL02-k and 1249 PL30c (Plans 1 and 2)

- The effect on highway safety with regard to potential conflict between vehicle movements and pedestrians and contingency parking arrangements in the event of flooding.
- The effect of the development on the living conditions of nearby occupiers with regard to privacy, outlook, daylight and sunlight.

Reasons

7. The appeal site currently comprises a 2-storey building which is used as offices on the ground floor and a residential flat on the first floor. The rear elevation of the building abuts the Thames Path National Trail (TPNT) which runs along the River Thames. A public footpath runs between the appeal site and the adjacent block of apartments, Lime Tree Court linking Straight Road with the TPNT.

Flood risk

8. Even though there is an existing residential dwelling on the site the proposal would increase this to 8 residential units. Consequently, there would be an increase of people living on the site. The Planning Practice Guidance (PPG) and the Framework indicate that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk by the application of the Sequential Test.
9. LP Policy F1 states that new residential development will not be permitted unless it can be demonstrated that the proposal would not increase the number of people or properties at risk from flooding. This policy is more restrictive than the Framework as it does not include any reference to the sequential approach. As a result in relation to paragraph 215 of the Framework I give it moderate weight.
10. The Council have produced a Strategic Flood Risk Assessment (2017) (SFRA) and an Increased Scope SFRA and Sequential Testing of Sites (2014) document (SFRA 2). However, the emerging Borough Local Plan Submission Version is at an early stage and as such I give it little weight. Consequently, the SFRA and SFRA 2 are not incorporated within the currently adopted development plan.
11. The SFRA, within section 5, defines the functional flood plain (Flood Zone 3b) (FZ 3b) as including land subject to flooding in the 5% annual exceedance probability (AEP) flood event and land where the flow of flood water is not prevented by permanent buildings. This reflects the guidance within the PPG.² The SFRA goes on to define FZ 3b developed, as land subject to flooding in the 5% AEP flood event on which existing permanent building footprints or other solid barriers are located. However, the definition of FZ 3b developed is not supported by policies within the current development plan. Moreover, the proposed scheme would include a basement level with grills that would allow water to flow through and be stored within it. As such the proposed building would not prevent the flow of water.
12. It was agreed by both main parties at the Hearing that the majority of the site is within FZ 3b and that buildings used for residential purposes are defined in the PPG as 'more vulnerable' development. PPG Table 3: Flood risk vulnerability and flood zone 'compatibility' makes it clear that 'more vulnerable' development should not be permitted in FZ 3b. Even if I accept the appellant's argument that the footprint of the existing building, that prevents the flow of water, is not part of the functional floodplain it would still have a high

² Paragraph: 015 Reference ID: 7-015-20140306

- probability of flooding and the majority of the remaining area of the site would still be within FZ 3b. Moreover, a 'more vulnerable' use is only appropriate development in FZ 3a subject to passing the Sequential and Exception Tests.
13. The appeal site was considered as part of the sequential testing of sites within SFRA 2. However, part of the methodology for assessing a potential allocation was that the Council decided to discount sites that would have a net yield of less than 10 dwellings. The appeal site was ranked within the lowest band as it is within FZ 3b and it was discounted due to it being a small site.
 14. The appellant has carried out Sequential and Exception Tests in relation to the proposed development. The conclusion of the Sequential Test is that there are no sequentially preferable sites within the Council's boundaries. However, the parameters of assessing whether a site is reasonably available are tightly drawn. I share the Council's concern that sites identified within its Strategic Housing Land Availability Assessment (SHLAA) to come forward after 2019 have been discounted within the Sequential Test as it states that they would not be available for immediate development.
 15. This includes sites referenced as WMMA0006 and WMMA0029 which are both within FZ 1. Even though the sites are identified as coming forward after 2019 there does not appear to be a valid reason as to why they would not be reasonably available now. Consequently, I consider that there are reasonably available sites at a lower risk of flooding and that the development has failed the Sequential Test. As the development has failed the Sequential Test it is therefore unnecessary to consider whether the Exception Test has been met.
 16. The appellant has drawn my attention to other developments within the Borough that have been granted planning permission or have been built within FZ 3. In relation to Rafts Boathouse, Brocas Street, Eton which was discussed at the Hearing, whilst it may be a similar development to the proposal it would appear that planning permission was granted before the publication of the Framework. As such, it does not represent a direct parallel to the appeal proposal.
 17. The site at 95 Straight Road was considered in detail within SFRA 2 as a potential site for allocation within the emerging plan and a sequential test undertaken as part of a planning application on that site was considered to be passed by the Council. However, the site is within FZ 3a and I do not have the full details of the case before me. As such, I cannot be certain that it is directly comparable to the scheme before me. In any case, I am required to determine this appeal on its individual merits.
 18. Taking into account all of the above, I conclude that the proposal is not an acceptable form of development taking into account its flood zone location and as such is contrary to paragraphs 100, 101 and 103 of the Framework which seek to direct development away from areas of highest flood risk and LP Policy F1.

