
Appeal Decision

Site visit made on 9 November 2017

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 29th November 2017

Appeal Ref: APP/T0355/W/17/3179550

Derryville, Burleigh Lane, Ascot SL5 8PF

- 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 Brookworth Homes Ltd against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 17/00229, dated 6 January 2017, was refused by notice dated 21 April 2017.
 - The development proposed is described on the application and appeal forms as: *'Erection of buildings to form 6 no. apartments, with associated parking'*.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice employed a fuller description of the development which was: *'Construction of building comprising of 4 x 2 bedroom and 1 x 3 bedroom apartments, detached 4 bay garage with 1 x 2 bedroom apartment above and associated parking and landscaping'*. I have adopted that description for this appeal.

Policy Context

3. The development plan here includes the Royal Borough of Windsor and Maidenhead Local Plan (1999/2003) (the LP), the Ascot, Sunninghill and Sunningdale Neighbourhood Plan 2011-2026 (2014) (the NP), and Policy NRM6 of the South East Plan. Also material is the National Planning Policy Framework (the Framework).

Planning History

4. The appeal site was previously occupied by a single detached dwelling which has been demolished. There has been a succession of successful planning applications to replace that dwelling with a single dwelling but these have not been implemented. One such permission remains extant at the time of writing and also included the similar replacement of a single demolished dwelling on the adjacent site to the west known as 'Wetherby'.
5. Previous applications to develop the site as apartments have been refused planning permission. One such refused application for a development of 8 apartments was dismissed at appeal in 2006 (Appeal Ref APP/T0355/

6. A/1170650). That decision was made when the current LP was in effect. However the decision predated the NP. It also predated the replacement of the Government's Planning Policy Guidance Note 3 with the Framework in 2012.

Main Issue

7. The main issues are considered to be:

- what effect the development would have on the character and appearance of the area;
- whether it would provide acceptable living conditions for the future occupiers in respect of natural light, outlook and noise disturbance;
- what effect it would have on protected trees;
- what effect it would have on protected wildlife; and,
- having regard to the local housing land supply situation, whether any adverse impacts in these regards would significantly and demonstrably outweigh the benefits of the development in the provision of housing.

Reasons

Character and Appearance

8. The LP contains general development management policies for the whole Borough including the Saved LP Policies DG1 Design Guidelines, H10 Housing Layout and Design and H11. However there are also NP policies which have been made much more recently and which are of more specific relevance to this location. The NP is the most recently made or adopted development plan policy. Where there is any conflict with the LP policies, the more up to date NP policies attract greater statutory weight.
9. NP Policies DG1, DG2 and DG3 seek that development should respond positively to the local townscape using the previously published RBWM Townscape Assessment Report. In particular, in areas which that Report identifies as: '*Villas in a Woodland Setting*' the NP seeks to maintain the character of those areas which are identified in Policy DG1.2 as featuring: '*dwelling for occupation typically by a single household, each house sitting in its own plot with a garden for its exclusive use*'. The NP does not preclude all other development provided that it is demonstrated that such development does not harm the area's character. However the reasoned justification to Policy NP/DG1 refers to local concerns about the impacts that apartment developments replacing one or two dwellings have had on sites in areas of this type.
10. The Appellant has drawn attention to comments made by the previous appeal Inspector in the context of then national policy in PPG3 Housing which sought a minimum 30 dwellings per hectare. However I note that the Inspector then assessed net density on the basis that a large part of the site should be excluded from the calculation owing to the need to protect trees and wildlife. On that basis the Inspector concluded that a development of 8 units equated to a net density of 36 dwellings per hectare. That is not the approach followed by the Appellant who has assessed the development at a gross density of about 14 dwellings per hectare by including the whole site area. That density would be much higher if assessed on the same net density basis.

11. The Appellant points to text in the emerging Borough Local Plan that refers to a minimum density across the Borough of 30dph. However that objective is not included in the relevant draft policy wording and only appears in the draft reasoned justification. Moreover the emerging Plan has yet to be examined and its wording may well change prior to adoption. It currently merits less weight than the Neighbourhood Plan that is already part of the adopted development plan and which attracts full statutory weight.
12. It is acknowledged that there is higher density development in other parts of the local area, including to the north and south of the appeal site. However those areas lie outside the area identified as 'Villas in a Woodland Setting' with its different low density character and specific NP policy requirements.
13. There have been some developments of apartments elsewhere within the identified areas of Villas in a Woodland Setting. These typically predate the made NP. Moreover the locally perceived adverse impacts of such development have explicitly informed the NP policies. Some such developments were also permitted after the publication of the Townscape Assessment but when that document did not have the force of development plan policy, unlike the subsequently made NP.
14. The change in the character of parts of the area as a result of those previous apartment developments does not apply in the immediate vicinity of the appeal site where density remains of a very low density character. That character remains at risk of being eroded by obviously higher density development. Moreover NP/DG1.2 includes the wording that: *'This policy shall apply even in areas within these zones where other types of dwellings may also exist'*.
15. The Appellant relies heavily on similarities between the proposed built development and the extant approved scheme for a single dwelling (Ref 14/03338/FULL). Whilst there are some similarities there are also significant differences including:
 - the southward extension of the main building;
 - the separation of the development into 2 distinct buildings;
 - the significant increase in the height and bulk of the detached garage/apartment building with additional dormer fenestration which changes would be prominent in views from the road and adjoining land and which would cause that building to cease to appear as wholly ancillary to the main building but rather as a separate building of similar volume to many 2 storey houses;
 - the provision of more extensive parking areas between the house and the road where parked cars would be prominent in public views of the site and would emphasise that this is not a single detached dwelling; and
 - increased activity and traffic movements on the narrow and roughly surfaced Burleigh Lane that would be likely to occur due to the increased occupation of the site by as many as 6 independent households.
16. When compared to the permitted scheme the southward enlargement of the building would not be obvious in public views of the site but might be apparent from adjoining land. The slight reduction in the height of the main building which would not materially affect its perceived bulk. The other changes would

