
Appeal Decisions

Site visit made on 2 September 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2020

Appeal A: APP/T0355/W/20/3253919

127-128 High Street, Eton, Windsor SL4 6AR

- 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 Eton College against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/03203, dated 14 November 2019, was refused by notice dated 13 January 2020.
 - The development proposed is extensions of a retail unit and addition of a residential dwelling.
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Appeal B: APP/T0355/Y/20/3253920

127-128 High Street, Eton, Windsor SL4 6AR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Eton College against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/03204, dated 14 November 2019, was refused by notice dated 13 January 2020.
 - The works proposed are extensions of a retail unit and addition of a residential dwelling.
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Decision

1. Appeals A and B are dismissed.

Procedural Matters

2. Whilst I note the descriptions of development found on the Decision Notices (DN) and the Appeal Forms (AF) differ to the description set out above, I consider the above description better reflects the scheme that is before me, particularly as the alternative descriptions on the DN and AF refer to the development as single storey. I have therefore dealt with the appeal on this basis.
3. The two appeals concern the same scheme under different, complementary legislation, I have therefore dealt with both appeals together in my reasoning.
4. Since the determination of the planning application (Appeal A), the Council has accepted that the evidence submitted in the Appellants' Daylight and Sunlight Statement demonstrates that sufficient natural light would penetrate through the habitable windows of the proposed dwelling and those of the existing window at 129 High Street. Similarly, acting in their responsibilities as the Highway Authority, the Council has also accepted that parking for the proposal could be secured through the use of an appropriately worded planning

condition. In this context, I have confined my assessment of the appeal proposal to the first and second reasons for refusal; the remaining aspects of the third and fourth reasons for refusal, in respect of the outlook from the proposed dwelling and 129 High Street; and I have not considered the Council's fifth reason for refusal, in respect of parking, in any further detail.

5. The main parties have referred to the emerging Borough Local Plan 2013-2033, which has been submitted for examination and further Hearings were due to resume in May/June 2020. However, I have not received any compelling evidence to suggest that the examination has progressed further. Emerging policies are not therefore matters that have a significant bearing on my consideration of the merits of these appeals, particularly as there may be unresolved objections to contend with. Therefore, in accordance with the requirements of Paragraph 48 of the Framework, the emerging plan attracts only limited weight in my consideration of the merits of the appeals.

Main Issues

6. The main issue for both appeals is whether the proposal would preserve a Grade II listed building, known as '126-131, High Street, Eton' and any features of special historic interest that it possesses, and the extent to which it would preserve or enhance the character or appearance of the Eton Conservation Area.
7. The main issues solely affecting Appeal A are as follows: -
 - whether the site of the proposal would be appropriate, having regard to its location in an area at risk of flooding;
 - whether the proposal would provide suitable living conditions for future occupants in respect of outlook; and
 - the effect of the proposal on the living conditions of the occupants of 129 High Street, in respect of outlook from its rear first floor window.

Reasons

Significance

8. The appeal property is a three-storey mid-terraced building situated to the west of High Street within the Eton Conservation Area (CA) and is Grade II listed together with Nos 126 and 129-131 (consecutive). The listing description also suggests that the building has group value with Nos 132 to 138¹ (consecutive). The listed building dates from the 19th Century and was constructed as part of a comprehensive development during commercial and residential growth in the town. The building is predominantly finished in yellow brick, but the ground floor of the southern half of the building incorporates shopfronts, with the remainder being stucco rendered. The upper floors of each property are served by a single sash window with a flat arch, except No 131 which has two windows on each floor. The building also incorporates a simple parapet which continues upwards from the front façade of each property, and to the gable end of No 126, which disguise the roof form of the building.

¹ The appellant has clarified that the address for the adjacent group is incorrect, as the group does not include 138 High Street, rather it terminates at No 137.