Character and appearance

19. The appeal site is within a mainly residential area which is characterised by a variety of age and type of dwellings. The adjacent buildings to the appeal site are 2½ / 3-storey in height with pitch roofs. The majority of dwellings appear to have mature trees and landscaping within their garden areas and this gives an attractive verdant appearance to the area when viewed from the TPNT or Straight Road. However, this is in stark contrast to the appeal site which has no mature landscaping or trees within its boundaries. The proposal would

- involve the demolition of the existing building and its replacement with a 3½/4-storey rendered and timber clad building with a flat roof.
20. The proposed building would be in close proximity to the crown spreads of 2 sycamore trees that are protected by a tree preservation order (TPO). The trees make a positive contribution to the surrounding area due to their position and stature adjacent to the very busy Straight Road, the TPNT and the River Thames. The trunks of the trees are within the grounds of Lime Tree Court but the crown spreads of those trees appreciably overhangs the appeal site. The proposed glazed stairwell on the front corner of the building would extend it towards the boundary with Lime Tree Court and the canopy of T2 as shown on Document 13.
 21. At the site visit it was agreed by both main parties that the stairwell would be within the existing crown spread of T2. As such, in order to provide a 2m clearance to the proposed building the canopy of T2 would need to be pruned back significantly. Even though this may not adversely affect the health of the tree it would substantially reduce the visual impact and verdant appearance of it. Moreover, the trees will continue to grow and will need to be regularly pruned to maintain clearance from the building. T2 is also in close proximity to Flat 12 of Lime Tree Court and pruning works have been authorised in the past to this tree in relation to that property. Furthermore, there would be limited space for any landscaping within the appeal site and this would exacerbate the harm to the character and appearance of the area that would result from the pruning works to T2.
 22. The Root Protection Areas (RPA) for the trees are shown on Document 13 and even though they may not reflect the whole of the RPA taking into account the existing buildings and hard surfacing adjacent to them it does indicate that the RPAs extend beneath the appeal site. I am satisfied that it would be possible to agree a boundary treatment along the line of the footpath that would restrict the footpath's use to pedestrians and an appropriate method of surfacing the footpath through the use of planning conditions if I was minded to allow the appeal. This would ensure that no further compaction would occur to the RPA within the footpath.
 23. A small area of the building works may extend within the RPA of T2 and it would be reasonable to consider that a suitable method of construction for the foundations to that part of the building could be agreed through a planning condition if I was minded to allow the appeal.
 24. Taking into account my findings in relation to sunlight and daylight below I do not consider that the proposal would materially increase the pressure to reduce or remove the TPO trees in relation to the loss of light.
 25. The building's finished floor level of the lowest level above the basement would need to be raised to ensure compliance with the recently updated 'Flood risk assessments: climate change allowances' for the Thames Area. The appellant considers that the level of alteration could be accommodated within the tolerances of the proposed structure. Even if the level of alteration would require part of the building to be raised slightly it would be similar in mass and scale to the adjacent buildings.
 26. Whilst it would have a flat roof it would be of a modern architectural style that reflects 21st century inspired design. As the surrounding area includes a variety of architectural styles of differing ages including a modern dwelling on

the opposite side of the river I do not consider that the proposed building would harm the character and appearance of the area.

27. Taking into account all of the above, I consider that the pruning works required to the TPO tree would appreciably harm the character and appearance of the area including the setting of the Thames. It follows that the proposal would conflict with LP Policies H10, N2, N6 and DG1 that, amongst other things, seek a high standard of design, conserve the setting of the Thames, to not permit development where the amenity value of trees outweighs the justification for that development and to not harm the character of the area through the loss of important features. These policies are broadly consistent with the Framework and can be given full weight.

