
Appeal Decision

Hearing Held on 13 April 2021

Site visit made on 20 April 2021

by Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th May 2021

Appeal Ref: APP/T0355/W/20/3255844

Former Squires Garden Centre, Maidenhead Road, Windsor, SL4 5UB

- 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 Bewley Homes Plc and Square Bay (No.5) Ltd against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/01755, dated 26 June 2019, was refused by notice dated 13 January 2020.
 - The development proposed is erection of 37 dwellings including the re-location of existing access, along Maidenhead Road with associated parking, internal circulation, public open spaces, landscaping and related infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In advance of the Hearing the Windsor and Eton Heritage and Environment Committee submitted an Asset Information Sheet in respect of the wall which runs along the northern side of the site. At the Hearing none of the parties indicated an intention to speak to this. It is unclear both its purpose and why this had been submitted so late. Given it potentially offended the Wheatcroft principles¹ I have given this document only limited weight.
3. Following the publication of the latest update on the emerging Local Plan from the Examining Inspector the Council now accord the status of the site allocation AL.22 which covers the appeal site moderate rather than limited weight.
4. Following the Hearing, I received a completed Unilateral Undertaking addressing the Council's second and third reasons for refusal regarding improved pedestrian infrastructure and affordable housing. I address these matters later in the decision.
5. Finally, during the Hearing, I invited representations from the main parties in respect of the recreational impacts arising from the appeal scheme on the Windsor Forest and Great Park Special Area of Conservation (SAC). Although the Council referred me to the HRA² prepared for the emerging local plan this was not strictly relevant given that it includes policies designed to mitigate for

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

² Habitats Regulations Assessment

any locally significant effects arising from the plan and not this specific project being determined against adopted policies. Subsequently, I received representations from Natural England identifying that in their opinion no recreation impacts would arise. This matter is, therefore not a main issue for this appeal.

Main Issues

6. The main issues raised by the appeal are:

- Whether the appeal scheme would be inappropriate development in the Green Belt, including the effect the proposals would have on openness
- The effect the proposals would have on the character and appearance of the area
- Whether or not affordable housing in line with adopted policy is included
- Whether sufficient infrastructure required for the scheme has been included
- Whether very special circumstances exist to warrant an exception to policies which require the protection of the Green Belt.

Reasons

Whether the proposals are not inappropriate development

7. The appeal site forms part of the northern section of Green Belt on the western edge of Windsor. Formerly occupied by a garden centre, both parties agree that it is previously developed land.
8. For this reason, the appellant consider that the appeal scheme benefits from the provisions of Paragraph 145g) of the National Planning Policy Framework (the Framework) in that its development would not have a greater impact on openness when compared to the existing development resulting in substantial harm to openness. The scheme includes 11 affordable dwellings, which is compliant with both adopted and emerging policy and is an important consideration in respect of the second part of Paragraph 145g).
9. There is no dispute between the parties that the amount of proposed development is considerable when compared to that of the existing buildings and areas of hardstanding which currently exist across the site. This is based on calculations of both volume and area. I have no reasons to disagree with the views of the main parties on this point.
10. The site is occupied by a building with a height of around 3-4m, which covers a large proportion of the total site area and there are 2 single storey ancillary structures adjacent to the western boundary. The whole site is covered in hardstanding which was originally used for parking. The northern boundary includes a wall of around 3.5m in height which extends from its shared boundary with Fold Cottage to the existing vehicular access.
11. However, the proposal is far more extensive in scale introducing built form across the whole site with only incidental areas of open space and private

gardens which contrast with the form development. This is acknowledged by the appellant³.

12. Within the proposed scheme buildings vary in height from 2 storey detached properties along the northern edge to short terraces of 2.5 storeys in the centre and western edge with 3 storey blocks of flats at the site's eastern edge and along its south eastern edge. The flatted blocks have a ridge height of around 11.5m but the block located on the eastern edge of the site steps down to 9.2m.
13. In both scale and massing this is a marked difference in built form from that existing. I have considered the appellant's representations in respect of case law⁴ regarding the limitations to assessing openness. I acknowledge that the wall and the extent of vegetation currently limit views into the site but the proposals would be clearly visible from its surroundings when compared to the existing retail building which is more difficult to see away from the site. This would be particularly the case with the gables of the 2.5 storey houses at the western edge of the site and the 3 storey blocks. The removal of the wall would serve only to make the amount of proposed development apparent when viewed from the northern edge of the site. Furthermore, from within the site the scale of the development would be considerably more than the existing parking areas.
14. For these reasons, the redevelopment of this previously developed site would have a greater impact on the openness of the Green Belt than the existing development and would cause substantial harm to its openness. It would be inappropriate development and would not fall within either limb of Paragraph 145g) of the Framework.