9. The shopfront of Nos 127 and 128 comprises two recessed entrances, aligned with the windows above, with large display windows to either side. While each property was originally built as two distinct elements within the terrace, the shop occupies one larger unit at ground floor and the accommodation on the upper floors was combined in the latter part of the 20th Century to provide two flats. A new access was formed and the stairwell reconfigured as part of access provided from the rear. At the time of my site visit, I observed that there were limited historic features on the ground floor and much of the historic floor plan form of the main part of the building and the floor plan and fabric of the earlier wings has been eroded.
10. The rear curtilages of the individual properties that constitute the listed building are arranged within burgage plots. These first appear to have been shown on the 1843 Parish Tithe Map, which identified a consistent plot width and depth and form to the rear wings and outbuildings of each property within the wider terrace.
11. While it is evident that many of the historic rear wings of the properties to the west of High Street have been lost in subsequent alterations and extensions, the replacement rear wings and extensions in situ appear to respect the historic legibility of the burgage plots, including those currently in situ to the rear of the appeal property and at Nos 126 and 130. However, this legibility is slightly diminished at the appeal property as the extensions are finished half-and-half in brick and timber panelling and there are several air conditioning units to the rear façade. Furthermore, as they extend to just over half the depth of both plots and the remainder of each plot is open at the rear, the hardstanding for parking and the storage of refuse bins are visually prominent when viewed from the rear of the listed building.
12. Despite the different phases of rebuilding and alteration undertaken internally and externally to the listed building, its significance today is derived from its architectural and historic interest, as a good example of a three-storey Georgian terraced building constructed as part of comprehensive commercial and residential growth within Eton High Street. In particular, the contribution made by the Classical proportions and shopfronts within the front façade of the terrace to the townscape and street scene of Eton, and the importance of burgage plots to the layout of the terrace, as experienced to the rear.
13. The boundary of the CA closely follows the built limits of Eton, north along High Street from the river crossing at Windsor and incorporates the grounds of Eton College. Historically, the development of the town has been constrained by the River to the east and common land to the west, with development arranged in a compact form within the medieval street pattern of the High Street and neighbouring streets, and more spaciouly in the more prestigious grounds of the College. The High Street is therefore integral to the link between Windsor Castle as a royal institution and the Eton College a royal foundation and draws visitors north from Windsor.
14. Most buildings date from the late-Georgian and Victorian period of the town's development and incorporate brick or rendered frontages with Classical proportions and detailing. There are also several buildings surviving of medieval origin. Beyond the High Street, developments are more modest but the rear extensions and wings of many buildings are visible, which provides evidence of the evolution and focus of these buildings for working in the town

and the influence of burgage plots on its layout. There have also been more modern extensions or alterations of buildings to the rear, and infill and larger developments scattered around the town, including close to and fronting the river. The rich variety of buildings in the CA therefore contributes to its character and appearance.

15. Despite the presence of modern extensions and alterations and the variety of buildings, the significance of the CA is principally derived from the wealth of historic structures, particularly the consistent quality of the Georgian and Victorian buildings found in High Street, and their arrangement within burgage plots, all of which contributes to the character and appearance of Eton as a historic town.
16. In so far as is relevant to this appeal, the form and appearance of the listed building reinforces the traditional hierarchy between the higher status of the High Street façade and the secondary elevations and wings to the rear. Furthermore, given that the rear of the appeal property is visible from the carpark to the rear and from Sun Close, the evidence and continued layout of the properties in respect of their burgage plots also makes a positive contribution to the character and appearance of the CA and thereby to its understanding and significance.
17. Whilst the burgage plots at the appeal property have eroded slightly due to the appearance of the extensions and the open hardstanding, they remain legible in part.

