



Appeal Decision

Site visit made on 4 October 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/J0350/W/21/3287265

Land to the rear of 18-24 Stoke Road, Slough SL2 5AG

- 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 Shall Do Stoke Road Limited against the decision of Slough Borough Council.
 - The application Ref P/06271/021, dated 19 June 2020, was refused by notice dated 1 October 2021.
 - The development proposed is construction of a building comprising 9 flats (3 x 1 bedroom, 4 x 2 bedroom and 2 x 3 bedroom as amended) with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development was amended by the appellant during the course of the appeal application, and accepted by the Council. I have used this updated description.
3. The Council's second reason for refusal concerned a lack of information regarding surface water drainage for the proposed scheme, which meant an increased risk of surface water flooding could not be ruled out. Following submission of drainage details, the Council has indicated that, subject to condition, this reason for refusal has been adequately addressed. I have therefore not considered this matter further.
4. The appellant has submitted a signed unilateral undertaking as part of this appeal. This would secure payment of a number of financial contributions sought by the Council in connection with the proposal. These include an education contribution, a public open space contribution and a public realm improvements contribution. The contributions appear to reflect the levels requested by the Council, which were based on the Developer's Guide¹.
5. Submission of the unilateral undertaking would therefore conceivably overcome the Council's third reason for refusal, which was imposed due to a lack of planning agreement to secure these infrastructure contributions. However, as I am dismissing the appeal on other grounds, I have not considered the detail of the planning obligation in further detail, nor have I have considered whether the obligations would meet the tests of fairness, necessity and relatedness.

¹ Developer Contributions and Affordable Housing (Section 106), Developer's Guide Part 2, November 2008 (updated September 2017)

Main Issues

6. In this context, the sole main issue is the effect of the proposed development on the living conditions of the occupiers of Abbey House, with particular regard to natural light.

Reasons

7. The proposed development would be located approximately 17 metres from the rear elevation of Abbey House, which is a block of flats recently converted from a former office building.
8. The appellant commissioned a Daylight and Sunlight Report² as part of its evidence. This was to assess the potential impact of the development on the occupiers of Abbey House with regard to natural light. The report adopted guidance and methodologies contained in the BRE Guidelines³, which is often used as a baseline for determining the acceptability of development schemes, in terms of effect on neighbouring daylight and sunlight amenity.
9. For context, two of the key measurements used to assess daylight in the BRE Guidelines are the Vertical Sky Component (VSC) and daylight distribution (also referred to as the no sky contour). The VSC is the extent of sky which is visible from a given point within a property (usually a window). The daylight distribution is the area of a particular room that can see the sky (at desk height).
10. Whilst intended as guidance only, the BRE Guidance indicates that a building in close proximity to a new development will generally retain good levels of interior light, if the proposed scheme would subtend less than 25 degrees from the horizontal, when measured from the lowest habitable room windows. In cases where this will not be achieved (as is the case here), then good daylight can still be achieved in neighbouring properties, provided that the VSC is in excess of 27% (or is reduced by less than 20% from its existing level), and if the daylight distribution is reduced by less than 20% of its existing area.
11. The Daylight and Sunlight Report demonstrates that these baseline levels would be breached by the development in a number of flats in Abbey Court, specifically at ground floor and lower ground floor level. Indeed, eight combined Living/Kitchen/Dining rooms (LKDs) in these flats would experience a reduction of between 31% and 63% in daylight distribution when measured against existing levels. Seven habitable rooms at lower ground floor level would also retain a VSC significantly below 27%, which would also be more than a 20% reduction when measured against existing levels.
12. Whilst the impact of the development would be limited to just a handful of flats within Abbey Court, for those affected, the impact would be severe. Indeed, of those flats affected at lower ground floor level, the levels of daylight and sunlight would breach both the recommended VSC, and the level of daylight distribution. Given that these reductions are concentrated to the principal living spaces to these units (being the LKDs), the loss of light would be felt acutely by their occupiers.

² Abbey House, Slough, Daylight and Sunlight Report, June 2021 (Waldrams)

³ Building Research Establishment's Site Layout Planning for Daylight and Sunlight: a Guide to Good Practice (2011)

13. This would be especially problematic, given that some of the affected units are understood to be small, only just meeting minimum space standards. Moreover, the outlook to these units is already impaired by their habitable room windows facing out on to a lightwell at subterranean level. This means their existing amenity standards are already compromised. In turn, any additional deterioration of living standards, particularly reductions in natural light, would compromise living conditions to an unacceptable degree.
14. I acknowledge that the BRE Guidance should be used flexibly. This is particularly the case for development in urban settings, where higher density housing is commonplace and lower levels of natural light may be acceptable. Nonetheless, the breaches of daylight and sunlight standards would be very significant in respect of a number of units within Abbey House, and such a flexible interpretation of the guidance would therefore not be warranted in this instance.
15. The proposed landscaping, and specifically the landscape buffer between the residential units and the parking area, would likely improve the outlook from the residential units at ground floor level. I am therefore satisfied that this element of the scheme would be acceptable. Nonetheless, this in itself would not be sufficient to overcome the harm to the lower ground floor units in terms of natural light.
16. For these reasons, the development would severely harm the living conditions of a number of occupiers of Abbey House. The development would therefore conflict with Policy EN1 of the Local Plan for Slough (2004) (Local Plan) and Policy CP8 of the Slough Local Development Framework, Core Strategy (2006 – 2026) (Core Strategy), which require new development to have a good relationship with nearby properties, ensuring it respects the amenity of neighbouring occupiers. The development would also conflict with the overarching amenity principles set out in the National Planning Policy Framework (2021) (Framework) and the National Design Guide. I find no conflict with Policy EN3 of the Local Plan, which seeks to secure appropriate landscaping as part of new development schemes.

Other Matters

17. The appellant has cited a number of developments within the Council's area, where lower levels of natural light have been accepted by the Council than now proposed. Nonetheless, each case must be assessed on its own merits. In this instance, the harm to the occupiers of Abbey Court, particularly to those living on the lower ground floor, would be especially acute. This is because the significant loss of natural light would further compound the existing shortcomings of amenity standards for these units, owing to their modest size and impaired outlook. I also note that examples referred to by the appellant were for significantly more units, whereby the associated benefits of the scheme (in terms of contribution to the Council's housing stock) would have been greater. In turn, this factor may have weighed more heavily in their favour. Either way, these examples do not persuade me that the development, as currently proposed, should be permitted.
18. The Council cannot demonstrate a five-year supply of deliverable housing, which means its policies relating to delivery of housing are out of date. This means paragraph 11(d)(ii) of the Framework (the tilted balance) is engaged. Nonetheless, paragraph 219 of the Framework is clear that due weight should

still be given to existing policies according to their degree of consistency with the Framework.

19. Paragraph 130 of the Framework is explicit that new development should function well and add to the overall quality of an area. It highlights that development should promote health and wellbeing through a high standard of amenity for existing and future users. The content of the Framework therefore reflects the overriding amenity principles of the Local Plan and the Core Strategy in terms of new residential development. Even accounting for the Framework's objective of boosting the supply of housing and the Council's housing land supply position, the conflict between the proposal and the relevant policies of the Local Plan and the Core Strategy should therefore be attributed significant weight in this appeal.
20. The net addition of nine dwellings would make a modest, yet welcome contribution to the Council's housing supply. The development would also re-use a vacant brownfield site, which would likely improve the character and appearance of the immediate area. Nonetheless, these benefits would not be sufficient to outweigh the significant harm to the living conditions of a number of occupiers of Abbey House. Consequently, the adverse impacts of the development would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this instance.

Conclusion

21. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

James Blackwell

INSPECTOR