



Appeal Decision

Hearing held on 1 August 2023

Site visit made on 1 August 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: APP/T0355/W/22/3313643

Maidenhead Spiritualist Church, York Road, Maidenhead SL6 1SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Shanly Homes Limited against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 20/03149, dated 19 November 2020, was refused by notice dated 21 July 2022.
 - The development proposed is the construction of 49 No. apartments with associated parking and landscaping following demolition of existing building.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 49 No. apartments with associated parking and landscaping following demolition of existing building at Maidenhead Spiritualist Church, York Road, Maidenhead SL6 1SH in accordance with the terms of the application, Ref 20/03149, dated 19 November 2020, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Shanly Homes Ltd against Royal Borough of Windsor and Maidenhead. This is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline with only landscape reserved as a matter for future consideration. I have therefore had regard to the submitted drawings on an indicative basis insofar as they relate to landscape.
4. I have amended the description of development to exclude wording that are not acts of development in the interests of clarity.

Main Issues

5. During the appeal the Council confirmed that it no longer contests the reason for refusal relating to affordable housing. Therefore, the main issues are:
 - the effect of the proposal on the nearby waterway;
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on the living conditions of neighbouring occupiers with regard to light and privacy.

Reasons

Waterway

6. The site lies adjacent to the York Stream, a statutory main river. Policy NR1 of the Borough Local Plan 2013 – 2033 (BLP) states, among other things, that development proposals near rivers (including culverted rivers) should retain or provide an undeveloped 8 metre buffer zone alongside main rivers.
7. The proposal would provide a buffer zone of approximately 4m and would therefore conflict with this Policy.
8. The Maidenhead Waterways Framework June 2009 (MWF) provides a framework for future planning decisions along the waterway corridor. Its purpose is to aid the restoration of the waterway including the achievement of the emerging Maidenhead Waterway Project.
9. The objective of the Maidenhead Waterway Project is restoring the waterway into a valuable amenity. The MWF also states that the buffer strip enables access for maintenance and promotes the ecological and landscape value of the watercourse. It goes on to say that in line with the objectives of enhancing the waterway setting and allowing for continuous walking and cycling, the council will generally oppose any reduction in this buffer strip.
10. The Council confirmed during the hearing that its concerns with respect to the lack of an 8m buffer zone relate to the ecological effects on the waterway.
11. The York Stream is a Local Wildlife Site which is locally designated. BLP Policy NR2 states, among other things, that development proposals that either individually or in combination with other developments, are likely to have a detrimental impact on sites of local importance, including Local Wildlife Sites, will not be permitted unless it can be demonstrated that the benefits clearly outweigh the need to safeguard the nature conservation value of the site.
12. The site is dominated by a tarmac surface. There is a small area of modified grassland at the northern side of the site and the boundary of the site with the river consists of overgrown vegetation with a mix of native and non-native species. The site therefore has low ecological value.
13. The proposed block of flats would be located closer to the river than the existing building, thereby reducing the width of the existing buffer and the amount of space available to create a high quality habitat. Landscaping is a matter reserved for future consideration. However, given the existing low ecological value of the site, and that the proposal would provide a reasonable buffer zone for planting that would include the removal of non-native species, I am satisfied that a scheme for landscaping at the proposed buffer would provide an ecological enhancement of the site.
14. The proposed building would be eight storeys high and would lie to the west of York Stream. It would therefore increase shading on the river at certain times of day. As discussed during the hearing this would be likely to affect riparian and aquatic vegetation. It would also have effects on the ecology of the river in particular on the habitat for wildlife and opportunities for foraging and sheltering.

