



Appeal Decision

Site visit made on 12 June 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2023

Appeal Ref: APP/T0355/W/21/3286822

**Land between 4 and 5 The Riverbank, Clewer Court Road,
Windsor SL4 5HU**

- 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 J Liggi against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/00367, dated 9 October 2020, was refused by notice dated 27 May 2021.
 - The development proposed is the construction of one dwelling with associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amended plans have been submitted as part of the appeal. These show a revised design and different orientation of the proposed dwelling. As these have been submitted after the decision was issued interested parties have not had an opportunity to be consulted as part of the normal planning consideration process. The changes make substantive alterations to the appearance and effect of the proposal. For these reasons, in mind of the Wheatcroft principle, I cannot be satisfied that consultees or residents would not be prejudiced by my accepting of the revised scheme. As such, I have considered the proposal based on the originally refused scheme.
3. The Borough Local Plan (LP) was adopted in February 2022. The Council has stated that the policies within the adopted plan have replaced the policies of the Royal Borough of the Windsor and Maidenhead Local Plan [2003]. The Council identifies that the following replacement LP policies are now germane to this appeal; SP2 (Climate Change), QP1 (Sustainability and Placemaking), QP3 (Character and Design), NR1 (Flood Risk), NR2 (Nature Conservation), and NR3 (Trees and Woodlands). The Council states that this change has not materially altered its case or the reasons for refusal.

Main Issues

4. The main issues are:
 - The effect of the proposed dwelling on the character and appearance of the area, including with regard to the effect on trees,

- The effect of the proposal on the living conditions of occupiers of 4 The Riverbank (No 4), with particular respect to outlook, sunlight and daylight, and
- Whether the proposal would be within a suitable location for housing with respect to flood risk in consideration of local and national policy.

Reasons

Character and appearance

5. 'The Riverbank' consists of a small residential estate of two-storey development with a communal car park within a central courtyard. The housing includes generous areas of gardens to the north of the site, over a footbridge crossing part of Mill Stream. The buildings within the estate have concrete tiled pitched roofs and brick walls. Some parts of the dwellings are clad in cedar boarding. The car park and surrounding green space includes various mature trees that create a pleasant semi-rural character. The appeal site is a parcel of land between two existing rows of housing. It is close to the boundary with the Clewer Conservation Area (CCA), located to the south of the site. The plot is relatively flat but slopes down at its rear toward the water's edge and is devoid of trees or hedges. Accordingly, the site is relatively non-descript and makes a neutral contribution to the character and appearance of the area.
6. The Council's Design guide [2020] places design excellence at the heart of the borough's vision for the future. This requires new development to respond to the size, shape and rhythm of surrounding plot layouts where fine grain plots divisions will be supported. It requires building lines to complement the streetscene and for new development to integrate well with the spacing, height, bulk and footprints of existing buildings. The site forms a gap between housing. This creates a degree of separation that is of some benefit to the general sense of spaciousness within the estate. However, the adjacent housing, and the adjacent block of No's 7-15, enclose the landscape car park creating a relatively strong delineation between the front and rear of the site.
7. Furthermore, the frontages of units 1-4 and 5-6 are not aligned creating a disjointed and staggered front building line. Therefore, whilst the proposal would be slightly ahead of No 5 it would generally align with the non-uniform building line of existing development. Furthermore, the proposed dwelling would strengthen this sense of enclosure and the established pattern of built form and would further reinforce this delineation between the car park and the open spaces beyond. Consequently, the gap is not of special significance and its retention would not benefit the character and appearance of the area.
8. Although detached in form, the proposed dwelling would be a similar scale to adjacent buildings, with a similar depth of front garden to neighbours, especially No 5. The building would be constructed of materials, and have a general form, that would replicate adjacent development. Although including a gable end facing the car park, this would create an interesting frontage that would provide visual interest. Also, the proposal would not be over dominant within the streetscene. It would therefore integrate well with neighbouring housing and complement the character and appearance of the surrounding area.

