
Appeal Decision

Site visit made on 9 December 2020

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 8th January 2021

Appeal Ref: APP/E0345/W/20/3259438

1A Mulberry House, Eldon Road, Reading RG1 4DJ

- 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 The Faculty Ltd against the decision of Reading Borough Council.
 - The application Ref 200123, dated 23 January 2020, was refused by notice dated 9 June 2020.
 - The development proposed is erection of a 3 to 5 storey building and semi-open basement providing 11 (5x1bed, 3x2bed and 3x3 bed) residential units (Use Class C3), 10 parking spaces, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There is an extant planning permission for similar development at the site that was granted in 2019 (the 2019 permission). Differences between the appeal proposal and the 2019 permission include the scale, elements of detailed design and internal configuration of the proposed building. The number of residential units has also increased from 7 to 11. The 2019 permission predates adoption of the Reading Local Plan (Local Plan) which this appeal must be considered against.
3. The Council have confirmed that they no longer wish to pursue reason for refusal number 6. This follows their consideration of the Appellant's evidence relating to sustainable drainage.
4. Reasons for refusal numbers 8 and 9 relate to the absence of a legal agreement under section 106 of the Town and Country Planning Act 1990 (s106) to secure obligations relating to an employment and skills plan and carbon offsetting. The Appellant has signalled a willingness to make the obligations but has not provided a signed and executed s106 as part of the appeal. Given the conclusions on other matters it is not expedient for me to pursue the s106 as it would not affect the outcome of the appeal. In any event, the s106 should have been submitted with the appeal if the Appellant wanted to ensure it was considered.

5. The Council makes a number of general references to whether the Appellant's additional information should be admitted as part of this appeal, including the Daylight, Sunlight and Overshadowing Assessment (Light Assessment) submitted to assess the impact on existing surrounding residents and future occupants of the proposal. For the avoidance of doubt, I have reviewed the Appellant's submissions and find admitting them to be in accordance with the Planning Appeals Procedure Guide. As such, I have paid regard to all the Appellant's submissions in reaching a decision.

Main Issues

6. The main issues are :

- The effect of the proposed development on the character and appearance of the surroundings, including the character and appearance of the Eldon Square Conservation Area (Conservation Area), the setting of nearby Listed Buildings, and impact on trees.
- Whether it would provide a suitable mix of accommodation and provision for affordable housing.
- Whether good living conditions would be created for future occupants of the development, with particular reference to standards of internal natural light and crime prevention.
- The effects on the living conditions of occupiers of nearby properties, with particular reference to outlook.

Reasons

Character and appearance

7. The main part of the appeal site is a roughly rectangular, vacant plot of land that fronts the east side of Eldon Road. The site is between the substantial modern later 20th century flat block of Hanover House and the 3 storey Edwardian style properties at 1-3 Eldon Road.
8. Although dominated to a degree by the road network, the surrounding area is predominantly residential in nature. The Conservation Area, which the site also forms part of, is centred around Eldon Square which is a short walk to the south and does not form part of the immediate surroundings of the site. On the west side of Eldon Road there are a number of Grade II Listed Buildings, notably Georgian in style and similar to those on the square. These buildings give the west side of Eldon Road a higher degree of consistency of appearance than the east. The Eldon Square Conservation Area appraisal identifies modern developments (such as Hanover House) as having a negative impact on the historic character and appearance of the Conservation Area.
9. I have considered the proposed building against that agreed as part of the 2019 permission. While there are similarities, the appeal proposal differs in a number of respects, notably in relation to the scale of the new building and elements of the detailed design which must be assessed on their own merits.