15. As stated in the Water Framework Directive Assessment, the proposed scheme will increase shading on the adjacent river particularly during midsummer. However, the total hours of full sun on the river during peak summer would decrease by a few hours. Therefore, the increase in shading of the canal would be unlikely to have a significant effect on the river as a whole.
16. In terms of preventing good ecological potential by not providing an 8m wide buffer zone, promoting ecological and landscape value is one of a number of the objectives of the requirement for an 8m buffer.
17. As stated in the MWF, habitats associated with buildings can act as steppingstones in a wider network of green spaces and allow the movement of wildlife along the length of the river. The proposed width of buffer at around 4m, would result in the river achieving less ecological and landscape value compared with an 8m wide buffer. However, given the approved developments to the north of the site which do not provide an 8m buffer zone, any ecological benefit to the river as a whole in providing such a buffer zone at the appeal site would be limited.
18. Accordingly, although the proposal would be contrary to the objectives of the MWF, the associated harm in terms of ecology would be limited.
19. The proposal would provide 49 dwellings to the local housing supply and there would be associated economic and social benefits. As the ecological harm to the waterway would be limited, and the ecological value of the site is negligible, the benefits would outweigh the need to safeguard the nature conservation value of the site. Therefore, the proposal would not conflict with BLP Policy NR2.
20. The Appellant had not carried out feasibility or viability studies to assess whether a scheme with an 8m wide buffer zone would be viable. However, given the limited size of the site and the surrounding development including railway line to the south, the provision of an 8m buffer would be likely to result in a smaller scheme. In addition, given the conclusions of the numerous viability assessments for the proposal, it is unlikely that a smaller scheme would be viable.
21. Consequently, the proposal would result in harm to the waterway. Therefore, it would conflict with BLP Policy NR1 which seeks, among other things, an 8m buffer zone alongside main rivers.
22. However, since the proposed buffer zone would be likely to result in ecological enhancement of the site and given the insignificant decrease in total hours of full sun on the river, the harm that would result from conflict with this Policy would be limited.

Character and appearance

23. The site lies at the southern end of an allocation area. As such the wider area, as I observed during my site visit, is undergoing significant change. The land to the north of the site benefits from planning permission for a seven storey block of flats. From the evidence I see no reason why that development along with the other approved schemes in the allocation area would not be implemented. As such, the emerging character of the area to the north of the site is primarily that of flatted development between four and eight storeys high.

24. To the south of the site lies a railway embankment that is raised some distance above the ground level of the site. While there are two storey dwellings to the east of the site, these are clearly separated from the site by the river. As such, the site has a closer relationship to the area to the west of the river than the east. To the west of the site lies a football ground with limited built development above ground. To two sides of the football ground would be flatted development and the railway embankment lies to the south. Accordingly, the emerging character of the area to the west of the river is largely that of flatted development notwithstanding the presence of the football ground.
25. The proposed block of flats would be eight storeys high and 1m taller than the approved development to the north of the site. In terms of height the proposed difference in height would not appear abrupt or out of keeping with the development to the north. In addition, the 1m difference in height would provide some variation such that the buildings when viewed together would not appear homogenous. The height of the proposal would therefore have a similar relationship to the football ground and two storey dwellings to the east as the approved schemes to the north. As the site has a closer relationship to the area to the west of the river, any lack of transition in terms of height between the east and west sides of the river would not harm the character of the area.
26. The site lies at the southern end of the allocation area. The railway embankment lies at a significantly higher ground level than the site and the primary public approach to the site from the south is via the public footpath that passes through a tunnel under the railway line. Therefore, there are very limited views to the site from the south of the railway line. As such, any lack of transition in scale from south to north would not appear noticeable in wider views and would not adversely affect the character of the area.
27. The footprint of the building would have a shorter length compared with the approved scheme to the north. However, the building would nonetheless have a rectangular footprint such that this element would appear in keeping with the approved scheme to the north and with the emerging character of the allocation area.
28. The west elevation would be articulated with setback portions dividing the massing into thirds and dark brick detailing around the windows. In addition, the balconies on the elevation facing the river would be connected vertically thereby visually breaking up the massing of the building when viewed from the public footpath. Overall, the proposed building would have an architectural style, height, massing, and materials that would be in keeping with the approved developments in the wider allocation area. It would therefore appear in keeping with the character of the area.
29. Consequently, the proposal would not harm the character and appearance of the area. Therefore, it would not conflict BLP Policy QP3 which seeks, among other things, development that respects and enhances the local character of the environment.

Living conditions

30. A Daylight and Sunlight Impact Assessment was submitted as part of the application which concluded that over 80% of the assessed windows meet the

BRE recommendations for the Vertical Sky Component (VSC), No-Sky Line (NSL) and Annual Probable Sunlight Hours (APSH).