Effect of the proposal on the significance of the listed building and the character and appearance of the Eton Conservation Area

18. Like the existing extensions to the appeal property, the proposal would occupy the majority of the width of the burgage plots at ground floor, aside from two recessed areas that provide access to the retail unit and the existing and proposed residential accommodation above. Moreover, the two-storey element of the proposal would be clearly distinct from the single storey elements and its footprint would straddle the midpoint of the burgage plots at ground and first floor. This would jar with and obscure the established grain of development present within the burgage plots to this part of the western side of High Street, particularly to the rear of the properties within the listed building, which are otherwise clearly defined. The proposal would therefore be harmful to the character of the CA and the special interest of the listed building.
19. I note that the extension at No 130 also incorporates a contemporary appearance and materials, but this recognises and maintains the form of its burgage plot. Likewise, while the projections to the rear of other buildings vary in age, form and scale, where they occupy more than one storey, they are also accommodated within the burgage plots.
20. Although the pitch of the proposed extension would be steeper than that of the host building, I note that there is some variety to the roof pitches of extensions, projections and wings in the locality. Similarly, although the flat-roofed dormer windows would be a contemporary addition, not evident elsewhere in High Street, they would only project a minor extent above the eaves line of the proposed building. Due to their position and relationship with neighbouring buildings, the dormers would also primarily be experienced in profile from the rear. I am also mindful that the dormers would enable the proposed roof to be

lower. Furthermore, the west façade of the proposal would incorporate large areas of glazing and a recessed terrace area, which would have a similar appearance to the primarily glazed west elevation of No 130.

21. The proposal would enclose the rear of the site and, in doing so, address the visual implications associated with the open views into the rear of the properties and the hardstanding area. Amongst other things, bin storage would be more thoughtfully located. This would also create a more consistent building line and enclosure of the rear curtilages of the listed terrace. The proposal would also utilise brickwork consistent with the listed building and be of a scale consistent with neighbouring projections at Nos 126 and 130.
22. With the above in mind and given that the existing extensions, projections and wings to the rear of High Street vary in scale, design and materiality, the appearance of the proposal would not, of itself, be harmful to either the CA or the special interest of the listed building.
23. The proposal would utilise the existing opening in the rear façade of the main building to provide a doorway into the stairwell, so the stairs beyond that point would be omitted, including the sloping soffit within the main building. Along with the removal of the remnants of earlier wings and extensions thereto, on balance, the loss of and alterations to the historic fabric of the listed building would not be harmful to the special interest of the listed building.
24. Despite my findings in relation to the appearance of the proposal and the loss of historic fabric, given the siting of the two-storey element of the proposal across the burgage plots of Nos 127 and 128, it would introduce a form of development that would have a significantly detrimental effect on the character of the CA and the listed building and, thereby, their understanding and significance as heritage assets.

Public benefits and conclusions on the first main issue

25. The statutory duties in Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) are matters of considerable importance and weight. Paragraph 192 of the National Planning Policy Framework (the Framework) states that the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation should be taken into account in determining applications. Meanwhile, paragraph 193 of the Framework also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation.
26. The proposal would be harmful to the special historic interest of the Grade II listed building and the character of the CA. This would have a negative effect on the significance of these designated heritage assets. In my view the harm that I have identified would equate to less than substantial harm to the significance of the designated heritage assets. In such circumstances, paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals, which includes the securing of optimal viable use of listed buildings.

27. The proposal would provide a single private unit of accommodation in the town which would contribute to local and national housing targets. The proposal would also provide some enhancement of the rear environment of the appeal property. However, I am not persuaded that there would not be another appropriate solution to the enclosure of the otherwise open rear aspect to the site and the visibility of, amongst other things, refuse bins stored in connection with the appeal property, which limits the weight I can attach to this as a benefit.
28. Furthermore, there is no substantive evidence before me to suggest that the proposals are required to sustain the heritage assets. In particular, the continued viable use of the appeal property as a retail unit with residential flats above would not be dependent on the proposal, as the building has ongoing uses that would not cease in its absence.
29. Taking the above together, the public benefits I have outlined above would not justify allowing works and development that would fail to preserve the special interest of the listed building and the character of the CA. Therefore, in accordance with paragraphs 193 and 196 of the Framework, considered together, I conclude that the public benefits do not outweigh the great weight to be given to the less than substantial harm that I have identified.
30. I therefore conclude that the proposal would fail to preserve the special historic interest of the Grade II listed building and the character of the Eton Conservation Area. Hence, the appeal proposal would fail to satisfy the requirements of the Act, paragraphs 192 and 193 of the Framework and conflicts with Policies DG1, CA2 and LB2 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (including Adopted Alterations, 2003) (the LP), which together seek to ensure that the character of listed buildings will not be adversely affected, both internally and externally by proposals; and proposals should enhance or preserve the character or appearance of conservation areas, including through being of a high design standard which is sympathetic in terms of, amongst other things, siting.

