



Appeal Decision

Site visit made on 2 March 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/T0355/W/22/3305462

Saltaire, Devenish Road, Sunningdale, Ascot SL5 9QP

- 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 Stevens of Livin Construction Limited against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/02983, dated 6 October 2021, was refused by notice dated 18 February 2022.
 - The development proposed is replacement dwelling following demolition of existing dwelling and outbuildings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have received planning obligation seeking to secure, amongst other things, a payment towards the Council's Carbon Off-set Fund, design principles, a custom/self-build dwelling, tree protection, and tree replacement. I return to this later.

Main Issues

3. The main issues are:
 - whether or not the proposal is compliant with policies for mitigation and adaption to climate change;
 - the effect of the proposal upon trees; and,
 - the effect of the proposal upon the character and appearance of the area.

Reasons

Climate change

4. Policy SP2 of the Borough Local Plan (2022) (the BLP) requires all development demonstrates it is designed to incorporate measures to mitigate and adapt to climate change. It lists matters for consideration and refers to SPDs for further guidance. The Position Statement on Sustainability and Energy Efficient Design (March 2021) (the PS) expects development should be net-zero carbon unless demonstrated this would not be feasible. Any shortfall may be provided

through a cash in lieu contribution to the Carbon Offset Fund, to be ring fenced to secure delivery of greenhouse gas reductions in the Borough.

5. The Sustainability Statement explains how the development could achieve at least a 20% Dwelling Emission Rate reduction against the Target Emission Rate, with at least 12% coming through renewables. The proposals also include a high-speed internet connection and design to minimise mains water consumption. Through building fabric insulation, windows, lighting and heating controls, heat pumps, and a heat recovery ventilation system, a 42% reduction in CO2 emissions would be achieved. I see no reason why these measures could not be secured by means of suitably worded planning conditions.
6. The appellant calculates a Building Emissions contribution of £5,422 and a Lifestyle contribution of £1,144 is necessary. I am of the view the contributions are necessary to mitigate the effects of the dwelling upon climate change, to make the development acceptable and compliant with Policy SP2. The contributions are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development.
7. The planning obligation seeks to secure the contributions. However, the Council's solicitor has set out a number of technical concerns about the obligation, such that it is considered flawed or incomplete. These include whether it is enforceable against all necessary parties, that the applicant is not party to it and whether the correct parties are party to the deed, an absence of clarity of interests in the land, and some of the terms set out. I have given the appellant the opportunity to address the matters raised, but they have not provided substantive evidence to address each concern to demonstrate the planning obligation is not flawed.
8. Therefore, based upon the substantive evidence before me, it is not demonstrated the obligation secures the contribution to ensure the development would be acceptable and policy compliant expected by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the National Planning Policy Framework (2021) (the Framework).
9. Therefore, for the reasons set out above, the proposed development would not be compliant with policies for mitigation and adaption to climate change. It conflicts with Policy SP2 of the BLP and the PS, the relevant provisions of which I have set out above.

Trees

10. The appeal site is lined by and accommodates a number of trees including some protected by Tree Preservation Order No 53 of 2006 (TPO). Due to their stature, condition and visibility, many have a significant amenity value, positively contributing to the character and appearance of the area. The new building would be within the Root Protection Areas (RPAs) of T14 (category B), T16 (category B), T18 (category B) and T34 (category C). These make a significant positive contribution to the character, appearance and amenity of the area, discernible from some neighbouring properties and at points on Devenish Road.
11. During construction extensive tree protection fencing and temporary ground protection would be laid in accordance with sections 6.2.2 and 6.2.3 of

BS5837:2012, supervised the Project Arboriculturist. The extent and a detailed specification are set out in the appellant's arboricultural evidence¹. This aspect of the proposals would safeguard the future health of the trees.