Highway safety

28. The proposal would utilise a semi-basement area to provide 11 car parking spaces and 7 spaces would be provided at the existing ground level. The Council have stated that 16 car parking spaces would be required to meet its parking standards. The scheme would therefore meet the required parking standards. However, due to the fact that the basement level would have a high probability of flooding there are times when the main area of car park would be unavailable. Furthermore, the use of one lift to access and egress the car park could mean that vehicles may be trapped within the basement in the event of a sudden flood.
29. Nevertheless, the parties present at the Hearing described the recent flood events that have taken place along the Thames in Old Windsor and it would appear that there is a degree of control over the areas of flooding using flood alleviation measures that are in place. I was told that the 2014 flood event happened 'overnight' and that there are flood warning schemes that can be utilised. The car lift would have a moisture sensor system linked in to the building management system and this could act as an emergency early warning system. Once the basement was cleared of cars the lift would be mechanically locked in the up position.
30. I also heard at the hearing that a warden would be appointed to assess any flood risk and to ensure that keys for cars of owners that were to be away for any length of time were made available. The operation of the basement carpark in the event of a flood would be dependent on management procedures but it would be reasonable to consider that the residents of the flats would have a vested interest in ensuring the safe recovery of their cars.
31. The access to the car lift between the proposed columns and the footpath would be possible as the minimum distance between them would be around 2.6m. As such, the introduction of a knee rail or other boundary treatment along the boundary to the footpath would not impede vehicular access and it would ensure that cars utilising the car park would be separate to pedestrians using the footpath. I am satisfied that even though the turning area and spaces for access are not generous they are not dissimilar to the existing parking situation which appears to work satisfactorily.
32. The car park would not be available in the event of a flood and as such the overspill parking would need to be met by on-street parking or within private car parks such as the Bells of Ouzeley public house. Straight Road is a very busy thoroughfare and even though there are no parking restrictions on large parts of it, within the vicinity of the site, it would be highly unlikely that it would be used for on-street parking.

33. However, there are a number of side streets off Straight Road, to the west/north-west of the appeal site, that in the main have no parking restrictions on them. I heard at the hearing that there is parking stress within Old Windsor and at my site visit on the 10 July there was moderate on-street parking within those side streets. Nevertheless, I did not observe any evidence of unsafe parking or significant issues relating to the safe and efficient operation of the highway network. I acknowledge that levels of parking in the evening when some residents return from work is likely to be higher. However, there is no evidence before me that existing on-street parking is causing harm to highway safety.
34. Taking into account all of the above, I consider that pedestrian/vehicle conflict would be minimised by the use of boundary treatment, sufficient parking spaces would be available within the site to cater for the development and that in the event of a flood any overspill parking would not harm highway safety. It follows that the proposal would comply in this respect with LP Policies DG1, H10, T8 and P4. These policies seek, amongst other things, development that provides adequate off street parking, provides appropriate provision for pedestrian access and for the safe movement of residents within the site. It would also comply with section 4 of the Framework.

Living conditions

35. The adjacent Lime Tree Court building contains 3 dormer windows and one additional window on the elevation that faces the appeal site. The occupier of Flat 12 Lime Tree Court has stated that the dormer windows are to a lounge and kitchen. The proposed building would be substantially taller than the existing building and the proposed stairwell would extend closer to the boundary. However, the stairwell would be a lightweight structure being mainly glazed and the proposed building would be a light coloured render. Moreover, the existing TPO trees will restrict the outlook to these windows, to an extent, at certain times of the year. Nevertheless, due to the proximity of the building to these windows and the substantial increase in its height I consider that the development would create an unneighbourly sense of enclosure which would be overbearing for the neighbouring occupants.
36. In relation to privacy there would be the potential for overlooking at a close proximity from the stairwell and windows on the western elevation of the duplex apartment. However, obscure glazing to these windows and the stairwell would overcome this and could be dealt with by way of a condition if I was minded to allow the appeal. Third parties have also raised the issue of privacy in relation to dwellings and gardens on the opposite side of the River Thames. Nonetheless, I have taken into account the separation distances observed during my site visit which I consider are substantially greater to those normally found acceptable on modern housing developments. Consequently, I am satisfied that the proposal would not reduce the privacy enjoyed by the occupiers of dwellings on the opposite side of the River Thames.
37. The Council's reasons for refusal, stated above, do not include reference to the loss of sunlight or daylight to the neighbouring occupiers but they are cited with the Officer's Report. The appellant has produced evidence and all parties had the chance to comment at the Hearing on these matters. Due to the close proximity of the side facing windows in Lime Tree Court to the TPO trees these windows will presently receive a reduced level of sunlight and daylight.
38. The Building Research Establishment (BRE) guidelines on 'Site Layout Planning for Daylight and Sunlight' contains advice that if a proposed development falls

beneath a 25 degree angle taken from a point two metres above ground level, that no further analysis is required in relation to daylight. The appellant has stated that the proposed development would meet these guidelines. As this is a commonly used approach and the Council has given no details to back up its case in relation to loss of daylight I see no reason to disagree. I therefore conclude that the development would not materially harm the living conditions of the occupiers of Lime Tree Court in regard to the loss of daylight.