31. A number of properties in Fotherby Court would fall short of the BRE requirement of a less than 20% reduction in VSC. The windows that fail to meet the recommendations would generally have a reduction of between 20% and 30% resulting in a minor adverse effect. Of the rooms that fail to meet the recommendations for NSL, the majority either fall marginally below the requirement or have an NSL of more than 50% and therefore retain adequate levels of daylight.
32. The southern elevation of the consented scheme to the north of the site would also have some windows that would fail to meet the BRE recommendations for VSC and NSL. However, a number of these windows would serve dual aspect spaces. The remaining windows that would fail to meet the guidelines would be located near the centre of the south elevation and would serve bedroom spaces. The future occupiers of these spaces would be unlikely to spend significant amounts of time in these spaces. The spaces would also achieve more than 50% NSL and would therefore experience adequate levels of daylight.
33. In terms of sunlight, the properties of Fotherby Court which do not meet the APSH recommendations generally either fall marginally below the requirements, would meet the VSC and NSL requirements, or serve spaces with more than one window where the other window would meet BRE guidance. All the windows of the consented scheme to the north of the site would meet the recommendations for APSH. As such the proposal would not have an unacceptable effect on the amount of sunlight experienced by neighbouring occupiers.
34. For the foregoing reasons, the proposal would not have an unacceptable effect on the living conditions of neighbouring occupiers with regard to light.
35. Turning to privacy, the distance from the proposed building to the dwellings at Fotherby Court would be over 25m. This would exceed the separation distances recommended in the Design Guide SPD. Moreover, given the proposed height of the building, views from the upper floors to Fotherby Court would be at an angle and the separation distance would be greater than that of the lower floors.
36. As such, while there may be some views from the proposed flats to areas of the dwellings and gardens at Fotherby Court, given the significant separation distances proposed, neighbouring occupiers would not experience undue adverse effects in terms of privacy.
37. Consequently, the proposed development would not unacceptably affect the living conditions of neighbouring occupiers with regard to light and privacy. Therefore, it would not conflict with BLP Policy QP3 in this regard which seeks, among other things, development that would have no unacceptable effect on the amenities enjoyed by the occupants of adjoining properties in terms of privacy, light and access to sunlight and daylight.

Other Matters

38. I note local concerns including those regarding parking provision, highway safety and traffic. Given the accessibility of services and facilities and the number of dwellings proposed, the proposed parking provision would be

sufficient and there would not be severe residual cumulative impacts on the road network. Given the turning space within the site and that the proposal would use an existing access, there would not be an unacceptable impact on highway safety. Furthermore, the Highway Authority has not objected to the proposal and for the foregoing reasons I see no reason to disagree.

39. I also acknowledge local concerns regarding drainage and flooding. The Lead Local Flood Authority did not object to the proposal subject to a number of conditions. From the evidence before me I see no reason to disagree.

Planning Balance

40. The Council are unable to demonstrate roughly a 4.8 year housing land supply. Therefore, the tilted balance in the terms of paragraph 11dii is engaged.
41. The proposal would contribute 49 dwellings to the local housing supply. While the housing shortfall is modest, the proposed number of dwellings is not insignificant. I am also mindful of the Government's objective of significantly boosting the supply of homes. The proposal would also provide a temporary economic benefit during the construction phase and future occupiers would provide economic and social benefits to the local community. However, given the limited width of buffer strip, this benefit would be limited. Therefore, I attribute moderate weight to the benefits of the scheme.
42. The proposal would result in limited harm to the waterway for the reasons given above. It would result in conflict with BLP Policy NR1 and with the development plan as a whole. Given the limited harm that would result from the development plan conflict, I attribute limited weight to the conflict with BLP Policy NR1.
43. Accordingly, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This material consideration warrants a decision other than in accordance with the development plan.

Conditions

44. The condition requiring details of materials is necessary to safeguard the character and appearance of the area. The conditions relating to access and vehicle parking spaces are necessary in the interests of highway safety and the conditions relating to cycle parking and EV charging are necessary in the interests of sustainable transport.
45. Conditions regarding light, biodiversity net gain, construction environmental management plan and biodiversity enhancements are necessary in the interests of biodiversity and wildlife. The conditions regarding drainage, flood risk and SuDS assessment are necessary to safeguard against flooding. In the interest of sustainability, a condition relating to sustainable design and construction is necessary.
46. In order to safeguard the living conditions of neighbouring occupiers, conditions relating to noise and refuse storage are also necessary. The conditions relating to building regulations part M are necessary in accordance with BLP Policy HO2.
47. Conditions relating to the submission of the reserved matter, biodiversity net gain, the construction environmental management plan and surface water

drainage are pre-commencement as they are likely to affect the early stages of construction.

