



Appeal Decision

Site visit made on 6 February 2023

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal Ref: APP/T0355/W/22/3303278

Land at 47 and 53 Courthouse Road, Maidenhead, Berkshire SL6 6JA

- 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 RAP Bluebell Ltd against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/00361, dated 8 February 2022, was refused by notice dated 27 May 2022.
 - The development proposed is described as the 'Demolition of existing dwelling and the erection of six detached and semi-detached dwellings with access, parking and amenity space.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amended plans were submitted during the consideration of the application. These plans¹ amended the siting of plot 6 (the dwelling), centralised the proposed access road, re-located the parking for plot 6, altered the parking arrangements, removed the garage building for plot 5, altered the design of houses in plots 1 and 2 and increased the extent of soft landscaping.
3. Whilst these amended plans were submitted prior to determination, the Council have confirmed that they did not consult on these amended plans.
4. I have considered the revised plans under the principles established by the Courts in *Wheatcroft*². Given the number of changes to the scheme, to consider it would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore considered the appeal on the basis of the originally submitted plans consulted upon by the Council.
5. A Preliminary Ecological Assessment and Building Inspection Report³, Noise Survey⁴, and Energy Statement⁵ have also been submitted during the appeal process. As these do not alter the scheme in any way, and are only providing further information, to consider them would not deprive those who should have been consulted the opportunity of such consultation. I have therefore considered the appeal on the basis of the additional information.

¹ Plan number 252-P01C, 252-P02C & 252-P07G, received on 19 May 2022

² *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

³ prepared by Landscape Science Consultancy Ltd, January 2022

⁴ Environmental Noise Survey and Acoustic Design Report by Hann Tucker Associates 16 June 2022

⁵ Energy Statement by Third Stone, July 2022

6. A Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 has been provided (S106 UU) as part of this appeal. It includes obligations relating to carbon offsetting and lifestyle contribution.

Main Issues

7. The main issues in this case are:

- the effect of development upon highway safety;
- the effect of the development on the character and appearance of the area;
- the effect of the proposal on the living conditions of the occupants of No 45 Courthouse Road, with particular regard to noise and disturbance;
- the effect of the proposed development on biodiversity; and
- whether the proposal would meet sustainability and carbon reduction requirements.

Reasons

Highway Safety

8. The submitted plans show that each dwelling would be provided by two off street parking spaces per dwelling, in accordance with the Councils Parking Strategy (2004).
9. However, the parking spaces for Unit 5 would be provided by a double garage building. The parking spaces provided by the garage do not meet the required minimum of 3 x 6m each, as set out in Parking Strategy (2004). Therefore, there would be insufficient space to accommodate the full parking requirement. As such, given that it would be impractical to park on the main road due to the distance, parking would be necessary on the access way, which would compromise access for other users, for example the occupiers of Plot 4, to their allocated parking spaces and would increase the potential for conflict between pedestrians and cars.
10. Whilst the parking requirements are a maximum and I acknowledge that the appeal site is nearby services and facilities, there is no evidence before me to set out why a reduced parking provision would be appropriate.
11. Accordingly, the proposal would have a harmful effect on highway safety. There is conflict with Policy QP3 of the Royal Borough of Windsor and Maidenhead Borough Local Plan 2013-2033 (2022) (LP) which requires new development to create safe and accessible places.

Character and Appearance

12. Courthouse Road is a mostly residential road with a mixed character and appearance and a substantial difference between the western and eastern sides of the road. The appeal site is located on the western side, which is generally characterised by two storey detached properties of traditional, if varied, form. On its eastern side are smaller terraced properties. The properties are set back from but generally face the highway in a linear fashion, however there is an example of backland development at Nos 53a and 53b, set behind the western side of the road. Moreover, the backland development at No 53 is directly next

to similar further backland development at 3 Havelock Road. This results in an established row of dwellings to the rear of Courthouse Road.

13. The plot sizes are also varied, with larger garden areas common on the western side, however, some, such as No 53 and 51 are curtailed by the appeal site and the two backland dwellings at Nos 53a and 53b. The dwellings directly opposite on the eastern side of the road are far smaller in terms of scale and garden sizes.
14. The proposed dwellings would be sited next to the dwellings to the rear of No 53, and in this context, they would not appear incongruous within the wider street scene. The separation gap between the dwelling and the properties to the front would be to the gap between No 53a and No 53. The plot sizes, whilst considerably smaller than the dwellings to the south on this side of Courthouse Road, are again comparable to Nos 53a and 53b.
15. The development would not therefore appear cramped, and the scale and form of the properties would sit comfortably within the wider established mixed architectural pattern. The amount of hardstanding is generally limited to the access and parking areas, and this would be mitigated and largely screened by soft landscaping. The access road would result in a greater separation gap between the replacement dwelling (plot 6) and No 45, increasing a sense of space from the road. The access itself would not appear overly lengthy compared to that existing at No 53.
16. I therefore conclude that the proposed properties would not harm the character and appearance of the area. The proposal would therefore comply with LP Policy QP3 which, in accordance with the National Planning Policy Framework (the Framework), requires development, to respect and enhance the local environment.