be more noticeable and would result in a significant intensification of development and an obvious departure from the area's perceived low density character of dwellings occupied by a single household. That would result in adverse effects on the character and appearance of the site and area.

17. For the above reasons I do not consider that it has been demonstrated that the development would not harm the area's character. The changes in character and appearance would be obvious, including by comparison with the permitted scheme for a single house and flat. The associated harm to the identified character and appearance of the area from this obviously more intense redevelopment would result in conflict with the NP and its objective to protect the valued character of this identified area of Villas in a Woodland Setting.

Living Conditions

18. LP Policy H11 includes a provision that development schemes should not cause damage to the amenity of the area. That does not explicitly refer to the amenity or living conditions of the occupiers. LP Policy H10 seeks amongst other things that new residential development displays high standards of design and that it provides adequate sound insulation in areas affected by high noise levels. NP Policy DG1 also seeks high quality design.
19. Another material consideration of more explicit relevance to the amenity of occupiers is the fourth core planning principle in paragraph 17 of the Framework which provides amongst other things that planning should: *'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'*.
20. The plans show that the layout of the development would feature many deep rooms. Some main windows to the ground floor living areas would have restricted direct light due to the deep overhanging balconies. Moreover the building would be generally surrounded by tall trees which are mainly deciduous but which include evergreen trees to the south on neighbouring land.
21. The Council's objections relate firstly to poor natural light and outlook in several apartments. In response the Appellant has submitted a Daylight and Sunlight Assessment. The Council has accepted the calculations. Different calculations have been made according to summer and winter conditions when the surrounding deciduous trees are or are not in leaf. However it is not clear in the assessment what if any account has been taken of the large evergreen trees which I saw on the neighbouring land to the south but which do not appear on the submitted drawings.
22. The assessment concludes that the average light levels would be acceptable but it is notable that levels of natural light would be below the recommended minima in several of the main living areas of the apartments during the summer when the surrounding trees are in full leaf. If the evergreen trees have not been taken into account the winter sunlight and daylight conditions may also be poorer than in the assessment. The Council notes that some of the trees are not fully mature in which case lighting may become more restricted in the future. The Council has expressed concern that this would lead to pressure to prune the trees in the future with associated loss of their amenity value.

23. I saw that some trees at other properties in nearby Burleigh Lane have been severely pruned which illustrates the adverse visual effects of such actions. However there is no information before me as to whether those trees were protected or regarding the circumstances in which they were pruned and the reasons for that action.
24. In relation to outlook, I consider that there would be sufficient separation between the windows of the main building and the surrounding trees to provide a satisfactory outlook. For the smaller building there would be windows at the rear at first floor level that would either serve bedrooms or would be secondary windows to living areas. Those windows would be very close to the boundary and their future outlook would depend upon the boundary treatment and how the adjacent land is managed in the future. The Appellant currently controls the adjacent property but there is no information before me as to how it would be managed in the future.
25. In relation to noise and disturbance I accept the Appellant's argument that adequate sound insulation can be incorporated in this new building to prevent disturbance for occupiers of a bedroom in unit 5 which would be above a kitchen/dining room.
26. It is commonplace to site apartments above garages and the approved scheme included what appeared to be an ancillary flat in this position for staff or other members of the household. Whilst this would be a quieter location than a more urban area, I do not consider that there is a significant risk of unacceptable disturbance to occupiers of the apartment from the use of the garages. Noise disturbance would not warrant the dismissal of the appeal.
27. In conclusion on this issue I consider that there is a significant risk of poor natural light in some of the main living areas of the apartments, and especially during the summer months. This would either result in poor living conditions for some occupiers or pressure to prune the surrounding trees to improve natural light in the apartments, with associated harm to amenity and conflict with the Framework principles.