Planning Obligation

48. The appellant has completed a legal agreement under Section 106 of the Act (a S106) in conjunction with Royal Borough of Windsor and Maidenhead which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to the following matters.
49. Affordable Housing: BLP Policy H03 requires all developments for 10 dwellings gross, or more than 1,000 sq. m of residential floorspace, to provide 30% of the total number of units as on-site affordable housing.
50. I note that the supporting text to the policy states that where the provision of affordable housing in accordance with this policy is not economically viable, the Council will expect the submission of open book financial appraisal information alongside the planning application.
51. Notwithstanding this, given the wording of the policy itself, and as no on site affordable housing units are proposed, the scheme would conflict with this policy. However, the Viability report submitted by the appellant demonstrates that the provision of affordable homes would make the scheme unviable. Furthermore, given the Council's housing land supply position, I attribute limited weight to the conflict with this Policy.
52. While the agreement does not provide for on-site contributions towards affordable homes, it does include a Viability Review Mechanism which requires that viability reviews are carried out prior to the commencement of development and prior to the sale or lease of more than 75% of the dwellings.
53. As part of the appeal, the Appellant submitted a Viability Appraisal Addendum dated April 2021. In 2023, the Council reviewed updated viability evidence from the Appellant and concluded that the scheme would result in a deficit. However, given the time available for the Appellant to commence development including the submission of the reserved matter, an early stage viability review is necessary, and I consider this approach to be robustly justified. Therefore, I consider the S106 agreement is fairly and reasonably related to the development proposed and as such passes the statutory tests.

Conclusion

54. For the reasons given above the appeal should be allowed.

R Sabu

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the landscaping (hereinafter called 'the reserved matter') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than [3] years from the date of this permission.
- 3) The development hereby permitted shall take place not later than [2] years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 010 Rev 00, 100 Rev 00, 200 Rev 01, 201 Rev 01, 202 Rev 02, 203 Rev 01, 204 Rev 01, 205 Rev 01, 206 Rev 01, 207 Rev 01, 208 Rev 00, 300 Rev 01, 301 Rev 01, 302 Rev 01, 303 Rev 01, 400 Rev 01 and 401 Rev 00.
- 5) Prior to commencement of the development, details of the biodiversity net gain which will be delivered as part of this development (including a clear demonstration through the use of an appropriate biodiversity calculator such as the Defra Metric 3.0 that a net gain would be achieved) shall be submitted to and approved in writing by the council. The agreed net gain measures shall thereafter be implemented/installed in full as agreed.
- 6) Prior to commencement of the development (including demolition, ground works, vegetation clearance) a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
 - a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements and should include all mitigation measures outlined in the ecology report (Ethos Environmental Planning, January 2021), an updated ecology walkover survey (including an updated PRA of the building) prior to commencement of any works to ensure that conditions on the site have not significantly changed since the time of the 2020 surveys, reasonable avoidance measures during site clearance works for reptiles, nesting birds, and hedgehog (including measures which would be undertaken should any individuals of these species be found), removal of the identified PRF under the supervision of a suitably qualified ecologist, protection of the river and any vegetation to be retained, and construction lighting to be directed away from the river and any suitable bat habitat.).
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to oversee works.

- f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (EcoW) or similarly competent person.
 - h) Use of protective fences, exclusion barriers and warning signs. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority. An updated ecology report detailing the results of this updated survey should be submitted with any Reserved Matters application, and if any new signs of presence of protected species on the site is found then further surveys may need to be undertaken and/or conditioned as part of the Reserved Matters application.
- 7) Prior to commencement of the development (excluding demolition) a surface water drainage scheme for the development, based on sustainable drainage principles shall be submitted to and approved in writing by the local planning authority. Details shall include:
- Full details of all components of the proposed surface water drainage system including dimensions, locations, gradients, invert levels, cover levels and relevant construction details.
 - Details of the maintenance arrangements relating to the proposed surface water drainage system confirming who will be responsible for its maintenance and the maintenance regime to be implemented.

The surface water drainage system shall be implemented and maintained in accordance with the approved details thereafter.

- 8) No development above ground floor slab level shall take place until samples of the materials to be used on the external surfaces of the development hereby approved have been submitted to and approved in writing by the local planning authority. This should accord with the details submitted in the Design and Access Statement. The development shall be carried out and maintained in accordance with the approved details.
- 9) No development above ground floor slab level shall commence until a report detailing the external lighting scheme, and how this will not adversely impact upon wildlife, has been submitted to and approved in writing by the LPA. The report shall include the following figures and appendices:
- A layout plan with beam orientation o A schedule of equipment
 - Measures to avoid glare
 - An isolux contour map showing light spillage to 1 lux both vertically and horizontally, areas identified as being of importance for commuting and foraging bats, and locations of bird and bat boxes. The approved lighting plan shall thereafter be implemented as agreed.
- 10) No development above ground floor slab level shall commence until details of biodiversity enhancements, to include integral bat boxes, bricks, or tiles, and at least four swift bricks built into the walls of the new building shall be submitted and approved in writing by the council. The boxes, bricks, or tiles shall thereafter be installed in accordance with the plans and a brief letter report confirming that the boxes, bricks or

tiles have been installed, including a simple plan showing their location and photographs of the boxes, bricks or tiles in situ, is to be submitted to and approved in writing by the Council.

