



Appeal Decisions

Site visit made on 28 October 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2023

Appeal A Ref: APP/T0355/W/22/3294310

67 Imperial Road, Windsor SL4 3RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr David Rahal (Malvern Estates Plc) against the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/02091 is dated 5 July 2021.
 - The development proposed is the demolition of an existing dwelling and the erection of four new dwellings.
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Appeal B Ref: APP/T0355/W/22/3299429

67 Imperial Road, Windsor SL4 3RU

- 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 Mr David Rahal (Malvern Estates Plc) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/00117/FUL, dated 13 January 2022, was refused by notice dated 24 March 2022.
 - The development proposed is the demolition of a single dwelling and the erection of four new dwellings.
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Decisions

1. Appeal A is dismissed and planning permission is refused.
2. Appeal B is allowed and planning permission is granted for the demolition of a single dwelling and the erection of four new dwellings, at 67 Imperial Road, Windsor SL4 3RU, in accordance with the terms of the application Ref 22/00117/FUL, dated 13 January 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

3. The two appeals relate to the same site. I have considered each proposal on its individual merits; however, as they raise similar issues I have dealt with the appeals in a single decision letter
4. Appeal A is made against the Council's failure to determine the application for planning permission within the prescribed period. The Council's putative reasons for refusal are set out in its statement of case.

Background and Main Issues

5. The appeal site is located on a residential road characterised by detached dwellings set back into their plots on the eastern side. A number of properties along the street have been redeveloped as larger, purpose built apartment

buildings. The opposite side of the road is lined by a substantial band of trees which screens areas of open space to the west.

6. Two alternative developments are proposed. Under Appeal A, it is proposed to replace the existing chalet bungalow with a two semi-detached pairs of dwellings set behind forecourt parking. Under Appeal B, the dwellings are proposed as a single terrace block, designed to resemble the scale and form of nearby apartment blocks on the same street.
7. Having regard to the evidence before me, I consider the main issues in respect of both appeals are:
 - i) The effect of the proposal on the character and appearance of the area;
 - ii) Whether the proposal would be acceptable in respect of carbon dioxide emissions.
 - iii) The effect of the proposal on highway safety.

Reasons

Character and appearance

8. The street exhibits a distinctive suburban character, with plots of generous depth and mature landscaping to the rear gardens in particular. The fronts of sites, for the most part, are given over to hard surfacing for parking, with some hedging and fencing partially screening views from the road.
9. I note the comments of a previous Inspector for the appeal at 71 Imperial Road¹ where the street was described as 'in transition' due to a number of recent developments. These now include larger apartment blocks at Nos 65, 71 and 73 creating a more mixed pattern and scale of development. From my own observations, I agree that there is a varied pattern, both in terms of scale and design, and that this context affords scope for redevelopment of the site.
10. Although several plots have been redeveloped at larger scale as apartment blocks, they retain the essential form of a single, large dwelling that complements the longstanding character of the street. In contrast, the pair of semi-detached dwellings proposed under Appeal A would be an uncharacteristic arrangement that would jar with this pattern. The dwellings, at two storeys plus roof level accommodation would stand above the height of their immediate neighbours to either side. This height, combined with narrow footprints, would create a distinct vertical emphasis that would contrast strongly with the more horizontal form prevalent to neighbouring dwellings. The two semi-detached pairs would also be set close to one another and to the side boundaries of the site, appearing squeezed onto the site in a cramped and contrived manner.
11. The proposal under Appeal B would also be for four dwellings, but unified in a single building. The entrance doors to the end dwellings would be on the side elevations. As a result, the front elevation would have a similar symmetrical appearance to the apartment blocks elsewhere on the street, albeit with two doors within the central entrance portico. The proposal would fit within the range of scale established by the apartment blocks, and would incorporate materials and design details which would complement those which prevail within the street. As a single building, it would better exhibit the horizontal

¹ APP/T0355/W/15/3012199, allowed 3 September 2015

emphasis of neighbouring dwellings and it would stand further in from the side boundaries to achieve a better sense of proportion in its plot relative to the scheme under Appeal A.

12. Both proposals would have a hard surfaced forecourt for parking of up to eight vehicles, with narrow strips of soft landscaping to the side and front boundaries, either side of a central vehicular access. The Council is critical of the lack of opportunity for more soft landscaping to the front. However, I saw that many, if not most, dwellings along the street have extensive areas of hard surfacing to the front, in particular the apartment blocks. As such, the proposals before me would not be out of character with their surroundings, and soft landscaping on the boundaries would help to filter views of the forecourt and integrate the frontage into the wider vista of the street.
13. For these reasons, therefore, I conclude that the proposal under Appeal A would harm the character and appearance of the area, in conflict with Policy QP3 of the Borough Local Plan 2013-2033 (February 2022) (the BLP) and Policy DES.01 of the Windsor Neighbourhood Plan (June 2021) (the WNP), which together require development to contribute towards achieving sustainable high quality design in the Royal Borough through, among other things, respecting and enhancing the local, natural or historic character of the environment, paying particular regard to factors including urban grain, layouts, rhythm, density, height, scale, bulk, massing, proportions and materials.
14. However, I conclude that the proposal under Appeal B would preserve the character and appearance of the area, and would accord with the requirements of Policies QP3 and DES.01.