9. Two mature Lime Trees are located within the car park, tree T1 being located closest to the proposal. These mature trees make a pleasant and important contribution to the character of the car park. The site plan shows a footpath in front of the proposed dwelling and that the dwelling itself would be around three metres from the front boundary of the site. The site plan also shows that two existing parking spaces, adjacent to tree T1, would be assigned to the proposed dwelling.
10. The Appellant's Arboricultural Report identifies that the front of the site includes is around 18 sqm area. This is beyond the hard surfaced area within the rooting area of tree T1 and is proposed to be retained for landscaping. Also, the proposed footprint of the dwelling is shown to be outside the root protection area of this tree. The report concludes that the trees could be fully protected during development works and would be unaffected by the proposal. I see no reason, in evidence, to disagree with these conclusions.
11. Although tree T1 would be relatively close to the proposed dwelling it would be unlikely to cause material shading of the habitable rooms due to the retained separation distance. Furthermore, the footways in front of the dwelling could be subject to a 'no dig' design and consist of permeable material to limit the effect of development on its roots. Furthermore, a condition could have been imposed, had I been minded to approve the scheme, to show servicing routes to prevent harm to the roots of tree T1.
12. Consequently, the proposal would complement the surrounding built form and accord with the character and appearance of the surrounding area which includes the CCA. Accordingly, the proposal would comply with LP policies QP3, NR2 and NR3, Policy DES01 and objective 2 of the Windsor Neighbourhood Plan (NP) and the Council's Design Guide. These seek, among other matters, for development to respect and enhance an area's local character and respond well to the size, shape and rhythm of surrounding plot layouts.

Living conditions

13. The proposed dwelling would align with the rear elevation of 5 The Riverbank and would stand slightly ahead of its front elevation. However, the frontage of No 4 is almost aligned with the rear elevation of the proposed dwelling. This forms a difference of around 8 metres between the front of No 4 and the frontage of the proposed dwelling.
14. The proposal would be adjacent to the shared boundary of No 4, which would place it close its front garden and windows. Due to its proximity and the depth of projection, the proposal would have a significant effect on the outlook from front windows of No 4. As such, the proposal would be oppressive and overbearing to occupiers of the neighbouring dwelling forming a substantive sense of enclosure. This relationship would cause demonstrable harm to their living conditions due to a loss of outlook.
15. Furthermore, the proposed dwelling would be sited to the southwest of No 4. Consequently, occupiers of the neighbouring property would be likely to experience a substantial reduction in sunlight in the afternoons and evenings, resulting in overshadowing of habitable rooms. Also, due to its proximity and projection in comparison to the front windows of No 4 it is likely that neighbouring occupiers would also experience a material loss of ambient daylight.

16. Accordingly, the proposal would result in a loss of outlook, sunlight and daylight which would demonstrably harm the living conditions of the neighbouring occupiers. Consequently, the proposal would conflict with principle 7.1 of the Council's Design Guide and the National Planning Policy Framework (the Framework). These require development, *inter alia*, to make effective use of land without adversely impacting on the amenity of neighbours and achieve a high standard of amenity for existing and future users.

Flood matters

17. The site is within the settlement boundary of Windsor. It is within a small housing estate and comprises a domestic garden. The site is adjacent to the River Thames and partly within flood zone 2 and partly in flood zone 3. LP policy SP2 requires development to, where possible, incorporate mitigation and resilience measures for any increases in river flooding as a result to climate change. Furthermore, LP policy NR1 identifies that a sequential test is required for all development in areas of risk of flooding. This states that a sequential test should consider five issues. These relate to the availability of suitable alternative sites in areas of lower risk of flooding, the vulnerability of the proposed use, the present and future risk, the scale of potential consequences and suitable site evacuation plan.
18. Paragraph 159, of the Framework, states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Moreover, where it is necessary, it should be made safe for its lifetime without increasing risk elsewhere. Being for a dwellinghouse the proposal would be 'more vulnerable' to flooding. The lower part of the site would have a 'high' probability of flooding being within flood zone 3. In such circumstances table 3¹ of the National Planning Practice Guidance (PPG) explains that development would require an exception test if within zone 3a 'high probability' and development should not be permitted in 3b 'functional floodplain'.
19. The Appellant's Flood Risk Assessment² confirms that most of the site is within flood zone 2. The northwest corner encroaches into flood zone 3a, having a high probability of flooding. The footprint of the proposed dwelling would be fully within flood zone 2. The Assessment recommends that the occupiers of the dwelling sign up to receive flood warnings and that the dwelling is built with flood resilient and resistant construction measures. The Environment Agency is satisfied that the proposed floor levels would be set high enough to prevent water ingress at times of flooding, and the scheme could be approved, provided that the decision maker is satisfied that the sequential test has been passed.
20. The Framework identifies that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The Appellant's Sequential and Exception Test³ (S&ET) considers a range of sites within the borough including those that are for sale and subject to planning approval. These sites were largely discounted as being unavailable due to their price and the restricted costs associated with a self-build project as proposed. The Test concluded that there were no alternative sites within the borough that are reasonably available.