Character and appearance

15. The appeal site is located on the western edge of Windsor and is surrounded by a variety of build development. To its north is 'The Willows' a series of buildings of various architectural styles. These range from 2 storey cottage style properties located on the road frontage to much larger detached properties to the east served by a short access road. Immediately to the west of the site are detached properties set in generous gardens. To the south east of the site is the Dedworth estate comprising detached and semi-detached 2 storey properties and to the north west of the site is the 'Willows Riverside' caravan park.
16. Although no specific style of architecture dominates the area around the appeal site, its prevailing character is one of openness, reflecting the area's designation within the Green Belt. This is derived from the large gardens enjoyed by 'The Willows' which run north to the River Thames and the set back of properties from road frontages by deep belts of mature vegetation. For example, the Dedworth estate is set back by access roads along the Maidenhead Road and Ruddlesway which are interspersed with well treed landscape belts.

³ Paragraph 5.24 Statement of Case September 2020

⁴ R(a.o.a. Samuel Smith Old Brewery (Tadcaster) and other) v. North Yorkshire County Council [2020] UKSC 3 at 22-23 and Europa Oil and Gas Limited v. SSCLG [2013] EWHC 2643 (Admin)

17. Closer to the appeal site, belts of mature vegetation lie along both sides of Windsor Road on the site's southern boundary. The 5 properties lying opposite the appeal site on the frontage to Maidenhead Road in 'The Willows' are the exception to this general pattern of development. Although there is a caravan park to the north west of the site, this is set down from its frontage to Maidenhead Road, largely hidden from view by fencing and vegetation.
18. The design of the appeal scheme has sought to respond positively to the range of surrounding buildings through the location of the detached houses on the frontage of the northern edge of the site, mirroring the built form on the north side of the road in 'The Willows'. The built form within the scheme seeks to replicate the surrounding pattern of building on land to the west of the site and on the Dedworth estate. Furthermore, the scheme would be built with a palette of materials drawn from the surrounding buildings.
19. Saved policies DG1 and H11 of the Local Plan⁵ require that proposal should be resisted which would cause harm to the character of a surrounding area through matters such as scale or density. The openness of the area surrounding the appeal site is its defining feature which the scheme should complement.
20. However, the crux of the Council's reason for refusal is that the size of the 2No. 3 storey blocks of flats and their relationship to the Windsor and Maidenhead Roads result in a cramped and unsatisfactory layout. In essence this is an objection not just to the design of the flatted blocks but the effect that their inclusion in the scheme has on the appearance of the remainder of the site.
21. These 2 x 3storey blocks of flats would be prominent in the streetscene. Looking west along Maidenhead Road the block at the site's eastern edge would be particularly prominent by reason of its height and proximity to the front of the site. With a ridge height of around 11.5m the 2No. 3 storey blocks, whilst only being slightly lower than some of the surrounding properties lack their qualities, including set back from frontages commensurate with their scale and detailing, as is the case with the cottages, included in 'The Willows' on Maidenhead Road.
22. The other block lies close to the southern edge of the site and relies on the well treed boundary and broad landscaping strip on highway to afford some degree of cover. However even this area of existing landscaping, strengthened as part of the scheme, could not address the adverse impact of the block on the area's existing character and appearance resulting in an incongruous appearance in this part of the streetscene.
23. For these reasons, both of these blocks would adversely contrast with the prevailing character and appearance of the area defined by built development which has only limited impact on the streetscene. Whilst the elevational treatment of each block has been articulated though a series of projecting gables and balcony details these measures, rather than reducing the impacts of each block serve only to emphasise their height and bulk.
24. During the Hearing the appellant identified that the blocks were required as the site lies at a 'gateway' to Windsor and they could support wayfinding. I am not

⁵ Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations adopted 2003))

convinced by this argument as the design of the 2 blocks has little distinguishing characteristics to identify them as such within the context of the local townscape.

25. The site's density at 53dph⁶ is high for the area and its location on the western edge of Windsor, requires a transition, despite its identification as previously developed land in the Green Belt, to lower densities. The 2 blocks would be incongruous given the open character of the surrounding area, and result in harm to its character and appearance.
26. For these reasons, the proposed scheme would adversely impact on the character and appearance of the area and conflicts with Saved policies DG1 and H11 of the Local Plan 2003. Furthermore, the appeal scheme would conflict with paragraph 127 of the Framework which requires new development to maintain a strong sense of place.

Infrastructure

27. Following the Hearing I received a completed Unilateral Undertaking which includes a commitment to the provision of measures designed to improve public access to local bus stops. The Council indicated that this Undertaking this overcomes its second reason for refusal. Having considered this matter I agree that the proposed infrastructure complies with Paragraph 103 Framework designed to encourage sustainable patterns of development.

Affordable housing

28. The completed Unilateral Undertaking includes the provision of 11 affordable dwellings. This amount is compliant with Policy H3. The Council indicated that this overcomes its third reason for refusal. Although the Council indicated that the proportion of these units included more shared ownership than the evidence base for the emerging local plan requires, the amount of affordable housing is compliant with adopted policy and supplementary guidance and for this reason, I am satisfied that the Council's objections have been overcome. For this reason, on this main issue I conclude that the proposals would not conflict with Policy H3 of the Local Plan 1999.

Other Matters

29. The Framework confirms that planning obligations should only be sought to mitigate the effects of unacceptable development therefore making it acceptable. The Framework in paragraph 56 and CIL Regulation 122 (2) set out 3 'tests' for seeking planning obligations. They must be necessary to make the development acceptable in planning terms, be directly related to the development and fairly and reasonably related in scale and kind to the development.
30. As I am dismissing this appeal, it is unnecessary for me to consider this matter further.

Very Special circumstances

31. The appellant's case rests on several issues which I address in turn below.

⁶ Dwellings per hectare

32. Firstly, the site is previously developed land. However, this designation does not mean that development of any sort is acceptable as Green Belt designation still applies in respect of preserving openness. In respect of the 2 main issues above, I have addressed how the proposed scheme would have a greater impact on openness than the existing development, resulting in substantial harm. I accord this matter substantial weight.
33. Secondly, the site is included in a housing allocation AL.22 for approximately 39 dwellings in the emerging local plan. However, this amount of development is predicated on not just the release of this site from the Green Belt but that adjoining to the south. This would establish a different context to consider the site's proposed development in line with the housing allocation. This is not the situation with this appeal.
34. Furthermore, the Main Modifications have yet to be drafted and public consultation carried out. The most recent letter from the Examining Inspector referred to above, does not refer to any suggested change to this allocation. However, given that the main Modifications have yet to be drafted and the final round of consultation completed, I accord the emerging site allocation only moderate weight.
35. Thirdly the proposals include a policy compliant amount of affordable housing. This is an obligation included in the completed Unilateral Undertaking submitted with the appeal. The SHMA identifies that the Royal Borough has one of the highest values for flats in this part of the south east of England. Furthermore, the Council has failed to deliver its quotient of affordable housing over the last few years. These matters were not contested by the Council during the Hearing. The provision of 11 affordable dwellings is policy compliant, given the Council's undersupply of affordable housing, I accord this matter significant weight.
36. On this latter point I note the weight accorded by my Inspector colleagues in 2 decisions⁷ cited by the appellant. However each decision is determined on the merits of its case and in both of these I understand that the impact of the scheme on the character and appearance of the area was a determinative issue.
37. Both parties acknowledge that the Council has an under supply of housing. The scheme would partly address this deficit through the provision of 37 new dwellings. I accord this matter significant weight.
38. The appellant cites a range of other matters which would flow from the development of the scheme including the economic benefits which would be short term through employment during the period of construction activities and in the long term increased spend in local shops and services arising from the occupiers of the new dwellings. These matters should be accorded significant weight.
39. Although the very special circumstances identified by the appellant articulate a strong case they are finely balanced when set against the substantial harm which I find the appeal scheme would have on the openness of the Green Belt. However, I find that the other considerations in this case do not clearly

⁷ APP/T3725/W/18/3218529 & APP/H1515/W/18/3209204

outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Planning balance and conclusions

40. Taking together all the issues involved in this appeal, I consider that despite the undersupply of housing, given the location of the appeal site in the Green Belt, Paragraph 11d)i (footnote 6) of the Framework applies.
41. I have found that the proposed development amounts to inappropriate development in the Green Belt as it would cause harm to openness. National policy is clear, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
42. During the Hearing there was agreement between the parties that saved policies GB1 and GB2 of the local plan are not entirely consistent with the Framework in that they are more prescriptive and do not account for the exception included in Paragraph 145g) in respect of previously developed land. However, despite this I find that they are both clear on the central issue to this appeal in seeking to maintain the openness of the Green Belt from new development. For this reason, I accord them considerable weight.
43. The proposed scheme would result in harm to the character and appearance of the area around the appeal site. Both main parties identified that the saved policies DG1 and H11 are consistent with Paragraph 127 of the Framework in requiring, amongst other matters that new development accords with the character of the surrounding area. Accordingly, I accord these policies considerable weight.
44. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. I accord significant weight to the conflict between the appeal scheme with saved policies GB1, GB2, DG1 and H11 of the Local Plan and therefore conclude that the proposal conflicts with the development plan as a whole.
45. Overall taking into account the Framework and the above, including the benefits of the development, I find that material considerations do not indicate that planning permission should be granted for the appeal scheme.
46. The proposed scheme is unacceptable and for the reasons set out above the appeal is dismissed and planning permission is refused.

Stephen Wilkinson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Heather Sargent	Of Counsel
Sara Dutfield	Turley
Sarah Hockin	Turley
Peter Morgan	Thrive
Will Page	Square Bay
Markham Mason	Square Bay
Andrew Morris	Bewley

FOR THE LOCAL PLANNING AUTHORITY:

Jo Richards MSc	Principal Planning Officer
Natasha Doughty (Observer)	Planning Support Officer, Appeals
Hilda Gashi (Observer)	Planning Support Officer

INTERESTED PERSONS:

Brian Huggett (Observer)	
Councillor Louvaine Kneen (Observer)	Chair of Bray Parish Council