
Appeal Decision

Site visit made on 1 August 2017

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 4 September 2017

Appeal Ref: APP/T0355/W/17/3174561

Rosedale, 54 Albany Road, Old Windsor SL4 2QA

- 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 Jordan Construction Limited against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/03142, dated 28 September 2016, was refused by notice dated 16 January 2017.
 - The development proposed is the erection of a pair of 3 bedroom semi-detached houses with associated parking and landscaping, following the demolition of all existing buildings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a pair of 3 bedroom semi-detached houses with associated parking and landscaping, following the demolition of all existing buildings at Rosedale, 54 Albany Road, Old Windsor SL4 2QA in accordance with the terms of the application, Ref 16/03142, dated 28 September 2016, subject to the conditions in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Jordan Construction Limited against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Procedural Matters

3. The proposed development was amended during the course of the application to remove single storey rear projections to the dwellings. Although the decision notice lists the original drawings, the Council's Development Control Panel Report of 11 January 2011 includes the later drawings. Consequently, I have based my decision on those later drawings.
4. Reference has been made to a new Local Plan that is subject to pre-submission consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 but I am not aware of the exact stage it has reached and the extent of outstanding objections or whether the policies concerned will be considered as consistent with the National Planning Policy Framework (the Framework). Consequently, in accordance with paragraph 216 of the Framework I give it very limited weight.

Main Issue

5. The effect of the proposed development on flood risk.

Reasons

6. The proposed development would result in the demolition of the existing dwelling on the site, along with the outbuildings, prior to the construction of a pair of semi-detached dwellings with modest sheds, such that the area covered by the dwellings would increase by 92sq.m. The site is largely located within flood zone 3, so is at a high risk of flooding. In order to mitigate that risk, the houses are proposed to have raised floor levels with void areas below the buildings to enable water storage in the event of a flood. These voids would have accesses for the flood water with metal railings that seek to make them inaccessible for other purposes, such as storage or flood debris.
7. The National Planning Policy Framework (the Framework) sets out sequential and exception tests for development within the flood plain. The Council have confirmed that the proposed development would meet the sequential test as there are no other sites that are reasonably available for the proposed development. I see no reason to disagree with their conclusions in this regard. Paragraph 102 of the Framework sets out the exception test, including that the development should provide wider sustainability benefits for the community that outweigh the flood risk. A site specific flood risk assessment must demonstrate that the development would be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere and, if possible, reduce the flood risk overall.
8. Policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan (LP) seeks to resist new residential development or extensions in excess of 30sq.m within the flood plain unless it would not reduce the capacity of the flood plain to store flood water or increase the number of people or properties at risk from flooding. Supporting guidance within the Local Plan and the Council's Supplementary Planning Guidance (SPG) on Flooding suggests that voids are not an acceptable means to provide flood storage as they can become blocked, but are now some years old and do not form part of the policy itself.
9. The Environment Agency (EA) have commented on the application and they accept that underfloor voids can provide adequate mitigation, subject to a condition requiring a maintenance plan to ensure the voids are kept clear, provided that the Council is satisfied such mitigation is appropriate. I understand that the Council do not consider that the suggested condition would be enforceable but it is not clear why this is the case. I see no reason why the condition suggested by the EA should not be enforceable and note that it has been imposed on other developments within the Borough, taking account of their individual circumstances.
10. The finished floor levels would be set above the fluvial flooding levels for the site and flood resilience and resistance measures have been considered. A low hazard escape route would be available for future occupiers. The outbuildings would be capable of flooding, such that they would not have a material effect on flood storage capacity.
11. My attention has been drawn to a number of sustainability benefits of the proposed development. The proposed development would increase the amount

of flood storage above that of the existing dwelling, with the inclusion of the voids. The proposed dwellings would contribute a single additional dwelling to the supply of housing within the Borough, which does not have a 5 year supply of deliverable housing sites as required by the Framework. This location is well related to services and facilities in the locality and the development would provide employment and other economic benefits during construction. The Council would benefit from increased Council Tax receipts and New Homes Bonus and the proposed dwellings would meet current Building Regulations that would have environmental benefits. The design of the proposed dwellings would reflect the character and appearance of the surrounding area. Sufficient parking would be provided for the dwellings in accordance with Council standards and the proposal would not affect the living conditions of neighbouring occupiers given the relationship between the proposed dwellings and surrounding properties.