10. In relation to the scale, the proposed building would infill a substantial part of the townscape gap between Hanover House and 1-3 Eldon Road as seen from Eldon Road. This would be most evident in closer public views as wider visibility would be restricted by the set back of the new building and its relationship with others in the surroundings.
11. Notwithstanding this, and considering the Appellants points about the constraints of the site along with the submitted CGI images and other details, the scale of the proposed building would sit uncomfortably within this relatively narrow plot. This would be particularly evident at upper floor levels. Although the proposed building is said by the Appellant to have the same overall maximum height as the 2019 permission, the greater single mass of the new building would result in a lack of clear distinction and gap between buildings that would, in some views, make the proposed building appear as an extension of Hanover House. Whilst the design shows some element of step down, and therefore transition, between Hanover House and 1-3 Eldon Road, this would not be clearly perceived in key views from Eldon Road in the context of the wider scheme and would therefore be ineffective.
12. In relation to the detailed design, the large areas of glazing incorporated into the Eldon Road elevation in particular would further reinforce the visual link with the utilitarian appearance of Hanover House. This would serve to compound the issues described above with the scale of the proposed building. The decreasing size of the glazing on the upper floors of the new building and deep reveals would not go far enough to lessen the effect.
13. It would be wrong to impose a single design approach or require pastiche simply because of the Conservation Area location. A clearly modern, high quality design that incorporates large areas of glazing may be appropriate for this site. However, the scale and detailed design of the new building is such that the proposal would not result in high quality design that maintains and enhances the character and appearance of the area in accordance with Policy CC7 of the Local Plan.
14. Notwithstanding the consultation response from Historic England, which I have carefully considered, the proposed building would also cause harm to the character and appearance of the Conservation Area. This is the case because of the design issues with the proposed building itself discussed above and as a result of the additional prominence that it would draw in key views from Eldon Road to Hanover House as a building that impacts negatively on the Conservation Area. As such, the proposal would not accord with Policies EN1, EN3, and EN6 insofar as they relate to conservation areas.
15. Applying the policy in Chapter 16 of the National Planning Policy Framework (the Framework) I would characterise the harm to the Conservation Area as less than substantial. Therefore, I have considered paragraph 196 of the Framework. The main public benefit of the proposal is the delivery of housing above and beyond that granted in the 2019 permission. Whilst desirable in terms of securing further housing delivery, this is not outweighed by the harmful effects on the Conservation Area of doing so.

16. I have considered the effects of the proposal on nearby Grade II Listed Buildings, notably those on the west side of Eldon Road opposite the site. Given the level of physical separation between these buildings and the site, reinforced by the road and the set back of the new building, the proposal would not harm the settings of these Listed Buildings.
17. In conclusion, I do not agree with the Appellants view that the proposal represents an improvement on the 2019 permission. Further, when assessed on its own merits it would result in harm to the character and appearance of the surroundings, including the character and appearance of the Conservation Area.
18. Consequently, I find conflict with the Local Plan, in particular Policies CC7, EN1, EN3, and EN6 which collectively require development to achieve a high standard of design and preserve or enhance the character and appearance of the Borough's conservation areas.

Trees

19. The proposal would result in the removal of a Black Mulberry tree. The tree is prominently located on a street frontage and is the subject of a Tree Preservation Order. It is therefore regarded as being at least locally of some importance. I note the Council's comments about its amenity, historical, and biodiversity value and that the Conservation Area appraisal highlights that trees are scarce and therefore make a significant contribution to the area's character and sense of identity where they are present.
20. I have considered the Appellant's Tree Reports, including the update for this appeal, (Tree Reports) and other evidence on this matter. I note that the description of the Mulberry tree as a category C tree is disputed by the Council in response to this proposal. Notwithstanding the difference of opinion, the Appellant acknowledges that the consequence of adopting the category C designation under the relevant standard is that the tree should be retained but it should not be considered as a constraint to any proposed design or subsequent development.
21. Having reviewed the evidence, the Appellant has provided no compelling justification for why the protected tree needs to be removed in order to facilitate the proposal or why it is a constraint on development. The potential lifespan of the tree of 10 years plus, replacement with another tree, and convenience of replacement while the site is being developed do not provide adequate justification.
22. On the basis of the evidence provided, I conclude that the proposal would result in the unjustified removal of a tree of importance, contrary to Policy EN14 of the Local Plan. Notwithstanding the proposed replacement, given the position on scarcity of trees in the Conservation Area, I also find that the unjustified removal would lead to less than substantial harm to the character and appearance of the Conservation Area. The harm is not justified by the public benefits of the proposal that are discussed elsewhere as it appears that the proposal could be carried out regardless of whether the tree is removed.