12. As the existing dwelling, garage and outbuildings are within the RPAs of T14, T16, T18 and T34, the buildings will have had an influence upon root growth, and it is likely there will be few or no roots under them. There would generally be less of a proportion of each of the RPAs covered by new buildings and for the most part they would be similar areas as existing buildings.
13. However, the existing extent of rooting, nature of foundations and slabs are not set out. The detailed specification of the new foundations and services are also not provided and could result in wider and deeper foundations and new services in new parts of the RPAs. So, there is a small potential for the new building to prejudice the future health and stability of these trees. I am satisfied a pre-commencement condition could ensure appropriate investigation and foundation design takes place to safeguard tree health and stability.
14. Hand removal of the driveway and replacement with a new permeable surface would be under arborist supervision. The geotextile membrane, base and wearing courses, and edge treatment specification, could all be undertaken in accordance with section 7.4 of BS 5837:2012. Subject to the imposition of suitably worded planning conditions to secure compliance with the Arboricultural Impact Assessment, the patio, driveway, and new surfacing works would not prejudice the future growth and health of the trees.
15. The new patio area would be adequate to facilitate movement around the dwelling and the area to the south would allow some outside seating. There would be adequate outside amenity space outside the existing canopies having regard to the scope for future tree growth. Moreover, the trees have been surveyed and many had past maintenance. I have no reason to believe they would not be well maintained in the future. Debris from trees is an inherent part of living where trees provide attractive places to live and work, and any future occupiers would be aware of the trees before inhabiting the property.
16. The sunlight and daylight report confirms that if the trees were opaque 40% of the garden would receive the requisite 2 hours of sunlight on 21 March, and without the trees it would be 93%. Given the trees are not opaque, allowing for some future growth, their form and spread are such that a greater than at least 50% of the garden area would receive two hours of sunlight. Therefore, it would pass Building Research Establishment (BRE) standards for overshadowing to gardens and open spaces². All rooms tested exceed the BRE summer and winter Average Daylight Factor. All living rooms would have at least one window that passes both the annual sunlight hours test and winter sunlight hours test. Given the size and orientation of the windows, the dwelling would provide satisfactory internal living conditions for the future occupiers.
17. Based upon the substantive evidence before me, the proposal would not be likely to result in a need to, or in substantiated future pressure to prune or remove trees to ensure satisfactory living conditions for future occupiers.
18. T17 to be removed is dead (Category U). T32 (Holly, category C) and T33 Cypress, category C) are modest specimens not listed in the TPO schedule or

¹ Arboricultural Evidence of David Partridge CEnv, HND (Arb) & Tech Cert (Arb) (August 2022).

² Building Research Establishment Site Layout Planning for Daylight and Sunlight: a guide to good practice (2011).

shown on the plan. Given their position and stature, they have a very limited discernibility outside the appeal site. Their loss would have a minor effect, and subject to the imposition of suitably worded planning conditions could be mitigated in the short to medium term by replacement trees.

19. Therefore, for the reasons set out above, subject to the imposition of suitably worded planning conditions, there would not be an overall harmful effect upon trees. The proposal would not conflict with Policy NR3 of the BLP and Policy NP/EN2 Ascot, Sunningdale & Sunninghill Neighbourhood Plan (2014) (the NP). Amongst other things these require proposals carefully consider the impact upon existing trees, provide a tree survey, tree constraints and tree protection plans in compliance with BS5837, protect and retain mature and important trees, provide mitigation, and integrate proposals for new planting.

Character and appearance

20. The site and surrounding dwellings on the southwestern side of Devenish Road are within the Villas in a Woodland Setting (14H) (VWS) classification area in the Royal Borough of Windsor and Maidenhead Townscape Assessment (2010) (the TA). The TA explains the VWS is characterised by, amongst other things, extremely low-density dwellings with large footprints in large irregular plots, long gravel driveways, and mature trees forming a sylvan backdrop.
21. While the existing dwelling is of limited architectural merit and garden has extensive bramble cover, the site positively contributes to the character and appearance of the VWS and area. The trees and shrubs mean there is only limited filtered visibility into much of the site from surrounding properties. However, given its elevated position and the height and maturity of some trees, its sylvan appearance is discernible above and between some dwellings, and vantage points on Devenish Road and Devenish Lane.
22. The proposed neo-Georgian styled 2.5 storey dwelling would occupy a similar position on the appeal site, although its footprint would be greater. However, the footprint is comparable with many and indeed smaller than some nearby dwellings. It also appears it would occupy less of a proportion of the main part of the plot rear of the driveway than many surrounding and in the area.
23. It is not fully clear how the Council measured useable amenity space. The area outside the tree canopies might be proportionally less than some neighbouring plots. However, many of the larger tree canopies and scaffold branches are of a significant height allowing light to the garden. The level of shading would not prevent their use for many functions. During hotter weather it may well increase useability. Space under or shaded by trees would still visually appear as useable amenity space and much space could functionally serve as garden. The amount and proportion of both visible and functional space is comparable with and in some cases much larger than plots nearby.
24. The proximity of the proposed building to the boundaries would have similarities to the current dwelling. Some elevations in closest proximity would be single storey, with a flat roof, or with roof living space within a pitched roof. It would be no closer than the existing building and not be harmful. The remainder of the building would be further from the boundary than these lower elements. The distance would be comparable with and indeed greater than many of the dwellings nearby, and it would not appear cramped.