Trees

28. Saved LP Policy N6 and Policy NP/EN2 Trees both seek survey information and measures for the retention and protection of suitable trees. Amongst other things the reasoned justification provides that: *'Retained trees should be given adequate space to prevent nuisance to occupiers of new buildings and to allow for future growth'*.
29. The many large trees on the site are important to the area's valued character as described in the Townscape Assessment. The site is the subject of a tree preservation order (TPO No 19 2003). The removal of some identified trees would be needed to implement the development and is not objected to by the Council. Those particular trees make little contribution to public amenity and that contribution would be outweighed by the benefits of the development. However the proposed parking area would include works within the root protection area for an important beech tree (T18). The Council's tree expert advised that this would risk harm to that tree which could diminish its amenity value.

30. At the appeal stage the Appellant has provided a further tree report that was carried out after the decision was made and which thus could not have informed the layout of the scheme. It was not before the Council at the time of its decision. The report recommends measures to protect T18 which are claimed to comply with BS5837:2012. However the Council's Arboricultural Officer advises that the beech is mature and that some harm can be expected such that the future viability of the tree cannot be assured. Also that there is a risk of damage to cars parked under the trees from falling debris. That could also create pressure to lop the trees in the future.
31. The Council considers that the location of the parking here is avoidable but no alternative layout is before me. I note that the Appellant has suggested that the 4 narrow garages be revised and replaced by 3 wider garages to address criticism of their usability. There would be an associated reduction in parking provision but no change in the amount of external parking. As I consider that the general location of the parking is also harmful to the area's character and appearance little purpose would be served by exploring this matter further by way of a planning condition.
32. I conclude on this issue that there is a risk of harm to protected trees and future pressure for their lopping which would harm their amenity value. It has not been demonstrated that the parking needs to be located within the root protection area of the protected trees. The proposal is thus in conflict with relevant development plan policies and their aims.

Wildlife

33. Part of the appeal site is occupied by extensive badger setts. The appeal has been accompanied by an updated badger survey which shows that the setts are in active use and which makes recommendations for the protection of the badgers and their habitat which could be set out in a Landscape and Ecological Management Plan and secured by a planning condition. That would suitably safeguard these protected species and the Council considers that the associated reason for refusal has been overcome and conflict with relevant development plan policies is avoided.
34. The appeal site is also located in an area where there is potential for increased off-site recreational activity generated by the additional residents and their pets to affect the habitat of ground nesting birds in the Thames Basin Heaths Special Protection Area. However the Appellant and the Council have completed a legal agreement dated 6 November 2017 which makes suitable provision for the mitigation of impacts including a financial contribution to provide a suitable alternative natural greenspace (SANG) and contributions to monitoring such that there would be no significant effect on the SPA or conflict with SE Plan Policy NRM6.

Housing Land Supply

35. The site does not currently provide any housing. The previous permission would have provided one main dwelling and one small flat. The proposed scheme would provide 6 flats and consequently would make a greater contribution to housing supply. That would have greater social and economic benefits to set against the identified harm to the environment.

36. The parties do not dispute that the Borough lacks the 5 year Housing Land Supply sought by Paragraph 49 of the Framework. There are no figures before me as to the extent of that shortfall. The Council has consulted upon an emerging Borough Local Plan which seeks to address the need for housing and any shortfall.
37. Nevertheless it follows that the LP policies for the supply of housing are currently out of date and that the 'tilted balance' in paragraph 14 of the Framework applies. This means that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole
38. A Written Ministerial Statement of 12 September 2016 was issued less than 2 years ago. It allows that where (as here) there is a made Neighbourhood Plan which contains policies for the supply of housing (including the allocation of sites for housing) the Council need only demonstrate a 3 year supply of deliverable housing sites. In this case it has not been demonstrated that there is a reduced 3 year supply of housing land or that the NP policies for the supply of housing are thus not out of date. They may or may not be out of date. But even if they are out of date the other NP policies contravened by the proposed development are not themselves policies for the supply of housing and they are not out of date.
39. It is concluded above that there would be a conflict with relevant development plan policies and I conclude that there would be an overall conflict with the development plan and relevant provisions of the Framework.
40. The LP dates from 1999 (partially revised in 2003) but the weight to be attached does not hinge on its age. Rather paragraph 215 of the Framework makes it clear that weight should be given to existing policies according to their degree of consistency with the Framework.
41. Relevant provisions of the Framework include: to seek a good standard of amenity for future occupants of buildings (Paragraph 17); that local and neighbourhood plans should set out the quality of development that will be expected in an area to guide density and to ensure that developments respond to local character (Paragraphs 58-61); and to conserve the natural environment (Paragraphs 109, 111, 113, and 117). The relevant LP and NP policies are consistent with these aims.

Other Matters

42. I have taken into account all other matters raised in representations. In particular but they do not outweigh the considerations that have led to my conclusions.

Conclusions

43. I conclude that the adverse social and environmental impacts of the development are in conflict with the development plan which is consistent with national policy and those impacts would here significantly and demonstrably outweigh the social and economic benefits of providing the apartments. The appeal should therefore be dismissed.

Robert Mellor

INSPECTOR