23. I have considered the evidence relating to other trees (in particular those identified as T2, T3, and T6 in the Tree Reports). The evidence provides satisfactory assurances that they would not be harmed as a result of the proposal, subject to conditions requiring agreement of detailed protection measures and confirmation that adequate soil depth would be provided for T6.
24. In conclusion, the effect on the Mulberry tree would be harmful to the character and appearance of the surroundings, including the character and appearance of the Conservation Area. Consequently, I find conflict with the Local Plan, in particular Policies EN14, CC7, EN1, and EN4 which seeks to protect trees of importance from damage or removal and preserve or enhance the historic environment.
- Housing mix and affordable housing provision*
25. Policy H2 of the Local Plan includes a requirement that, wherever possible and having regard to other material considerations, development of the location and scale of the proposal should make provision for 50% of the dwellings to be 3 bedrooms or more.
26. The 2019 permission proposed no 3 bedroom units but, as acknowledged by the Appellant, fell below the threshold where the requirement is triggered. The 2019 permission could be implemented in preference to the proposal and therefore provides a fallback position. However, implementing a 7 unit permission rather than the 11 units proposed simply to avoid the requirements of Policy H2 does not, on the basis of the evidence provided, indicate an attractive fallback position for the Appellant to take in reality.
27. I have considered the Appellant's other points, including those relating to market considerations. However, as the Local Plan has been adopted relatively recently, following examination of its soundness, I find nothing in the evidence compelling enough to reach a conclusion that the policy basis underpinning Policy H2 is incorrect.
28. The developments on other sites referred to by the Appellant would have been assessed on their own merits and the evidence presented. Any acceptable justification for not following Policy H2 for those developments does not in itself justify an exception in the present case.
29. Overall, the evidence does not demonstrate that the requirement for 50% of the units to be 3 bedrooms or more should not be applied. As such, there is conflict with Policy H2.
30. Policy H3 of the Local Plan says that a 30% contribution towards affordable housing will be sought, with an assumption in the first instance that it would be provided on site. The proposed development includes no affordable housing and seeks to justify that on the basis of viability. Policy H3 makes provision for this as an exception if it can be clearly demonstrated by the developer/landowner.

31. I note that the Council were satisfied that no contribution was justified when they granted the 2019 permission, although subject to a deferred affordable housing contribution that was secured as part of a s106. The outcome in relation to the 2019 permission was on the basis of a 7 unit scheme with a different housing mix.
32. Given the differences between proposals, a fresh appraisal is necessary in order to justify no contribution being made as part of the present proposal. This may require more than simply revising and updating the information underpinning the 2019 permission. I also note that the 2019 permission pre-dates adoption of the latest Local Plan with its more up to date assumptions that justify the level of contribution required under Policy H3.
33. I have reviewed the Appellant's viability evidence, principally in the Viability Report dated November 2019. I have also paid regard to the Council's comments from their Valuations Officers given in response to the planning application. These are acknowledged by the Council as being a high level review and highlight the need for further discussions about some of the inputs that inform the conclusions in the Viability Report.
34. The contents of Policy H3, along with the related Supplementary Planning Document, indicate that it was legitimate for the Council to ask for clarification on matters such as sales values, existing use, and development costs. However, whether the Council allowed time for these further discussions to take place before issuing their decision is debatable.
35. The Council have provided limited evidence on the specific points of clarification that they needed. The Appellant has also produced no further substantive evidence on this matter to support this appeal. As such, the evidential basis on which to decide this matter one way or another is weak.
36. However, Policy H3 clearly places the onus on the Appellant to demonstrate that no affordable housing contribution is justified. I am of the view that this is not demonstrated on the basis of the evidence provided and that there is resulting conflict with Policy H3. However, in reaching this conclusion I acknowledge the points above about the gaps in the evidence, which are not entirely the fault of the Appellant. It should also be noted that this conclusion does not affect the position in relation to other main issues or the outcome of the appeal as a whole.
37. In reaching my conclusions on this matter I have not paid regard to the Council's report by BPS Chartered Surveyors at Appendix 10 of their statement of case. This is because the information constitutes additional technical data and therefore should not be admitted under paragraph D5 of the Planning Appeals Procedure Guide. Admitting this information would in my view have prejudiced the Appellant by not allowing them sufficient time to respond within the Appeal timetable.

38. For the reasons discussed above, it has not been demonstrated that the proposal would provide a suitable mix of accommodation or make adequate provision for affordable housing. Consequently I find conflict with Policies H2 and H3 of the Local Plan which require 50% of the dwellings to be 3 bedrooms or more and a 30% contribution towards affordable housing unless justified by exception.

