



Appeal Decision

Site visit made on 28 October 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeal Ref: APP/T0355/W/22/3298086

13 Braywick Road, Maidenhead, Berkshire SL6 1BN

- 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 Leap Homes Ltd against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 21/02046, dated 2 July 2021, was refused by notice dated 24 February 2022.
- The development proposed is demolition of existing dwelling and construction of two storey flats (8 units) with alterations to entrance and parking.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The Council's reason for refusal relates to the effect of the proposal on the character and appearance of the area. However, during the course of the appeal, I raised with the parties the matter of carbon dioxide emissions, due to this being a reason for refusal on other recent appeals I have dealt with in the same Council area. Based on the responses received from the parties, I consider this as an additional main issue of the appeal.
3. Therefore, the main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the proposal would be acceptable in respect of carbon dioxide emissions.

Reasons

Character and appearance

4. The appeal site contains a detached dwelling within a linear pattern of development to one side of a busy, four lane dual carriageway. The dwellings on the adjacent side to the appeal site are set below the level of the road and apart from each being two storeys in height and set back into their plots along a reasonably consistent building line, they vary considerably in their design, height and width, some extending across virtually the whole plot.
5. The character of the area is largely influenced by the dual carriageway. I agree with the views of the Inspectors in two appeal decisions¹ on Braywick Road that the harsh, engineered appearance of the dual carriageway, with its prominent

¹ 23 Braywick Road - Appeal Ref: APP/T0355/W/17/3174874, allowed 4 October 2017; 25-27 Braywick Road - Appeal Ref: APP/T0355/W/18/3211780, allowed 1 March 2019

retaining wall and crash barriers, detracts from the appearance of the area. Its dominant presence means the dwellings on the eastern side stand somewhat subordinate to it given their recessed and set down positions in their plots. In light of these factors, I also concur with the views of those Inspectors that it is not necessary to retain a specific scale or design in any redevelopment scheme, as there is sufficient variety to both within the street that a slightly larger and different design could be accommodated into a street scene that would continue to be defined by the main road.

6. Policy QP3 of the Borough Local Plan (February 2022) (the BLP) expects new development to contribute towards achieving sustainable high quality design in the Borough through, amongst 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. Principles 7.6 and 7.7 of the Borough Wide Design Guide (June 2020) (the BWDG) set out that new development should reflect and integrate well with the spacing, heights, bulk, massing and building footprints of existing buildings; and that roof forms that diverge from the prevailing character will be resisted.
7. The proposal would replace the existing dwelling with a purpose built apartment block containing eight flats. The design of the building would resemble a large, detached dwelling from the front, with a single entrance portico, hipped crown roof and dormer windows to the front roof slope. Such features are seen to neighbouring dwellings, and in this respect, the proposal would have regard to the surrounding context.
8. At two storeys plus roof level accommodation, the building would fit within the range of building sizes seen along Braywick Road. It would also retain space between the side walls and boundary. As a result, the building would not appear oversized or dominant in its plot or relative to its neighbours, and would remain smaller than the redeveloped building at No 23. Though deeper in footprint than the existing dwelling, the proposed building would still sit within the general front building line and would not extend significantly beyond the rear elevations of adjoining dwellings.
9. For these reasons, I conclude that the proposal would preserve the character and appearance of the area, and no conflict would arise with the aforementioned requirements of Policy QP3 of the BLP or the guidance of the BWDG). The proposal would also accord with the aims of the National Planning Policy Framework (the Framework) to achieve high quality design in all developments.

Carbon Dioxide Emissions

10. 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.

11. The IPS requires that residential development achieves net zero carbon emissions unless demonstrated otherwise, to be set out in a detailed energy assessment. 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.
12. The appellant submitted a unilateral undertaking, the content of which has been agreed with the Council. The undertaking would provide for the submission of an energy statement to the Council in line with the requirements of the IPS, and where the statement indicates a shortfall in achieving net zero carbon emissions, the owner would be required to make the necessary financial contributions to offset this shortfall. However, the appellant has been unable to secure a signature from a mortgagee to complete the undertaking. As a result, both main parties seek the imposition of a condition to secure the completed planning obligation.
13. The Planning Practice Guidance (PPG) makes it clear that no payment of money or other consideration can be positively required when granting planning permission, but that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk, such as in the case of particularly complex development schemes. However, the PPG states that this is unlikely to be appropriate in the majority of cases and ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed.
14. I appreciate the willingness of the main parties to accept a condition, and that the circumstances are influenced by an external party. However, the proposal is not one that is 'particularly complex', and the absence of a signature on a planning obligation is not a rare occurrence. Furthermore, the reasons for the mortgagee's reluctance to sign the agreement have not been indicated, and there is nothing before me to indicate that delivery of the development would otherwise be at serious risk, particularly as it is open to the appellant to seek a fresh planning application. Having regard to the PPG, I find that the evidence before me does not indicate these to be exceptional circumstances which would justify use of a negatively worded condition in place of a completed planning obligation. Moreover, no wording for a condition has been put to me for consideration as to its suitability.
15. Therefore, in the absence of a completed planning obligation, there would be no certainty that the proposal would achieve reductions in carbon dioxide emissions, and so would conflict with the requirements of Policy SP2 of the BLP and the guidance of the Council's IPS.

Other Matters

16. At appeal stage, the Council has provided an updated position statement in respect of housing land supply. In short, the Council asserts it can demonstrate a five year supply of deliverable housing sites, whereas it conceded it could not

do so when its delegated report was prepared. I have had regard to the evidence presented, and the appellant's response. Ultimately, the appellant, whilst querying some of the Council's methodology, does not argue that the Council is unable to demonstrate in excess of a 5 year supply or set out evidence as to the potential extent of any shortfall. As such, I do not have substantive reasons to doubt the Council's stated position at appeal.

17. However, I recognise that the Council's housing strategy includes a sizeable contribution from windfall development, and that the proposal would add a net seven dwellings to the Council's housing stock in this respect, and in an accessible location. In view of this, and the key aim of the Framework to boost the supply of housing nationally, I afford moderate weight to this benefit.
18. There would be benefits arising from the economic activity generated for the local building trade in implementing the proposal, from engagement by future occupants in the local economy and in terms of the New Homes Bonus for the Council. However, given the small scale of the development, such benefits would attract only limited weight.
19. I note concerns raised by interested parties in respect of living conditions, particularly loss of light and overlooking. I note from the plans that the proposed building would not breach a 45° line drawn from the nearest windows of dwellings to either side. Having observed the potential depth of the dwelling at the rear whilst on site, I am satisfied that it would not be of a size or position that would significantly restrict the outlook for neighbouring occupants.
20. Concern is also raised that there would be overlooking from proposed balconies at the rear. However, there are no balconies proposed on the submitted plans. In other respects, the windows to habitable rooms would face front and rear as at present and would not lead to a material increase in overlooking.
21. In other matters, including highway safety, ecology and air quality, I have no compelling evidence to conclude contrary to the Council, and such matters do not weigh against the proposal.

Planning Balance and Conclusion

22. On the basis of the evidence before me that the Council is able to demonstrate a five year supply of deliverable housing sites, the tilted balance of the Framework is not engaged and the proposal falls to be determined against the development plan, having regard to relevant material planning considerations.
23. For the reasons set out, I conclude that the proposal would cause harm in respect of carbon dioxide emissions, resulting in conflict with the development plan, taken as a whole, to which I afford significant weight. Material considerations advanced in this case, including the identified benefits, would not cumulatively outweigh this conflict so as to justify granting planning permission.
24. Therefore, the appeal should be dismissed.

K Savage

INSPECTOR