- 11) No development above ground floor slab level (as shown on the approved site section drawing) shall commence until details of measures to incorporate sustainable design and construction shall be submitted to and approved by the local planning authority, this should be based on the Sustainability and Energy Statement prepared by Bluesky Unlimited dated 12 February 2019 or such other details as agreed in writing by the local planning authority.
- 12) No development above ground floor slab level (as shown on the approved long section drawing) shall commence until a noise study has been submitted to and approved in writing by the local planning authority. This shall include:
 - i) Details of all the measures to be taken to acoustically insulate all habitable rooms against environmental and operational noise (including the operation of the adjoining railway), together with details of the methods of providing acoustic ventilation
 - ii) Details of how the proposed development is designed so that cumulative noise from surrounding uses (including the railway) does not impact on residential amenity. This shall include any appropriate mitigation measures.

The development shall be carried out in accordance with the approved details and retained as such thereafter.

- 13) Notwithstanding the drawings hereby approved, details regarding the provision of units designed to meet Categories M4(1), M4(2) and M4(3) of Approved Document Part M of Building Regulations 2010 (as amended) shall be submitted to, and approved, in writing by the local planning authority prior to the commencement of above ground floor slab level building works of that building. Thereafter, the development shall be completed in accordance with the approved details.
- 14) No part of the development shall be occupied until the access has been constructed in accordance with drawing number 100 Revision 00 (proposed site plan). The access shall thereafter be retained.
- 15) No part of the development shall be occupied until the cycle parking facilities have been provided in accordance with the details set out in drawing number 200 Rev. 01 (Proposed Ground Floor Plan) and 401 Rev. 00 (Two Tier Rack Space Requirements). These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.
- 16) No part of the development shall be occupied until EV charging facilities have been provided in accordance with drawing 362-2XX-01 (EVCP Spaces Plan). These facilities shall thereafter be kept available for the charging of electric vehicles in association with the development at all times.
- 17) No part of the development shall be occupied until vehicle parking spaces have been provided and laid out in accordance with drawing number 100 Revision 00 (proposed site plan). The spaces approved shall be retained for parking in association with the development.

- 18) No part of the development shall be occupied until the refuse bin storage area and recycling facilities have been provided in accordance with drawing 200 Rev. 01 (ground floor plan). These facilities shall be kept available for use in association with the development at all times.
- 19) The development shall be carried out in accordance with the submitted Flood Risk and SuDS Assessment, Project Number 20076, by Water Environment dated November 2020 and the following mitigation measures it details: The footprint of the proposed development shall be located outside of the 1% annual probability (1 in 100) flood extent with an appropriate allowance for climate change as listed In section 5.19 Finished floor levels shall be set no lower than 25.29 m above Ordnance Datum (AOD). There shall be no raising of existing ground levels within the 1% annual probability (1 in 100) flood extent with an appropriate allowance for climate change as shown in drawing number 200 revision 3 entitled "proposed ground floor plan" and drawing number 01A entitled "site survey as existing".

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Kevin Scott	Solve Planning
Rosalind Gall	Solve Planning
Sarah Forsyth	Ethos Environmental Planning
Jonathan Lonergan	EB7
Ian Rennie	Shanly Homes

FOR THE LOCAL PLANNING AUTHORITY:

Jeffrey Ng	Principal Planning Officer, Council
Alison Long	North Area Team Leader, Council
Alex Swann	Environment Agency
Lauren Giddings	Environment Agency

INTERESTED PARTIES:

Andrew Hill	Local resident
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DOCUMENTS

Hard copy of Appellant's costs application including appendices
E-mail dated 1 August 2023 and hard copy of Council's rebuttal to costs application
Hard copy of agreed S106 agreement
Hard copy pages 8 and 14 of the Design and Access Statement
E-mail dated 1 August 2023 attaching EB7 statement dated 23 February 2023
E-mail dated 1 August 2023 from Solve Planning confirming drawing numbers referred to in conditions.
E-mail dated 1 August 2023 - Wording of paragraph 12.2.17 of the Borough Local Plan 2013-2033
E-mail dated 1 August 2023 – Appellant's written agreement to pre-commencement conditions
E-mail dated 1 August 2023 – Appellant's written agreement to pre-commencement condition number 11
E-mail dated 1 August 2023 – Appellant's written agreement to pre-commencement condition regarding buffer zone
E-mail dated 1 August 2023 attaching Drawing No. 362-2XX-01