25. Despite its elevated position, the new dwelling would not appear discernibly higher than many surrounding. The building includes single storey elements with a setback sloping upper level. Combined with the composition of the elevations and their use of materials and openings, the bulk and massing would be acceptable. It would also be well-screened by protected trees, a number of which are taller than the proposed new dwelling.
26. As a matter of planning judgement, the layout, siting, footprint, scale, height, bulk and massing would not appear dominant. It would neither be out of keeping with surrounding dwellings or the character and appearance of the area. The proposal would not represent over-development. The dwelling would be subservient to the woodland landscape, maintain the positive characteristics of the site, and its contribution to the VWS character area.
27. For the reasons set out above, the proposal would be in keeping with and not harmful to the character and appearance of the area. It would not conflict with Policy QP3 of the BLP or Policies NP/DG1, NP/DG2 and NP/DG3 of the NP. Amongst other things, these expect development to be of a high-quality design that respects and enhances the area, respond positively to the townscape, retain and enhance sylvan character, and be of a suitable layout, density, scale, footprint, separation, and bulk. It would also not conflict with the guidance on page 85 of the TA insofar as this seeks to retain mature trees, ensure significant planted areas, and maintain the eminence of mature trees.

Other Matters

28. Given its scale and that there would be no net gain in residential units, the parties agree it does not fall within the category of development to result in likely significant effects upon the features of interest of either the Thames Basin Heaths Special Protection Area or the Thurley Ash Pirbright and Chobham Special Area of Conservation, so an appropriate assessment is not necessary.
29. Comparisons are made to a historic proposal³ refused by the Council. However, this appeal proposal is considered under different development plan and national planning policies and is accompanied by arboricultural evidence leading me to conclude it would not be likely to result in harm to protected trees. It is also accompanied by a Daylight and Sunlight Report demonstrating it could provide satisfactory living conditions. This appeal scheme is of a different footprint that I do not find harmful to the living conditions of occupiers of Scotswood West. Therefore, the previously refused proposal is not directly comparable to this appeal scheme and does not justify dismissing this appeal.
30. The Council is required by the Self-Build and Custom Housebuilding Act 2015 (the Act) to grant permission for enough serviced plots of land to meet demand for self-build and custom housebuilding which arises in each base period, and the appellant has provided a number of appeal decision letters in this regard⁴. The appellant's evidence suggests there might be a significant shortfall of custom and self-build permissions in the area to meet the needs of those on the register. However, while the planning obligation proposes construction by a custom or self-builder, there does not appear to be any clause securing its ownership or on-going occupation by a self-builder beyond its construction.

³ 07/02684/FULL.

⁴ APP/B1930/W/19/3225543; APP/G2435/W/18/3214451; APP/W0530/W/19/3230103; APP/G1630/W/20/3250835; APP/H1840/W/19/3241879; APP/B1930/W/20/3265925; APP/D2320/W/20/3247136.

The concerns over some technical aspects of the obligation set out by the Council, also suggest the obligation is flawed or incomplete. On this basis the obligation would not secure a custom or self-build dwelling.

Planning Balance

31. The proposal would result in a small temporary economic benefit during construction, and once occupied there might be some small benefit to the local economy. Based upon the nature of the site, the proposal and indicative enhancements, a scheme for ecological enhancements could secure a small benefit. Were I to be of the view the planning obligation does secure a custom or self-build dwelling, based upon the submissions before me its contribution towards meeting the Council's statutory duties under the Act would attract significant weight. On this basis the overall benefits of the development attract significant weight in favour of the scheme.
32. If I were to agree the proposal would be or could be made compliant with policies in respect of matters such as materials, energy and resource efficiency and generation, vehicle charging, flood risk and drainage, construction management, refuse storage, the living conditions of future and neighbouring occupiers, protected species during construction, highway safety and accessibility, these would be neutral matters in the balance. Subject to the imposition of suitably worded planning conditions the proposal would be compliant with policies in respect of trees, and it would overall have a neutral effect upon the character and appearance of the area. These are neutral matters in the balance.
33. Overall, the policy compliance and benefits of the proposal attract significant weight in favour of the scheme. However, the proposal conflicts with the development plan and the SP in respect of not securing mitigation to combat climate change. This is a matter that attracts significant weight against the scheme, such that this harm and the policy conflict outweighs the policy compliance and benefits of the proposal.

Conclusion

34. The proposal conflicts with the development plan read as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR