



Appeal Decisions

Site visit made on 28 November 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal A Ref: APP/T0355/W/19/3235908

Windsor Physiotherapy, Essex Lodge, 69 Osborne Road, Windsor SL4 3EQ

- 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 Sorbon Estates Limited against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/00916, dated 1 April 2019, was refused by notice dated 5 July 2019.
 - The development proposed is demolition of existing building and construction of new building comprising 10 x two bedroom and 2 x one bedroom flats with associated parking, alteration to existing access and new bin enclosure.
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Appeal B Ref: APP/T0355/W/19/3233296

Windsor Physiotherapy, Essex Lodge, 69 Osborne Road, Windsor SL4 3EQ

- 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 David Howells of Sorbon Estates Limited against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/03027, dated 11 October 2018, was refused by notice dated 16 January 2019.
 - The development proposed is erection of a new building comprising 11no two bedroom and 3no one bedroom flats.
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Decisions

Appeal A Ref: APP/T0355/W/19/3235908

1. Appeal A is dismissed.

Appeal B Ref: APP/T0355/W/19/3233296

2. Appeal B is dismissed.

Procedural Matters

3. As set out above there are two appeals on this site. They differ in the design of the building proposed and the number of flats within it. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. The addresses provided for each application are different, however, as noted above, they refer to the same site. I have used the address provided on the decision notices for consistency. Similarly, In appeal the case of B, Mr David

Howells is cited as the applicant on behalf of Sorbon Estates Ltd. I have considered these appeals as being made by the company.

5. In regard to Appeal B the Council has confirmed that it is no longer seeking affordable housing on schemes of this size. The drainage issues have also subsequently been resolved by the submission of a Technical Note which sets out the surface water drainage design and are no longer a matter of dispute between the main parties. The Council are therefore not defending reasons for refusal numbers 4 and 5.
6. The Royal Borough of Windsor and Maidenhead Borough Local Plan 2013-2033 Submission Version -2017- (the Emerging Local Plan) has been published but has not yet been examined and found sound and so attracts limited weight as a material consideration.
7. I received a request from a resident to view the proposals from Heron Lodge. During my site visit I was unable to contact the resident. However, I consider that, from the information available to me within the appeal documents and from my observations on site I have sufficient information before me to determine the appeals without entering Heron Lodge.

Main Issues

8. In view of the Council not defending reasons for refusal Nos 4 and 5, the main issues are:-
 - The effect of the proposal on the character and appearance of the area, including the setting of the Inner Windsor Conservation Area (Appeals A and B).
 - The effect of the proposal on the living conditions of occupiers of Heron Lodge (Appeal B only)

Reasons

Character and appearance (Appeals A and B)

9. The appeal site is located on the corner of Osborne Road and Bolton Avenue, on a busy gyratory junction. The buildings around the junction are set back, providing a degree of spaciousness around the junction. Osborne Road and Bolton Avenue are tree-lined streets with their buildings set behind modest front gardens and this reinforces the sense of spaciousness of the area.
10. Both appeal schemes would demolish the existing building on the site and replace it with a three storey building, with, only in the case of Appeal B, a further level of accommodation in the roof. In both cases the building would be centred within the site, with frontages to Osborne Road, Bolton Avenue and the junction. The boundary of the Inner Windsor Conservation Area (the CA) is opposite the site, on the northern side of Osborne Road. The CA is, in the vicinity of the appeal site, characterised by residential development of various designs set in spacious streets.
11. The Council have carried out an assessment of the townscape of the Borough, summarised in the Royal Borough of Windsor and Maidenhead Townscape Assessment -2010- which separates the surroundings into various character areas. The site is located at the junction of four of these character areas and is

- within an area designated as “leafy residential suburbs”, principally reflecting the areas to the east and south-east, along Osborne Road and Bolton Avenue.
12. The designs of the appeal schemes have evolved in response to two previous appeal decisions¹. Both schemes have reduced the height and massing of the buildings, particularly adjacent to Heron Lodge, which faces onto Osborne Road adjacent to the site.
 13. The current building makes a limited positive contribution to the character and appearance of the site and area through its historic appearance, reflecting features of King’s House, at 77 Frances Road, which lies within the CA, and 1 and 3 Bolton Avenue.
 14. Around the junction the buildings exhibit a variety of design scales and styles. The two corners of the roundabout which lie within the CA contain buildings of a generally moderate scale. The remaining two corners accommodate flatted buildings of substantial scale and mass.
 15. Notwithstanding the scale changes of the proposals, the layout and massing of the proposals remains of significant concern. In each case the corners of the proposed building would be located close to its site boundaries on Osborne Road and Bolton Avenue, whilst the front of the building facing the junction moves forward of the existing building footprint. In this matter I am consistent with issues identified by the Inspectors in the previous appeal decisions.
 16. On the other corners of the junction the set-back of the building affords some space for landscaping. In the cases of the two proposals before me the proposed development would provide very limited space and this limits the opportunity to provide significant soft landscaping.
 17. Whilst there is a single storey wing on the existing building that projects almost to the Osborne Road boundary, this is of a height that retains a degree of spaciousness in views along Osborne Road into the junction. In contrast, the corners of the new buildings would be greater in height and project to the front of the existing building lines in Osborne Road and Bolton Avenue. This would increase the sense of enclosure both within the junction, and in views along Osborne Road and Bolton Avenue. This would create a development form that would be detrimental to the appearance of the site and the locality. The proposal would be visible in views against the background of the CA.
 18. The site does, to a degree, provide a gateway into the town centre and Osborne Road. This is reflected in the appearance, scale and detailing of the proposals, referencing the design features of Kings House. However, the layout and bulk of the proposals would not be in character with the other corners on this gateway junction, where large developments are set back to provide a sense of spaciousness.
 19. The corners of the proposed developments would bring a substantial building form close to the site boundaries which would lack a suitable setback. This would prevent the establishment of a reasonable level of vegetation, limited to hedging and small trees, that would be likely to have restricted growth potential. This would be out-of-keeping with the spacious “leafy residential” character of the area behind the site, or the contrasting, but also spacious character of the other corners of the roundabout. Whilst the site currently