39. In relation to sunlight the development would be to the south/south-east of Lime Tree court and therefore, it potentially could reduce the amount of sunlight to the windows facing the appeal site. The appellant has submitted a shadow analysis (Document 6) which indicates what the shadows cast by the proposal would be at 12.00 in the 4 seasons. The shadow analysis is limited as it only considers 12.00 and it does not take into account the shadows cast by the existing trees.
40. However, it is useful as it demonstrates that when the trees are in full leaf the shadows cast by the development will be at their shortest. At other times of the year the shadows cast by the development at certain times of the day may reduce the amount of sunlight in the rooms in Lime Tree Court facing the appeal site. However, this will be at times when the trees are not in full leaf and consequently, I do not consider that the proposal would materially reduce the level of sunlight received in those rooms.
41. Taking into account all of the above, I conclude that by reason of its proximity the proposal would be harmful to the living conditions of the occupiers of Lime Tree Court with regard to outlook. Consequently, the proposal would conflict with paragraph 17 of the Framework which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings. The Council have cited LP Policy DG1 in relation to this matter but I do not consider that it is relevant as it covers general design guidelines.

Other matters

42. I note the appellant's concern regarding difficulties communicating with the Council and the time taken in relation to the non-determination of the planning application. However, they are not matters for my consideration in the context of this appeal decision.

Conclusion

43. In terms of the three dimensions to sustainability set out in paragraph 7 of the Framework the proposal would make a limited contribution to the local economy including the provision of construction jobs, some additional local spend and New Homes Bonus and Council Tax receipts. I acknowledge that there would be accessibility benefits associated with the proposal. Specifically, the appeal site is within the built up area of Old Windsor where there is a range of services, facilities and employment opportunities available. An additional 7 dwellings would be created which would have a modest social role by increasing the mix of housing and making a small contribution to the housing supply.
44. Nevertheless, I have little evidence as to whether the Council can demonstrate a 5 year supply of deliverable housing sites (HLS). However, even if they cannot demonstrate a HLS in terms of the presumption in favour of sustainable development set out at paragraph 14 of the Framework, it is the second limb of bullet point 4 that would be applicable in that instance, namely '...granting

planning permission unless: ... specific policies in this Framework indicate development should be restricted.'

45. For the purposes of paragraph 14 examples of the Framework's restrictive policies are set out in footnote 9 and locations at risk of flooding is cited as one of the examples. In my reasoning above I have found that there would be conflict with the Framework's flood risk policy. The proposal could not therefore be considered sustainable development for which the Framework presumes in favour.
46. I have found that the proposal would conflict with policies within the development plan. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case although LP Policy F1 has moderate weight there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
47. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Uttley	Form Architecture and Planning
Mike Chidzey	Form Architecture and Planning
Tom Butterfield	
Simon Rye	

FOR THE LOCAL PLANNING AUTHORITY:

April Waterman	Principal Planning Officer
Helen Leonard	Arboricultural Co-ordinator
Adam Jackson	Senior Planning Officer

INTERESTED PERSONS:

Councillor Malcolm Beer

Councillor Jane Dawson

Councillor Anne Horner

Maurice Redmond

DOCUMENTS SUBMITTED BEFORE THE HEARING FROM THE COUNCIL

- 1 Strategic Flood Risk Assessment (2017)
- 2 Increased Scope SFRA and Sequential Testing of Sites (2014)
- 3 The extent of the Green Belt in the Borough
- 4 Definitive Map of Public Rights of Way

DOCUMENTS SUBMITTED BEFORE THE HEARING FROM THE APPELLANT

- 5 True to Scale 3D Views
- 6 Shadow Analysis
- 7 Response to the Councils Statement of Case
- 8 Plan ref No – 1249 PL02-k
- 9 Plan ref No – 1249 PL30c

DOCUMENTS SUBMITTED AT THE HEARING FROM THE COUNCIL

- 10 Emails from Paul Uttley to Diane Charlton
- 11 Arboricultural Method Statement Condition
- 12 Flood Risk Assessments: climate change allowances

DOCUMENTS SUBMITTED AT THE HEARING FROM THE APPELLANT

- 13 Tree related issues at the Boatyard, 105 Straight Road, Old Windsor