12. Most of those matters would be expected as generic requirements of planning policy and, individually, would only carry limited or modest weight in the planning process. Nevertheless they are sustainability benefits that can be weighed against the flood risk in accordance with the Framework.
13. Since refusal of the planning application, I understand that the Council have issued a Certificate of Lawfulness of Proposed Development for extensions to the existing house along with garage and outbuildings that would comprise up to 118sq.m. The outbuildings may be capable of flooding such that they would not significantly reduce the capacity of the flood plain. Nevertheless, this is a fall-back position that can attract great weight in the planning process.
14. For these reasons, the proposed development, including voids below, would ensure the development would be protected from flooding. I understand the Council's reluctance to accept voids as a realistic means to increase flood storage capacity such that the proposed development would not increase the risk of flooding elsewhere. However, I consider that the condition suggested by the EA, along with the cumulative effect of the sustainability benefits identified and the fall-back position, would outweigh the flood risk in this instance. As such, I conclude that both the sequential and exception tests are passed and the proposed development would comply with Policy F1 of the LP and the Framework.
15. I have been provided with another appeal case¹ where the condition suggested by the EA was considered to be unenforceable. It is not clear why the condition was considered unenforceable in that case and, in addition, safe access/egress from that site was not provided in the event of a flood. Consequently, I do not consider that case to be directly comparable and have considered this case on its own merits.

Other matters

16. Whilst the dwellings would be tall, they have been located to reflect the front and rear building lines of neighbouring dwellings, such that they would not have a materially harmful effect on the outlook of neighbouring occupiers and nor would they materially affect daylight and sunlight to those neighbouring dwellings. As such, there would not be a material harmful effect on the living conditions of neighbouring occupiers. I note reference to concerns regarding

¹ Appeal reference APP/T0355/A/14/2223375

subsidence in the locality, but limited information has been provided and I see no reason to consider that the proposed dwellings would be affected by subsidence in the future.

Conditions

17. I have imposed a condition specifying the relevant drawings as this provides certainty. A condition is necessary for samples of materials to be submitted and approved prior to development commencing to ensure that they would maintain the character and appearance of the area. A condition is necessary to ensure the development is carried out in accordance with the ecological appraisals and that invasive non-native species are appropriately dealt with in order to protect the ecology of the area. A condition relating to provision of acoustic insulation and approval of this prior to development commencing is necessary to protect the living conditions of future occupiers of the proposed dwellings.
18. Conditions are necessary to ensure adequate access and parking are provided to meet the needs of the occupiers of the proposed dwellings in order to protect highway safety. A condition is necessary to provide, prior to development commencing, a construction method statement to ensure the development works take place without undue disturbance to neighbouring occupiers and to maintain highway safety. A condition is necessary for refuse bin storage area and recycling facilities to be provided in order to protect the character and appearance of the area. A condition is necessary to ensure the proposed voids below the building are provided and kept clear in order to ensure adequate flood storage capacity.
19. In some cases I have amended the wording of conditions suggested by the Council in the interests of clarity.

Conclusion

20. For the above reasons and taking into account all other matters raised I conclude that the appeal should succeed.

AJ Steen

INSPECTOR

Schedule of 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:
 - 15.217-LP Site Location Plan;
 - 15.217-SL Rev B Site Layout;
 - 15.217-01 Rev A Proposed Floor Plans;
 - 15.217-02 Rev E Proposed Elevations;
 - 15.217-FV Rev A Proposed Flood Void Locations;

15.217-RD Vertical Railings to Voids;

15.217-SS-01 Rev C Proposed Street Scene; and

15.217-CS Cycle Shed – Proposed Plans and Elevations.

- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) The development shall be carried out in accordance with the preliminary ecological appraisal and preliminary bat roost assessment report and the recommended ecological enhancements shall be implemented in accordance with the timeframes as set out in this report. Prior to the commencement of development an invasive non-native species method statement shall also be submitted to and approved in writing by the local planning authority. This report shall detail the proposed measures for the containment, control and removal of invasive non-native species at the site.
- 5) Details of the measures to be taken to acoustically insulate all habitable rooms of the development hereby permitted against aircraft noise, together with details of the methods of providing ventilation to habitable rooms shall be submitted to the local planning authority and approved in writing before development commences. The approved acoustic insulation shall be installed prior to first occupation of the dwellings and shall thereafter be retained.
- 6) No part of the development shall be occupied until the access has been constructed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The access shall thereafter be retained.
- 7) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 15.217-SL Rev B Site Layout for cars to be parked and that space shall thereafter be kept available at all times for the parking of vehicles.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 9) 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.
- 10) The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA) dated 18 May 2016 and prepared by Phlorum Limited and drawing number 15.217-RD Rev and the following mitigation measures detailed within these documents:

- Finished flood levels will be set no lower than 18.77 metres Above Ordnance Datum (AOD);
- Voids spaces and openings to be implemented as shown - the height of the voids spaces and openings will be no lower than 18.47 metres AOD.
- Undercroft void space and openings shall remain open, free and maintained from all blockages, debris and storage in perpetuity for the life time of the development. The undercroft area will not be used for any storage facilities.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.