Living Conditions

17. The proposed access to the backland properties would run between No 45 Courthouse Road and the replacement dwelling (plot 6). This would result in the sole access to 5 dwellings running along the side garden of No 45.
18. Whilst this neighbour has side facing window and door, there is a tall boundary fence and hedgerow on its side boundary. Were I be minded to allow the appeal, this boundary treatment or a suitable alternative could be secured/improved through a condition and would limit visual intrusion from car headlights or pedestrians. In terms of noise, the appellants have submitted a Noise Survey which sets out that predicted noise levels within the rear garden and nearest habitable rooms, during the day and at night, would be below limits set out by the relevant standards⁶.
19. Whilst the survey extrapolates from a single 24 hour period, this provides sufficient representative measurement results. The position of the measurement microphones close to No 45 and towards the rear ensures appropriate noise measurements are collected with regards to the rear garden area as well as the property. The noise from doors shutting or non-electric engines starting would be very brief in duration and would not represent a prolonged nuisance.

⁶ Including Noise Policy Statement for England (Department for Environment, Food & Rural Affairs, 2010).

20. Based on this information and what I saw on site, compared to the existing situation, I am satisfied that the proposal would not lead to an unacceptable effect on the living conditions of the occupants of No 45 in terms of noise and disturbance.
21. I therefore find no conflict with the protection of amenity goals of LP Policy QP3, the Framework and the Windsor and Maidenhead Borough Wide Design Guide Supplementary Planning Guidance document (2020).

Biodiversity

22. The appeal site is not subject to any policy designations relating to ecology, and I have not been made aware of any nearby sites designated for their ecological qualities.
23. However, LP Policy NR2 requires development proposals to demonstrate how they maintain, protect and enhance the biodiversity of application sites. The appellant has provided a Preliminary Ecological Assessment and Building Inspection Report which concluded that there is no realistic prospect of protected species being on the site (including Badgers, Great Crested Newts and Reptiles) and that the existing dwellings and outbuildings (to be demolished) have negligible suitability for bats and nesting birds.
24. Based on this information and what I saw on site and with no clear evidence to the contrary, I am satisfied that there is no reasonable likelihood of this species being present. In accordance with the survey recommendations, a condition to secure measures such as the provision of bat boxes, native planting and hedgehog/nesting bird protection during the construction phase of the development would ensure biodiversity enhancements, were I be minded to allow the appeal.
25. Accordingly, the proposed development would not harm biodiversity and I find no conflict with the biodiversity protection and enhancement goals of LP Policy NR2, the Framework and Circular 06/2005⁷.

Sustainability Requirements

26. LP Policy SP2 requires development to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. In lieu of a completed Supplementary Planning Document on this matter, a Position Statement on Sustainability and Energy Efficient Design (2021) (PS) provides further detail on the requirements which will be sought on new developments in order to deliver on these measures.
27. An Energy Statement has been submitted by the appellant, which includes an assessment of the estimated total carbon emissions for the development and an appraisal of the applicability of photovoltaic technologies to the development. The document sets a calculation of energy demand and carbon dioxide emissions and provides a carbon reporting spreadsheet. The Council have again had an opportunity to comment on this but have not done so and its findings and methodology are therefore undisputed. From the information before me, I have no reason to dispute its findings.

⁷ Biodiversity and geological conservation - statutory obligations and their impact within the planning system

28. Part 1(E) of the PS sets out that where it is demonstrated that this outcome cannot be fully achieved on site, any shortfall may be provided through a cash in lieu contribution to the Boroughs Carbon Offset Fund. To this end, a S106 UU has been provided as part of this appeal. It includes obligations relating to carbon offsetting and lifestyle contribution. The Council have confirmed that the building emission contribution and lifestyle contribution would meet the policy requirement, and, subject to any necessary alterations to the UU as set out by the Council, were I minded to allow the appeal, I have no reason to find that the submitted UU would not address this issue.
29. As such, the proposal would meet sustainability and carbon reduction requirements and I conclude that there is no conflict with the climate change mitigation goals of LP Policy SP2 and the Framework.

Other Matters

30. There would also be some short-term economic benefits arising from the construction process. Economic and social benefits are also likely to arise from the occupation of the new dwellings. However, given the quantum of development in this case, such benefits would be modest.
31. The appellant sets out that the annual build out rates from 2013/2014 through to 2020/2021 are low and points to the economic downturn as impacting further on build rates. However, the Inspector for the recently adopted Local Plan (2022) concluded that the Council could demonstrate a 5 year housing land supply, even with a 20% buffer. The Council have also provided a Position Statement on the Housing Delivery Test (HDT) (August 2022) which determines the latest housing land supply at 5.92 years, with a Housing Delivery Test of 111%. This follows re-calculation of the HDT by the Department of Levelling Up, Housing and Communities.
32. As such, I am satisfied that, having regard to the evidence before and paragraph 74 of the Framework, a five year housing land supply is demonstrated. The presumption in favour of sustainable development in Framework paragraph 11 does not therefore apply.
33. The appellant refers to the lack of conflict with policies relating to issues such as accessible location, the living conditions of future occupiers and flooding, however, this to be expected in any development and does not weigh in favour of the proposal.
34. Notwithstanding this, the proposed scheme, as a windfall site, would contribute to the Borough's stepped housing trajectory/supply and more widely help address the Government's broader objective of significantly boosting the supply of homes. The development would provide two and three bed dwellings, contributing to the housing mix and supply in a location with good access to services and facilities. However, the provision of 5 additional units would be a minor social benefit attracting limited weight in favour of the scheme.

Conclusion

35. Even if there were a shortfall as the appellant suggests, the harm to highway safety is a matter that attracts significant weight against the scheme and would significantly and demonstrably outweigh the benefits of the development, which attract limited weight in favour of the scheme.

36. The proposal is contrary to the development plan as a whole and there are no other material considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

B Phillips

INSPECTOR