



Appeal Decision

Site visit made on 20 May 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/T0355/W/19/3242038

Land adjacent to 33A, The Crescent, Maidenhead SL6 6AG

- 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 Churchgate Premier Homes against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/02030, dated 19 July 2019, was refused by notice dated 23 September 2019.
 - The development proposed is for nine apartments with associated landscaping, parking and access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Churchgate Premier Homes against the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal submission has been accompanied by amended plans and information which were not assessed by the Council when it made its decision. These include details of replotted tree locations, no-dig areas within the appeal site and visibility splays. An ecology assessment that was not included with the application has also been submitted. This, in part, represents new information. The appeals' procedural guide makes it clear that 'the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'¹.
4. Nevertheless, it is my view, that the additional information does not fundamentally alter the scheme in terms of its design, scale and layout. Whilst I appreciate that the information is technical in nature given that it relates to highway safety, trees and biodiversity, the Council have had sight of it and had the opportunity to comment. I have therefore assessed the appeal on the basis of the additional information.

Main Issues

5. The main issues of the appeal are:

¹ Annex M, M.2.1, The Planning Inspectorate Procedural Guide, Planning Appeals – England, August 2019

- the effect of the proposed development upon the character and appearance of the area, having particular reference to; (i) the proposed design and scale; (ii) the proposed layout; and (iii) the protected trees on the site;
- the effect of the proposed development upon the living conditions of future residents of the flats, with particular reference to outlook and daylight;
- the effect of the proposed development on biodiversity; and
- the effect of the proposed access arrangement on the safety of vehicular and pedestrian traffic on the surrounding road network.

Reasons

Design and Scale

6. The proposed development comprises a detached building incorporating 9 self-contained flats over three floors of accommodation.
7. The appeal site comprises a former side garden area that is located adjacent to No 33A The Crescent (No 33A), a two-storey semi-detached dwelling with a hipped roof. The site is currently overgrown and characterised by the large mature trees along its front and side boundary with The Crescent, a residential street located close to the town centre. Due to the site's position on a corner plot and with clear views through the trees it has a prominent position in the street. It can also be seen from the elevated footbridge that crosses the railway track to the rear of the site.
8. The surrounding dwellings on The Crescent, are largely traditional in their design and primarily comprise two-storey detached and semi-detached dwellings. There are a number of dwellings in the street that incorporate accommodation in the roof space as evidenced by dormer roof extensions, and some dwellings incorporating 3 storeys, however, I found these to be in the minority. The majority of the surrounding dwellings are of medium scale with frontages that neither appear narrow or wide in their context and often characterised by projecting gables and front bay windows set to the side of canopied front entrance porches. External finishes comprise either brick or rendered walls, while roof designs are a mix of gabled and hipped styles with slate or tile coverings. The subtle variations in the appearance of dwellings along with the relative consistency in their proportions, contribute positively to the character of the street.
9. With accommodation over three floors the proposed building would be taller than the majority of the dwellings that surround it, while the higher roof eaves and ridgeline would contribute to the proposal's significant mass in contrast to the surrounding dwellings which have much restrained roof proportions. It would also have a wider frontage elevation than neighbouring dwellings, that would be accentuated when viewed from the street, by the two recessed projecting wings and balconies emanating from the flank walls. Combined with the building's greater depth, and a substantial roof construction compared to surrounding dwellings, it would appear as an expansive and bulky structure in the context of the dwellings in the street which are predominantly smaller in scale. Consequently, the proposal's scale would have an incongruous impact on the prevailing character of the area.
10. Despite the presence of the existing boundary trees, as well as those proposed, the landscaping would provide limited screening for the appeal building, as its height and excessive mass would be clearly observed through existing gaps in the frontage and from the elevated railway footbridge to the site's rear.