Carbon dioxide emissions

15. Policy SP2 of the BLP requires all developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change, and refers applicants to various existing and future supplementary planning documents and guidance. One of these is the Environment and Climate Strategy (December 2020) which seeks a 50% reduction in emissions by 2025. The Council has also produced an interim position statement (IPS) to set out its approach to addressing local and national climate policies in advance of the adoption of a new supplementary planning document.
16. The IPS requires that residential development achieves net zero carbon emissions unless demonstrated otherwise, to be set out in a detailed energy assessment. As a minimum, it should be demonstrated how the proposal would achieve a minimum 20% CO₂ reduction over Part L of the Building Regulations 2013 and that it would include renewable technologies capable of meeting 12% of forecasted energy demand. Where it is demonstrated that a net zero outcome cannot be fully achieved on-site, the IPS sets out that any shortfall may be provided through a cash in lieu contribution to the Council's Carbon Offset Fund, to be used for delivering carbon reduction projects in the Royal Borough.
17. The appellant has produced an energy statement at appeal stage, which sets out a range of measures proposed to be incorporated into the proposals, including insulation, heat retention, natural ventilation and energy efficient appliances. An air source heat pump is proposed to heat water and rooms. A waste water heat recovery system is also proposed. It is indicated that these

technologies would account for 58% of anticipated demand, well in excess of the required 12%. The statement adds that overall CO₂ emissions would be reduced by 77% against the 2013 Building Regulations.

18. In order to address the shortfall, the appellant has provided a signed unilateral undertaking (UU) in respect of each appeal which would secure a financial contribution of £8,509 towards offsetting carbon emissions from use of the dwellings. The contribution appears consistent with the formulas set out in the IPS and would encompass both an emissions and lifestyle contribution. The Council has argued that the detail of the energy statement is not sufficient to calculate the exact level of emissions and the contribution due. However, no specific evidence has been offered to cast doubt on the conclusions reached in the appellant's energy statement, and therefore I have no compelling reasons to question its content.
19. On the evidence before me, the submitted UUs would address the calculated shortfall in carbon emissions savings necessary to make the developments acceptable in planning terms. Taken together, the combined efficiency measures incorporated into the development and contributions offered in each appeal would significantly reduce carbon emissions, in accordance with the stated aims of Policy SP2 and the National Planning Policy Framework (the Framework).

Highway Safety

20. Under Appeal A, the Council is critical of a lack of detail as to visibility splays from the proposed entrance. However, a virtually identical access and parking arrangement was found to be acceptable under the officer's report related to Appeal B, subject to conditions to ensure the provision and retention of adequate visibility splays. Oddly, this position appears to have been reversed in the Council's appeal statement for Appeal B, with the same arguments now being made as in respect of Appeal A.
21. I have little evidence to explain the different positions adopted by the Council, but having observed the site, I see no fundamental reason why a suitable access could not be achieved on what is a straight road with multiple existing accesses and a 30mph speed limit. There appears to be no constraint to the access being widened slightly should this be required to ensure two vehicles can pass side by side to avoid cars waiting in the carriageway. Details of this, and the visibility splays, could be secured via condition. Therefore, in respect of both appeals, I find no conflict with Policy QP3 in terms of its requirement that development delivers easy and safe access and movement for pedestrians, cyclists, cars and service vehicles.

Other Matters

22. Concern is raised by interested parties in respect of loss of light and privacy. The Council does not oppose either scheme in respect of these matters. Both schemes would extend development further to the rear, beyond the rear elevation of No 67a to the south, with that under Appeal B extending slightly further, based on comparison of the plans. However, the additional depth of the built form would not be significant having regard to the size and spaciousness of the rear garden of No 67a. Given this, the additional massing would have limited impact to one side of what would remain an expansive vista over the rear gardens from the rear windows of No 67a. Therefore, the outlook

enjoyed by neighbouring occupants would not be significantly diminished. Moreover, as No 67a stands to the south of the appeal site, the additional massing would not cause demonstrable loss of sunlight or daylight, nor a harmful sense of enclosure or overshadowing.

23. On the opposite side, the rearward projection would be less and the greater separation distance to No 65a means that the proposed buildings, under either scheme, would not intrude harmfully into the outlook from the rear of this property, nor project so far as to have materially harmful effects in terms of sunlight, shadowing or enclosure.
24. In terms of privacy, both schemes would include a number of side facing windows. Those at ground floor level would not overlook neighbours due to boundary fencing and planting. Those at upper floors would be obscurely glazed under both schemes, which would prevent overlooking of neighbours.
25. The Council did not refuse either application in respect of trees or ecology. I have no substantive evidence to reach different conclusions in these matters. An absence of harm means they are neutral matters in the planning balance.
26. The proposals would each deliver additional residential units for the Royal Borough's housing stock, in line with the key aim of the Framework to boost the supply of housing. However, given the scale of the developments, these would be modest contributions to the Council's overall housing targets and therefore would attract only limited weight in favour of the proposals.
27. There would be benefits arising from the economic activity generated for the local building trade in implementing each proposal and from engagement by future occupants in the local economy. However, given the scale of the developments, such benefits would attract limited weight in each appeal.