Flood risk

31. The site lies within Flood Zone 3 which is an area where there is a higher risk of flooding. There is some disagreement between the parties as to whether the flood risk sequential test (ST) would be applicable to the proposed development.
32. Both the Framework and National Planning Practice Guidance (NPPG)² provide advice on when the ST need not be applied. This includes for individual developments on sites which have been allocated in development plans through the ST, or for minor development or change of use (except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site). The appellant has suggested that the proposal would equate to minor development.
33. The definition of minor development in the NPPG and relevant legislation³ (the Order), includes the extension of an existing building used for non-domestic purposes where the floor space created by the development does not exceed

² Paragraph: 033 Reference ID: 7-033-20140306, Revision date: 06 03 2014.

³ Schedule 4 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

250 square metres. Whilst the ground floor of the proposal relates to an extension of the existing retail use, so would fall within this parameter, the first floor would accommodate a new dwelling. Accordingly, the proposal would not fall within the definition of 'minor development' and the ST would be required. Furthermore, it goes without saying that, not being minor development does not in turn lead to development being 'major development', as this is defined elsewhere in the Order.

34. The Framework suggests that the aim of the ST is to steer new development to areas with the lowest risk of flooding. Development should not therefore be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
35. The appellant has suggested that it would not be possible to locate the proposal elsewhere, particularly the proposed extension to the existing retail use, or to separate the elements from one another. Moreover, I understand that the proposed dwelling is required to make the overall development financially viable. For those reasons the appellant has indicated that it would be impractical to undertake the ST in isolation for the individual parts of the building.
36. Although I accept that a pragmatic approach should be taken to the availability of alternative locations for an extension to an existing business, for housing, the extent of the ST should not be constrained by land ownership and realistically will often extend across a town or local authority area. That being said, overall, the appellant has suggested that there would not be any reasonably available sites in a lower probability zone.
37. However, on the basis of the evidence before me, I cannot be certain whether other reasonably available sites at a lower risk of flooding that are similar to the appeal site have been fully or robustly considered or would not be sequentially preferable to the appeal site. Furthermore, there is no substantive evidence before me in respect of the economics of the proposal that would demonstrate that an extension to the retail use could not be carried out in isolation from the proposed dwelling. I have therefore afforded this matter limited weight in my consideration of the appeal proposal.
38. Compliance with the ST is a fundamental requirement of the Framework and NPPG and it has not been met. It is therefore not necessary for me to consider the proposal's compliance with the Exception Test. In light of this, I conclude that the site of the proposal would not be appropriate, having regard to its location in an area at risk of flooding. Hence, the proposal would not accord with Policy F1 of the LP, which seeks to, amongst other things, resist new residential development in flood areas unless it can be demonstrated that it would not increase the number of people or properties at risk from flooding. The proposal would also be in conflict with paragraph 158 of the Framework.

Living conditions of future occupiers

39. Due to the narrow width of the site, the bedrooms in the proposed dwelling would incorporate windows facing north and south. Moreover, Bedroom 1 would have a dual aspect to the north and south, while Bedroom 2 would be served by windows to the north and in the south roof slope. Meanwhile, the living space would incorporate dual aspects to the south and west.