Living conditions – future occupants

39. The Light Assessment submitted as part of the appeal indicates that a very high proportion of the rooms within the proposed building would meet the relevant best practice guidelines in relation to daylight. Three of the rooms where the standards would not be met relate to kitchen/living spaces and are therefore regarded as primary living spaces, although one of the rooms is only marginally short of the standard. Notwithstanding these deficiencies, considering the development as a whole, it would on balance provide adequate standards of daylight for future residents and accord with Policy CC8 of the Local Plan in this respect. This is the case even when factoring in potential for additional overshadowing from trees.

40. The Light Assessment does not include a detailed assessment of levels of sunlight for the proposed dwellings. The Appellant provides little specific detail to show that the dwellings in the proposed building meet the occasions where the relevant standards suggest an assessment would not normally be needed.

41. Considering the narrowness of the site, the proximity of the proposed building to other structures, and the marginal nature of the daylight assessment in some areas, a precautionary approach should be taken to this issue. As such, the evidence provided does not adequately demonstrate that the standards of sunlight for the proposed development would accord with Policy CC8.

42. Turning to effects on crime and safety, I have noted the comments from the Thames Valley Police who do not object to the proposal but offer comments in relation to crime prevention design. The Appellant offers no evidence in relation to the matters raised and I have no reason to dispute that the issues highlighted are well founded. However, taken as a whole these matters could be satisfactorily addressed using planning conditions. This includes a condition relating to the provision of a shutter designed to secure the proposed basement car parking area. As such, there is no policy conflict with CC8 on crime and safety grounds.

43. In conclusion, it has not been demonstrated that the proposal would create good living conditions for future residents, with particular reference to standards of internal natural light, with particular regard to sunlight. Consequently I find conflict with Policy CC8 of the Local Plan which says that development should not cause unacceptable living conditions for new residential properties, including in terms of access to sunlight.

Living conditions – occupiers of nearby properties

44. Having reviewed the Appellant's Light Assessment, the Council have confirmed that they are content that the information meets their concerns in relation to standards of natural light. However, they remain concerned about impacts on outlook resulting from the visual dominance and overbearing effects of the proposed building. These concerns particularly relate to effects on the living conditions of occupiers of properties in Hanover House and 1-3 Eldon Road.
45. The north west corner of the proposed building would be very close to some south facing windows that serve the flats in Hanover House. The closest windows to the proposed building on the corner of Hanover House would look towards the angled solid privacy wall. Whilst this wall may be necessary in order to avoid overlooking, it would be oppressive and overbearing when viewed from properties in Hanover House. It would be particularly detrimental to the outlook presently enjoyed by the residents occupying the flats at Hanover House at ground, first, and second floor levels, closest to the north west corner of the proposed building.
46. Turning to 1-3 Eldon Road, the upper floors of the proposed building would be closer to this property than agreed in the 2019 permission. However, considering the differences between the 2019 permission and the proposed development and the separation distances between properties, I am satisfied that harm by reason of loss of outlook would not occur to 1-3 Eldon Road.
47. In conclusion, the proposed development would have a harmful effect on the living conditions of occupiers of nearby properties, with particular reference to loss of outlook. Consequently, I find conflict with Policy CC8 of the Local Plan which says that development should not cause a detrimental impact on the living environment of existing residential properties, including harm to outlook.

Conclusions

48. I have identified conflict with the Local Plan arising from harm in relation to the character and appearance of the surroundings and the Conservation Area, trees, the mix of accommodation and provision for affordable housing, and the effects on the living conditions of future occupants of the proposal and occupiers of nearby properties.
49. I acknowledge that some benefits would result from the proposed development, principally in relation to provision of housing above and beyond that granted by the 2019 permission on a small/medium sized site. Whilst the proposal would increase the density of development this would come at the expense of significant conflict with the Local Plan and therefore harm. The proposal would not therefore make optimal use of the potential of the site.
50. The 2019 permission differs from the appeal proposal, both in terms of the proposal itself and the policy context in which it was considered. Whilst I have taken account of the 2019 permission when deciding this appeal, it does not in itself constitute a material consideration justifying conflict with the Local Plan. Further, given the conflict identified, the 2019 permission constitutes a more desirable fallback position than the appeal proposal rather than a suboptimal one as asserted by the Appellant.

51. For the above reasons, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

D.R. McCreery

INSPECTOR