Conditions

Appeal B

28. I have had regard to the list of prospective conditions set out by the Council. The appellant has indicated their acceptance of the suggested conditions. Where necessary, I have amended the conditions to ensure they meet the relevant tests set out in the Framework.
29. In addition to the standard time limit, a condition is needed to specify the approved plans, to provide certainty.
30. Conditions are required in respect of a construction environmental management plan and landscape ecological management plan to ensure protection of the environment during construction and implementation of biodiversity enhancements. These are pre-commencement as they relate specifically to the construction phase and would be ineffective or lead to harm or loss were they required to be addressed at a later stage.
31. Further conditions are necessary to specify details of external materials, hard and soft landscaping, and to secure their implementation, in order to ensure a satisfactory appearance.
32. A condition requiring the implementation of the vehicular access and visibility splays is necessary in the interests of highway and pedestrian safety. Details

and implementation of cycle storage is necessary to promote sustainable modes of transport.

33. It is necessary to require upper floor side windows to be obscurely glazed and non-opening below 1.7m above the internal floor level to prevent overlooking.
34. Finally, given the particular form and layout of the development and its proximity to neighbouring buildings, it is necessary to remove permitted development rights for extensions and alterations to the dwellings or their roofs or the erection of outbuildings which may otherwise lead to harm to the appearance of the buildings or the living conditions of adjoining occupants.

Conclusions

Appeal A

35. For the reasons set out, I conclude that the proposal under Appeal A would cause harm to the character and appearance of the area, resulting in conflict with the development plan, taken as a whole, to which I afford significant weight. Material considerations advanced in this case would not outweigh this conflict so as to justify granting planning permission. Therefore, I conclude that Appeal A should be dismissed.

Appeal B

36. For the reasons given, I conclude that the proposal under Appeal B would preserve the character and appearance of the area and, overall, would accord with the development plan, taken as a whole. There are no material planning considerations which indicate that permission should nevertheless be withheld.
37. Therefore, Appeal B should be allowed.

K Savage

INSPECTOR

Schedule of Conditions (Appeal B Only)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 1:1250; 01 (Proposed Floor Plans); 02 (Proposed Floor Plans); 03 (Proposed Elevations); 04 (Proposed Site Plan – 1:500); 06 (Proposed Site Plan – 1:200); 07 (Indicative Street Scene).
- 3) No development shall take place until a method statement and Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. This plan shall detail the works to be carried out showing how the environment will be protected during development. It shall also include details of the following:
 - The timing of works
 - Construction methods
 - The measures to be used during the development in order to minimise environmental impact of the works
 - Any necessary pollution protection methods
 - Information on the persons/bodies responsible for particular activities associated with the method statement that demonstrate they are qualified for the activity they are undertaking.

The works shall be carried out in accordance with the approved method statement and CEMP.

- 4) Prior to the commencement of development the biodiversity enhancements shall be detailed in a landscape ecological management plan to be submitted to and approved in writing by the Local Planning Authority. It shall detail of bird and bat boxes, and other options available for the ecological net gain of the site. The enhancements shall be carried out in the first planting season following the completion or occupation of the development, whichever is the sooner and thereafter maintained.
- 5) No development shall take place above slab level until there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of soft landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 6) No development shall take place above slab level until samples of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.
- 7) No development shall take place above slab level until full details of the hard landscaping works have been submitted to and approved in writing by the local planning authority. These works shall be carried out as approved following the completion of the development and retained thereafter in accordance with the approved details.
- 8) No dwelling hereby permitted shall be occupied until the site access has constructed in accordance with plans to be first submitted to and approved in writing by the Local Planning Authority. The plans shall include details of suitable pedestrian and vehicular sight lines in either direction. The access shall thereafter be retained in accordance with the approved details and no structure or erection exceeding 0.6 metres in height shall be placed within the sight lines shown on the plans approved under this condition, nor shall any shrubs, trees or other vegetation be allowed to grow above 0.6 metres in height within those same sight lines.
- 9) No part of the development shall be occupied until covered and secure cycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be kept available for the parking of cycles in associated with the development at all times.
- 10) The first floor flank windows in the side elevations of the building hereby permitted shall be obscurely glazed and non-opening below 1.7m above the internal finished floor level of the room in which they are installed, and shall be so maintained for the life of the development.
- 11) Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification) no enlargement, improvement or any other alteration (including the erection of any ancillary building within the curtilage) of or to any dwelling house the subject of this permission shall be carried out without planning permission having first been obtained from the Local Planning Authority.