40. Although the parapet proposed to the boundary with 129 High Street would not obscure outlook from the north-facing bedroom windows, the outlook available would be over the roof the extension to No 129 and toward the substantial solid wall of the extension to the rear of No 130. Similarly, the south-facing window of Bedroom 1 would be in close proximity of the northern façade and pitched roof of the two-storey rear projection serving No 126. Furthermore, the access to the existing flats in Nos 127-128 would be taken across the roof of ground floor extension, directly past the south-facing window of Bedroom 1. Whilst I accept that the Council did not raise concerns in this respect, this would have an effect on the privacy of future occupants and place a greater emphasis on the outlook from the north-facing window.
41. Conversely, while the living space would also incorporate outlook south, the principal outlook would be from the west-facing window out onto the proposed terrace area. This would provide more distant views over the surface carpark to open land.
42. Despite the nature of the outlook available west from the living space, when occupants of the proposed dwelling are within the bedrooms, there would be very little relief from the outlook toward surrounding buildings which would appear imposing in close proximity of those windows. For these reasons, I conclude that the outlook from the proposal would be inadequate, to the extent that it would have an unacceptable effect on the living conditions of the future occupants of the proposed dwelling. Hence, the proposal would conflict with paragraph 127(f) of the Framework, which seeks to ensure that developments create places with a high standard of living conditions for existing and future users.
43. The Council's Officer Report and Statement of Case referred to conflict with policies DG1, H10 and H11 of the LP but I have not found in relation to these policies, in respect of this issue, as they do not refer to the effects of proposed development on living conditions.

Living conditions of occupants of 129 High Street

44. The appeal building is situated in a busy area occupied by a mixture of commercial and retail uses at ground floor, but there are residential properties interspersed amongst these uses and to the upper storeys of buildings. In particular, to the north is 129 High Street, which is a three-storey house. It is separated from the appeal property by a stepped boundary wall that initially slopes down from the rear façade. To the North, No 130 has been extended to the rear as far as the carpark to the west.
45. The proposed extension would add to the scale of the appeal building but the first floor would be set away from the rear elevation and away from the shared boundary with No 129; and the roof would be hipped to the eastern end.
46. Given the layout and scale of the first floor of the proposal, particularly its separation from No 129, the proposed extension would not appear oppressive or imposing when viewed from the rear facing first floor window of No 129, in its own right or in combination with the extension at No 130.
47. In light of the above, I conclude that the proposal would not have a harmful effect on the living conditions of the occupiers of No 129 in respect of outlook. Hence, the proposal would accord with paragraph 127(f) of the Framework, in

this respect. For the reasons outlined in the previous main issue, I have not found in relation to Policies DG1, H10 and H11 of the LP.

Other Matters

48. The appellants submitted the proposal following pre-application advice⁴, which was supportive of elements of the appeal scheme. The Framework stresses the benefits of early engagement and of good quality pre-application discussion. Nevertheless, I am mindful that this is not binding and, in any event, I have considered the individual merits of the proposal afresh as part of my statutory duties (see above), in light of the evidence before me. Therefore, any positive feedback given in respect of those matters does not warrant allowing these appeals.

Planning Balance

49. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
50. The appellants have alluded to a lack of housing supply in the Borough, but there is no substantive evidence before me of a shortfall in the supply of deliverable housing land.
51. Clearly, if the Council cannot demonstrate a 5-year housing land supply, paragraph 11 of the Framework would be engaged. However, I am mindful that in light of my findings in relation to heritage and flooding matters, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, the presumption in favour of sustainable development does not apply.
52. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage assets. Furthermore, the proposal would not be harmful to the living conditions of the occupants of 129 High Street.
53. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the special historic interest of the Grade II listed building and the character of the Eton Conservation Area; the location of the development in respect of the risk of flooding; and the living conditions of the occupiers of the proposed dwelling.
54. The proposal would not amount to sustainable development under the terms of the Framework. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.

Conclusion

55. I have found harm in respect of Appeals A and B in relation to the Grade II listed building and the character of the Eton Conservation Area; and harm in relation to Appeal A in terms of the location of the development in respect of the risk of flooding and outlook for the future occupiers of the proposed dwelling, and there are no other considerations which would outweigh these

⁴ Planning Reference: 19/90528/PREAPP.

findings. Accordingly, for the reasons given, I conclude that the appeals should be dismissed.

Paul Thompson

INSPECTOR