¹ Appeal Decisions APP/T0355/A/12/2169905 and APP/T0355/A/13/2205683

makes no contribution to the verdancy of the area, this does not justify the lack of potential to mitigate the massing of the proposals and the proposals neither enhance the built form nor the existing environment through appropriate landscaping.

20. The corners of each of the buildings would therefore introduce a conflicting element, disrupting the regular frontage line along this part of the streets. Although the projections would, in longer views, be partially concealed by existing trees the projecting corners, with their bulky, obtrusive nature would have a detrimental, harmful effect on the character and appearance of the site. The northern corner of the buildings would be visible in views along Osborne Road, the north side of which is within the CA. I appreciate that the proposed developments have been altered compared with previous schemes, but in this case each of the proposals would again result in a direct, harmful reduction of the spaciousness of the area's character. There is insufficient scope for the use of landscaping and suitable materials to mitigate the resultant harm sufficiently, so as to make either of the proposals acceptable.
21. In the case of Appeal A, the proposed building would introduce a substantial gap within the building connecting Osborne Road with Bolton Avenue, producing an incongruous void in the streetscape, whilst the roof is formed of numerous planes and ridges, giving an impression of over-complication when viewed in comparison with nearby roof forms.
22. In the case of Appeal B, the proposed building would, again, incorporate a complicated roof design, with an extensive crown roof to the upper storey, which is not a common feature of the style of domestic architecture that it seeks to emulate, nor is it reflected in the roofs of buildings of the CA.
23. Whilst the proposals seek to address concerns regarding the harmful impact of the layout, massing and landscaping raised in previous appeals, these, considering the proposals as a whole, remain and so I conclude that the scheme would harm the character and appearance of the area.
24. In longer views, approaching the junction from the west, the proposed buildings would be perceived as being appreciably larger than the existing and the increases in scale would restrict views of background tree cover, reducing the perception of the verdancy of the streets behind. Nevertheless, the scale of the proposed developments would respond well to the larger forms of development nearby.
25. When viewed in context from the approaches, the larger scale of the buildings would be seen in conjunction with the lower ridge levels to the south-east parts of the roof and would provide a transition with the more suburban scale and lower heights of the buildings to the south-east. The proposals would provide a significant presence to the junction and would have a scale appropriate to their surroundings. Nevertheless, whilst the proposals may be deemed acceptable in scale, the overall layout, mass and landscaping of each, for the reasons set out above, lead me to conclude that unacceptable harm would arise from either development.
26. There is a street tree on the Bolton Avenue frontage. This tree is prominent in views along Bolton Avenue and from the junction and makes a meaningful positive contribution to the street scene.