11. In terms of its design, although the proposal incorporates obvious similarities with the surrounding properties, such as the proposed projecting gables, chimney stacks and the front bay window, these are associated with a fundamentally bulky and discordant structure that amounts to a design that is inconsistent with neighbouring properties.
12. I recognise that the National Planning Policy Framework (the Framework) encourages distinctive places and high-quality design, however, that should not be at the expense of harm to an area's prevailing character. In this case, the proposal incorporates dimensions that combine to create a building that would be of a design and scale that would be at variance with dwellings in the area.
13. I noted during my site visit that there are larger and taller flat developments on The Crescent, namely Pelham Court and Stour House. However, these also share a frontage with Marlow Road, where the design and scale of development consists of taller and wider buildings, compared to those that surround the appeal site. Furthermore, where dwellings in the street incorporate a third floor of accommodation, these are largely in the form of modest dormer extensions extending from roof planes. The proposed building, however, would have a larger area of third floor accommodation that would be evident across its wider frontage by the higher roof eaves and third floor fenestration that would be partly inserted into the upper portion of the proposed elevations. Overall these features would contribute to the appeal building's greater scale to the detriment of the street's character. Accordingly, these other properties do not lead me to consider that the proposed building's scale and design to be acceptable.
14. Notwithstanding that the Council considers that the appeal site and its immediate surroundings have characteristics that are consistent with the 'Leafy Residential Suburbs' townscape type as listed in its Townscape Assessment² (TA), it is clear from the TA that the site lies within the 'Victorian and Edwardian Suburbs' townscape. Moreover, from my observations the character of The Crescent aligns more obviously with the characteristics listed in the TA for this townscape. However, this has not been a factor that has had a bearing on my findings above.

Layout

15. Dwellings along The Crescent and those on the neighbouring residential street, Elm Grove, are predominantly set back a short distance from the road with the intervening space consisting of shallow parking forecourts and front gardens. The spaces between neighbouring dwellings and their respective side boundaries are modest, primarily comprising narrow side paths and single width driveways. Rear gardens are relatively narrow and vary in depth, nevertheless, from my observations during my site visit, dwellings are overall served by spacious rear amenity areas.
16. The proposed development would have a shallow area of rear amenity space where it would face the railway track, yet there would be more spacious areas between its flank elevations and side boundaries, in addition to the intervening space between the front elevation and the highway. The land around the proposed appeal building would predominantly be more spacious and open in contrast to the surrounding dwellings. Although the proposed development would be greater in mass and scale it would not appear constrained within its plot to the extent that it would be harmfully at odds with the surrounding layout and pattern of development.

² Royal Borough of Windsor and Maidenhead Townscape Assessment, June 2010

Protected Trees

17. The three large mature protected trees positioned close to the appeal site's boundary and frontage with The Crescent provide an attractive and verdant setting that make a positive contribution to the character of the street.
18. The revised landscape protection plan (the LPP)³ shows that the front edge of the proposed appeal building would encroach into the root protection areas (RPA) of the Acacia (T3) and Oak (T4) trees, albeit to a very minor degree. The appellant's arboriculture consultant does not consider that this intrusion is harmful as the level of encroachment is infinitely smaller in proportion to the undeveloped land in the RPAs. Tree roots would primarily be unaffected in these areas while the clearance of the existing vegetation on site would create more favourable soil conditions for the protected trees than would currently be the case.
19. Outside of the building envelope, one of the proposed parking bays would partially encroach into the RPA of T4, however, this area is negligible and in the context of the tree's health and vitality the appellant's arboriculture assessment states that there would be no detrimental impact incurred upon T4. Elsewhere, the proposed pathways and the bin storage area would be developed using permeable surfaces and a 'no dig' formation that would overcome potential harm to tree roots within the RPAs. These are established building techniques in relation to protected trees. Moreover, the appellant confirms that construction would follow a series of site guidance notes that would include appropriate construction methods where new surfacing would be constructed close to existing surfaces. Careful controls in terms of construction methods, level changes and protective measures as set out in the appellant's submission documents, could be secured by condition, and would safeguard the trees. With these safeguards in place, the appellant's arboriculture assessment considers that the health and vitality of the trees would be safeguarded.
20. The Council has questioned the extent of the RPAs plotted on the LPP. It considers that these would extend further into the site given the constraints posed by the highway and boundary wall. However, the asymmetrical crowns of T3 and T4 overhang the pavement and road suggesting root coverage into these areas. The existing vegetation covering the site would also have a bearing on the extent of root coverage given the competition for soil in this part of the site. Therefore, based on the evidence before me I am satisfied that the RPAs on the LPP are a reasonable approximation of their coverage.
21. From my site visit observations, I noted that the asymmetrical tree canopy of T4 encroaches further into the site than indicated on the LPP. Nevertheless, T4 along with the canopies of T2 and T3 would maintain satisfactory distances from the proposed appeal building due to its set back position within the site. Moreover, the positioning of habitable room windows would allow daylight to enter through gaps between the protected trees. Additionally, there would be views from habitable room windows through gaps and under the canopies of the protected trees. Therefore, there would be no adverse harm to the outlook or daylight of future residents in this respect. This would also be the case for the areas of communal outdoor space to the sides and in front of the proposed building. Accordingly, there would not be any significant threats to the continued good health and longevity of the protected trees, arising from the pressure to fell or prune from future occupiers.

³ Barrell Plan Ref: 19090-BT6

22. I note there are safety concerns in respect of the trees upon future residents, however, there is no indication in the evidence that any of the trees on the site present any safety risks. Nevertheless, I acknowledge there could always be a safety risk from trees particularly during inclement weather, while the health of a tree can deteriorate over time and be a risk to safety in that regard. Should there be future concerns on this matter I would expect the Council to have procedures in place for the management of protected trees and that those procedures would likely allow for maintenance to be carried out to trees in the event that they became unsafe.
23. New standard trees along the appeal site's boundary are proposed as part of a landscape scheme. These would serve to enhance the site's verdant appearance while partially softening the proposed built development within the site. Given their number and coverage, the proposed trees would also adequately compensate for the loss of the Yew tree that previously stood on the site and would result in an attractive verdant interface with the street.

Conclusions on character and appearance

24. I have found that the proposal's design and scale would have a harmful effect on the character and appearance of the surrounding area. Notwithstanding this, the proposal would have an acceptable effect on the character and appearance of the area in terms of its layout and the effect on protected trees. In this respect it would comply with aspects of the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations in June 2003) (the Local Plan) (Policies DG1, H10 and N6) that seek to protect character and appearance in terms of avoiding cramped development and harm to important landscape features. However, this lack of harm weighs neutrally in my assessment of the proposal. When considered against the development plan as a whole I have found that the design and scale of the proposed development would conflict with policies within it which seek to protect the area's character and appearance.
25. Therefore, I conclude that overall the proposal would cause material harm to the character and appearance of the surrounding area. It would conflict with Policies DG1, H10 and H11 of the Local Plan insofar as they require the design and scale of new buildings to be compatible with the surroundings and with the character of the area. The proposal would also be contrary to the Framework which requires development to be sympathetic to local character.
26. For the same reasons there would be conflict with emerging development plan⁴ Policy SP2's requirement that new developments should positively contribute to places in which they are located, albeit given the plan's current stage of preparation and the situation regarding changes this only carries limited weight.

Living Conditions

27. The rear elevation of the proposed building would be a very close to the rear boundary fence that separates the appeal site from the railway embankment. The vegetation and trees immediately beyond the rear boundary fence are tall and thick in places and would be very close to some of the proposed habitable room windows. When these boundary features combine with the height, mass and orientation of the proposed appeal building, it would diminish the daylight the intervening space would receive. This would result in a gloomy and physically confined outlook from within the living room and bedroom windows of Flats 2 and to a lesser, but nevertheless harmful, extent from the higher first floor bedroom

⁴ Borough Local Plan Submission Version

- windows of Flat 5. The living room window of Flat 5 would be located further away from the taller boundary trees and vegetation allowing for greater daylight exposure into this room, and a more open outlook towards trees located on the opposite side of the railway track.
28. Whilst it is possible for the trees and vegetation adjacent to the appeal site's rear boundary to be cut and reduced in height, the appellant does not have control over this land. Furthermore, I have not been presented with a mechanism that would secure these works nor their regular maintenance.
29. The windows relating to the second floor flat (Flat 8) would be located above the boundary trees and vegetation. Future residents would not be faced with the same outlook of dense vegetation and the physical proximity to the site's rear boundary that the rooms I have referred to in Flat 2 and 5 would. Instead the views from Flat 8's windows would face the trees located further away and beyond the railway line. This would result in greater visual relief and habitable rooms would receive more daylight and experience an acceptable outlook.
30. Although I have concerns regarding the poor outlook and level of daylight the communal private amenity space to the rear of Flats 2 and 5 would receive, the communal area extends around the whole building and is more open and spacious in other areas. These spaces would have an improved level of outlook and daylight and incorporate enough area to provide functional space (e.g. seating areas, bike storage and clothes drying) such that the living conditions of future residents would not be harmed.
31. Nevertheless, proposed development would have an unacceptable impact on the outlook and the daylight of future occupiers of the flats, particularly those in Flats 2 and 5. The proposal would therefore be contrary to Policy H11 of the Local Plan insofar as it requires development proposals to protect amenity and achieve sustainable high-quality design. In terms of the Framework, the proposal would fail to comply with the requirement for developments to have a high standard of amenity for existing and future users.
32. I have also found there to be conflict with Policy SP3 of the emerging plan which expects new developments to have no unacceptable effects on the amenities of occupants. However, given the emerging plan's current stage of preparation and the situation regarding changes, this policy only carries limited weight.

Biodiversity

33. The Framework (Paragraph 175) advises that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort compensated for, then planning permission should be refused. Furthermore, Circular 06/05⁵ states amongst other matters that it is essential that the presence or otherwise of protected species, and the extent that they may be affected is established before planning permission is granted and any necessary measures to protect the species put in place, through conditions and/or planning obligations.
34. The appellant's Ecological Impact Assessment acknowledges that the survey of reptiles took place during a sub-optimal time of year and over just one month. Although weather conditions were considered favourable, the appointed consultants admit that some reptile species or numbers of reptiles may have been missed due to the time of year. Consequently, this would place doubt on the adequacy of the mitigation proposed. Furthermore, it is not clear from the

⁵ Paragraph 99 of Circular 06/05: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

submitted details of the location and extent of the compensatory land that would mitigate for the lost reptile habitat, and how this area would relate to and be managed alongside the proposed communal private amenity space allocated for residents of the proposed flats. This would also cast doubt on the effectiveness of habitat connectivity with the adjacent land beyond the appeal site's rear boundary.

35. I conclude that the absence of sufficient information, along with a level of uncertainty relating to the timing and duration of the survey, and the effectiveness of the proposed mitigation means I cannot rule out that the proposed development would not have an unacceptable effect on biodiversity. Given this degree of doubt, the use of conditions would not be reasonable in this case. Therefore, the proposal would not accord with the provisions of the Framework and Paragraph 99 of Circular 06/05 as set out above.

Highway safety

36. The proposed site access would be located within 10m of the junction with Elm Grove and The Crescent, a distance which the Council's guidance specifies would create a serious hazard. There is also concern that proposed parking spaces and access would not meet pedestrian and vehicular visibility standards.
37. I noted at my site visit that visibility would be limited to a certain extent by the mature trees and overgrown vegetation along the appeal site boundary. However, the vegetation is likely to be removed while the retained front boundary is sufficiently low in height to allow satisfactory vision in either direction for drivers emerging onto the Crescent, even in reverse gear, to observe oncoming vehicular and pedestrian traffic. Moreover, the detailed design of the proposed boundary railings along the southern perimeter could be secured by condition to ensure they enable acceptable visibility for drivers emerging from the site, to view oncoming pedestrians coming from the direction of the railway footbridge. I therefore do not consider that the safety of pedestrians and vehicular traffic would be materially harmed by the proposed access.
38. Elm Grove comprises a narrow residential street accessed off The Crescent and serving a small group of dwellings. Close to its junction with Elm Grove, there is a short section of The Crescent that leads to a dead-end for vehicles, however, the pavement links in with the railway foot bridge. As such there would be a negligible amount of through traffic coming from this direction. Despite the close proximity of the appeal site's access to the adjacent road junction with Elm Grove, the configuration of the road at this location together with the residential character of the street, would likely result in vehicles travelling at low speeds and with movements being small in number. It is therefore anticipated that the proposal would be unlikely to give rise to any conflict with vehicular traffic that would result in unacceptable highway safety impacts upon the local road network.
39. The amount of proposed off-street parking spaces would be below the number required by the Council's parking standards. However, I note the Council's Highway advisors have not raised any obvious concerns in this regard, as the shortfall could be accommodated through on-street parking. In addition, the site is within convenient walking distance of the town centre and public transport connections, making the likelihood of at least some future residents being non-car owners possible.
40. In concluding on this main issue, the proposed access arrangement would have an acceptable effect on vehicular and pedestrian safety on the surrounding road network. It would accord with Policy T5 of the Local Plan, which amongst other things, seeks to ensure the new development does not place an undue burden, or

create problems of congestion on the highway. It would also comply with the provisions of the Council's Parking Strategy, May 2004 where it requires proposals to consider the safety of road users.

Other Matters

41. The proposed building's window openings and balconies have primarily been positioned to face away from neighbouring properties in the direction of the street or railway line. Where they do face other dwellings, the proposed windows maintain a sufficient distance from neighbouring rooms and garden areas, that would ensure no harmful loss of privacy. Furthermore, the appeal building occupies an acceptable position in the plot and an adequate distance from adjacent dwellings so as not to appear physically overbearing from neighbouring garden areas or habitable rooms. The proposal would not therefore harm neighbouring privacy or outlook.
42. The area proposed for bin storage would be afforded some screening by the existing and proposed landscape features along the boundary and is likely to be of a scale that would not be prominent when viewed from The Crescent. Nevertheless, the final design and scale of the bin storage could be controlled by a planning condition to ensure it would not harm the visual qualities of the street.
43. The appellant states that the site's vacancy has resulted in it being subject to anti-social behaviour. Whilst I sympathise with this, I do not see this as a reason to allow the appeal given the harm I have identified. Moreover, there may be alternative security measures that would overcome the anti-social behaviour that has occurred at the site.

Planning Balance

44. Notwithstanding my findings on biodiversity, I have not been presented with any compelling evidence from the Council that the appeal site could be considered as an area or asset of particular importance. I cannot, therefore, agree with the Council that the application of Framework policies protecting such areas or assets provides a clear reason for refusing the proposal in the context of Framework paragraph 11. It is not a matter of dispute between the main parties that the development plan is out of date. Therefore, in this circumstance the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
45. In the context of the development plan I have found that the proposed development would be contrary to Policies DG1, H10 and H11 of the Local Plan. For this appeal, I have found these policies to be generally consistent with the relevant aims of the Framework, and the conflict with those policies carries substantial weight. Although, I have found no harm to arise in terms of the effect of the proposal on highway safety, protected trees and its layout in the context of the area's character and appearance, the proposal would not accord with the development plan when considered as a whole.
46. The proposal would provide a limited amount of short-term employment through the construction of the development. Some further modest benefits would result from the additional support to the vitality of the local community from the future occupiers of the flats. The nine new flats would make a moderate contribution to the supply of housing and be an efficient use of underused land. I have also taken into account the appeal scheme's location in an existing built up area with good accessibility to various modes of transport, services and facilities, and to which I attribute moderate weight.

47. However, the design and scale of the proposal would result in significant harm to the character and appearance of the area, while internal space arrangements would harm the living conditions of some future occupiers in terms of outlook and daylight. Furthermore, I have not been convinced from the submitted evidence that the proposal would safeguard the site's ecology. As such it would be contrary to the aims of the Framework which requires proposals to be sympathetic to local character, to be of a high standard of amenity for future residents and to adequately mitigate development resulting in significant harm to biodiversity. I have attributed substantial weight to these matters such that they would outweigh the benefits.
48. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. It would also not accord with the development plan.

Conclusion

49. For the reasons given above I conclude that the appeal should be dismissed.

R. E. Jones

INSPECTOR