¹ Planning Policy Guidance: Paragraph 067 Reference ID: 7-067-20140306

² Flood Risk Assessment, BWB, 2019

³ Flood Risk – Sequential Test Assessment and Exception Test, SDS Consulting, December 2020

21. However, the sequential test has not considered all reasonably available housing sites within the borough. The PPG explains that reasonably available sites should be in a suitable location for housing, with a reasonable prospect that the site is available to be developed and do not need to be within the Applicant's ownership. The Council's Housing and Economic Land Availability Assessment [2019] (HELAA) identifies small pockets of land suitable for housing. These were discounted as these were deemed to be too small to be included being for less than 5 dwellings. Nonetheless, being outside the floodplain and having potential for housing, these sites should have been assessed within a sequential test to determine whether they were suitable for the Appellant. The Council has identified that some of these were of comparable size and therefore could be suitable. As such, I am unsatisfied that the sequential test is robust as it fails to adequately consider small HELAA sites.
22. The Exception Test, that considers mitigation and resilience, does not need to be applied as the sequential test has not demonstrated that there are no other reasonably available sites suitable, for the proposal, on lower risk sites.
23. Furthermore, paragraph 167(e) of the Framework, requires development at risk of flooding to be subject to safe access and escape routes. The PPG explains that safe evacuation will depend on the type of flood risk present, the number of people that would require evacuation, the adequacy of routes and identified places to people to evacuate to and the sufficiency of up-to-date flood plans. The S&ET explains that during higher order flood events, floodwaters would exceed 200mm and that occupants should be discouraged from wading in these depths due to hidden risks. However, the Appellant has provided insufficient details of local land levels beyond the site. As such, the flood evacuation route and extent that occupiers may have to wade through deep water is unclear. This therefore fails to adequately demonstrate that occupiers of the dwelling would have a clear and safe evacuation route in the event of a flood.
24. Accordingly, the proposal would not comply with local or national policies with respect to matters of flooding. Consequently, the proposal would conflict with LP policies SP2 and NR1 and the Framework which seek to only allow development that is located and designed to ensure that flood risk is acceptable in planning terms.

Other Matters

25. The Application form indicates that the dwelling would be for self-build and custom housing. The dwelling would be occupied by the Appellant's family member who, I understand, is registered on the Council's Self Build register. This would meet an objective of the Framework that supports the delivery of sites to meet the needs of groups with specific housing requirements. This includes for those people wishing to commission or build their own homes. This provision could have been secured, in this case, by the imposition of a negatively worded condition had I been minded to allow the appeal. Consequently, the merits of specialist housing of this type, and its social benefit to the Appellant, weighs in favour of the scheme.

26. The proposal is within the setting of St Andrews Church, a Grade II* listed building. In accordance with my statutory duty⁴, I am required to pay special attention and have regard to the desirability of preserving the setting of listed buildings. The building demonstrates the evolution, stylistic development and decorative treatment of a C12 church. It is of a knapped flint construction, with Bath freestone dressings, a medieval door and porch and buttresses. Its significance therefore derives from its architectural and historical interest. Views of the church from the site are largely obscured by intervening landscaping and fencing creating limited intervisibility. The site appears to have no historical link to the Church. As such, the proposal would make a neutral contribution to the setting of the listed building and preserve its significance.

Planning balance and conclusion

27. The Framework seeks to significantly boost the supply of housing. The proposal would deliver a dwelling within a site with good access to local goods and services. Also, the proposal would create economic benefits through the construction of the dwelling and through increased local spending generated by future occupiers. Nonetheless, these benefits are of limited weight in favour of the proposal. Furthermore, the scheme would deliver a self-build dwelling, affording modest weight in support of the proposal.

28. I have found that the proposal would have no adverse effect on the character and appearance of the area. However, it would result in harm to the living conditions of a neighbouring occupier, would fail to meet the sequential test, would fail to demonstrate a safe evacuation route and would conflict with the development plan when taken as a whole. In this case, the limited to modest benefits advanced in favour of the appeal would not outweigh these conflicts and do not indicate that a decision should be made other than in accordance with the development plan.

29. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR

⁴ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990