27. The applications included tree impact assessments, tree protection plans and arboricultural method statements. In both appeals, the building would encroach into the root protection area of the street tree. Furthermore, the tree would be to the south of windows serving habitable rooms on each of the proposals. Even though, in the case of Appeal A, the building has been moved back to provide additional clearance to the building for the canopy, the buildings for both schemes would remain close to the canopy of the tree and I note that the tree has not yet achieved its full growth potential. In combination the shadowing effect of the tree, proximity to the windows and seasonal debris is likely to, in both cases, result in pressure from residents to reduce the canopy of the tree. This has potential to affect the health of the tree and this impact is likely to be exacerbated if the root system is significantly damaged, resulting in the decline of the tree.
28. Reduction in the canopy, or, in the worst case scenario, the loss of the tree, would reduce the leafy verdancy of the street scene during the spring and summer months, when the tree is in leaf. The reduction in verdancy would be detrimental to the character and appearance of the area.
29. Bringing these matters together, I therefore conclude that both of the proposed developments would have a harmful impact on the character and appearance of the area, including the setting of the nearby CA. The proposals would, therefore, be contrary to Policies DG1, H10 and N6 of the Royal Borough of Windsor and Maidenhead Local Plan Incorporating Alterations -2003 as amended- (the Local Plan) which together, amongst other things, seek a high quality of design that has regard to the context of the site and area, including views, protects existing landscape features, including trees, and provide appropriate landscaping that enhances the built form and the existing environment through appropriate landscaping. Although there would be no conflict with Policy H11 due to the proposed scale and density of each proposal, they would both conflict with Policy CA2, in as much as neither would preserve or enhance the character or appearance of the setting of the CA.
30. Similarly, the proposals would be contrary to those parts of the National Planning Policy Framework (the Framework) that aim to achieve developments that provide well designed places and conserve and enhance the historic environment.
31. Although, for the reasons set out above, bearing limited weight, the proposals would also be contrary to policies SP3, NR2 and HE1 of the Emerging Local Plan which have similar aims as Policies DG1, H10, N6 and CA2, but would not conflict with policy HO5 of the Emerging plan, which has similar aims as Policy H11.
32. I have noted the various parties' comments regarding the removal of the existing building and its value to the area, in terms of its character and appearance and that the building has been identified as a Heritage Asset in the emerging Windsor Neighbourhood Plan. However, the neighbourhood plan has yet to be adopted and so carries limited weight at this time. The Inspectors in the previous appeals noted that the building is not considered of listable quality and is not within the CA and that there is no control over the removal of the current building on the site. Nonetheless any redevelopment would need to have a suitable design, appropriate to its context. I also take this position, and

consider that neither of the proposals would achieve an appropriate design, for the reasons set out above.

33. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. In addition, Paragraph 193 of the Framework requires when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
34. In regard to both Appeals A and B I find that the development would cause material harm to the character and appearance of the setting of the CA, contrary to Policy CA2 of the Local Plan.

Planning balance in regard to heritage assets

35. The statutory duties in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. As a consequence of the siting and design of the appeal schemes, each would have a harmful impact on the setting of the CA. However, neither of the proposals would lead to the loss of any of the buildings or any of their special features. As such, whilst material, I find that the harm would, in either case, be less than substantial. Paragraph 196 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal.
36. In the case of Appeal A, the development would provide benefits in terms of delivering twelve additional homes to boost housing supply. In that of Appeal B fourteen additional homes would be provided. There would be benefits to the local economy in terms of short term employment in the construction industry and longer term support to local shops and businesses. Each proposal would provide a degree of green landscaping within the site, albeit that the scope for such landscaping is limited. The proposals are situated in a relatively accessible location and future occupiers would not rely solely on the use of the private car to satisfy their transport needs. Taken together, and given the scale of the development these benefits carry moderate weight.
37. On the evidence before me I therefore conclude that the public benefit, in each case, has not been demonstrated to outweigh the less than substantial harm identified to the setting of the CA.
38. My attention has been drawn to a recent appeal decision at 67 Alma Road, Windsor, SL4 3ES (Ref APP/T0355/W/18/3203764). From the limited information before me I am not satisfied that this decision forms a direct contextual comparison to the appeals before me. I have, in any case, determined these appeals on their own merits.

Living conditions of neighbours (Appeal B only)

39. Heron Lodge has windows on all three storeys on its flank wall facing towards the site. Currently these windows face a single storey extension, with the upper storey elements of the existing building set further back, or to the side, giving these windows a more spacious outlook. The existing land levels set the site of Heron Lodge lower than that of the appeal site.

40. The Appeal B scheme would introduce a substantial three storey elevation, incorporating windows for habitable rooms on its first and second floors close to the boundary with Heron Lodge.
41. Given the difference in levels, and the proximity and scale of the wall, the proposed building would create an increased sense of enclosure for anyone standing at the windows in the flank elevation of Heron Lodge. Furthermore, the presence of the windows would result in an unacceptable increase in both surveillance and the perception of surveillance of these habitable rooms with a corresponding loss of privacy to the occupants of Heron Lodge.
42. I therefore conclude that, in the case of Appeal B, the proposal would result in significant harm to the living conditions of occupiers of Heron Lodge. This would be contrary to the aims of those parts of the Framework that seek to create places with a high standard of amenity for existing and future users.
43. Whilst, for the reasons given above, bearing limited weight, the proposals would also be contrary to policy SP3 of the Emerging Local Plan which seeks to ensure that development has no unacceptable effect on the amenities enjoyed by the occupants of adjoining properties.

Other matter (Appeals A and B)

44. Both parties agree that the Council cannot demonstrate a five year supply of housing land. However, I have identified harm to a designated heritage asset and, having regard to Paragraph 11 of the Framework, the presumption in favour of sustainable development does not apply in this case.

Conclusion

Appeal A

45. For the reasons given above, and having taken into account all other matters raised, the appeal is dismissed.

Appeal B

46. For the reasons given above, and having taken into account all other matters raised, the appeal is dismissed.

I Dyer

INSPECTOR