



Appeal Decision

Site visit made on 31 March 2023

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Appeal Ref: APP/T0355/W/22/3304447

The Jolly Gardeners, 92-94 St Lukes Road, Old Windsor, Windsor SL4 2QJ

- 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 Punch Partnerships (PML) Limited against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/00825, dated 12 March 2021, was refused by notice dated 4 February 2022.
 - The development proposed is described as 'Conversion of the public house (Sui Generis) to create two dwellings and the erection of one dwelling (C3), alterations to the existing parking layout, and associated hard and soft landscaping'.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of the public house to create two dwellings and the erection of one dwelling with alterations to the existing layout and associate hard and soft landscaping at The Jolly Gardeners, 92 – 94 St Lukes Road, Old Windsor, Windsor SL4 2QJ in accordance with the terms of the application, Ref 21/00825, dated 12 March 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development above is taken directly from the original planning application form.
3. Since the determination of the application the Council has adopted the Royal Borough of Windsor and Maidenhead Borough Local Plan 2013 – 2033 (adopted 2022), ('Borough Local Plan'). Despite the adoption of the Borough Local Plan, the matters of contention in the appeal remain the same. Additionally, in setting out its reasons for refusal the Council's decision notice and case officer's report also referred to the relevant emerging policies of the Borough Local Plan, as well as relevant national policy contained within the National Planning Policy Framework (the Framework).
4. No appeal statement has been submitted by the Council, albeit copies of the decision notice, planning officer report and consultee responses have been received.
5. The Council subsequently referred to another application at the site (ref: 22/01957/FULL) that was refused in November 2022 and sought to use the officer's report for this application as part of its case for this current appeal. Only a website link to the relevant documents for the application (ref: 22/01957/FULL) was provided by the Council. Furthermore, this additional evidence was provided beyond the deadline for final comments on this appeal.

This is despite the fact that the decision/officer report would have been available suitably in advance of the deadline for comments on the appeal.

6. The appellant has raised concerns regarding the procedural fairness of accepting the Council's late evidence. The Council has not outlined any suitable reasons as to why the late evidence should be accepted. Having regard to advice contained within the Procedural Guide: Planning Appeals - England, I have therefore proceeded to determine the appeal without consideration of the Council's late evidence.

Main Issues

7. The main issues are the effect of the proposed development on: a) the character and appearance of the area; b) the significance of a non-designated heritage asset; c) flood risk; and d) climate change.

Reasons

Character and Appearance

8. The appeal site comprises The Jolly Gardeners Public House, which lies on the western side of St Lukes Road in Old Windsor. The public house is set back from the highway behind associated off-street parking. St Lukes Road is a predominantly residential street and The Jolly Gardeners sits between residential properties to either side.
9. The area has a highly mixed character and appearance, with residential properties varying in size, type, use of materials and precise form. This mix in character reflects that development, including infilling, has taken place along St Lukes Road during a range of periods. This appears to include traditional mid-18th/19th century cottages, as well as development built during the inter-war period and beyond. As such, the area has no particular consistency in built form or a strong, overriding character. Nevertheless, the public house makes a positive contribution to the street scene. This is largely due to the architectural and aesthetic quality of its frontage.
10. The appeal scheme involves conversion of the existing public house to two dwellings, as well as the erection of a detached dwelling on land that currently forms part of the northern patio-garden and car park to the public house.
11. The front elevation of the existing building would remain largely unaltered, thereby fundamentally retaining its historic character and appearance from the streetscene. Alterations and extensions are proposed, mainly to the rear of the public house to facilitate its conversion. However, these would not be particularly perceptible from public vantage points due to their siting and scale. As such, I am satisfied that the proposed physical alterations to the public house would not adversely affect the character and appearance of the area.
12. Turning to the proposed new dwelling, this would sit in the existing gap between the pub and adjacent residential properties to the north of the site. The proposed dwelling would be two-storeys in height and closely reflect the overall scale and building line of adjoining neighbouring properties. I also find that its plot size and spacing with the adjacent buildings would suitably reflect existing residential development within the street.

13. The precise appearance and finish of the proposed detached dwelling is typical of many modern new build dwellings. In this respect it does not necessarily draw upon the more historic elements, including detailing and finishing materials that can be found on many properties nearby. Nevertheless, it is not of a poor design quality, whilst the streetscene contains a diverse mix of building styles and materials. Accordingly, I do not consider the proposal would be at odds with its surroundings.
14. The Council has raised concerns that the proposed detached dwelling would eliminate an existing gap between the side of the public house and existing residential development to the north. However, the built form along the street is close knit, including dwellings being immediately sited alongside the public house to the south. Whilst the current gap between the neighbouring property to the north may be a remnant of a once more open area, it appears to hold little significance. Additionally, due to the building line of the public house being set back slightly from its adjoining neighbours, the gap is only appreciable from close range views to the front of the site. Views of the gap are therefore extremely localised, while the space is also enclosed by an existing high-level, close-boarded fence. As such, I do not find that the gap provides the existing building with a sense of space or contributes valuably to the character or appearance of the area.
15. The proposed new build dwelling would also obscure views of the existing side elevation of the public house. However, I do not consider this to cause any appreciable adverse impacts to the character and appearance of the area.
16. Overall, I am satisfied that the proposed development would not cause harm to the character or appearance of the area in which it lies. It therefore complies with Policy QP3 of the Borough Local Plan. The policy, amongst other matters, seeks for development to respect and enhance the local or historic character of the environment. It also accords with the aims of the Framework in respect of promoting development that is designed to be sympathetic to its surroundings.

Non-designated Heritage Asset

17. Both main parties agree that the Jolly Gardener Public House is a non-designated heritage asset (NDHA), with the property also being classified as a 'Structure of Character' in the Old Windsor Neighbourhood Plan (adopted 2019).
18. The building appears to comprise of two distinct elements, a 19th Century frontage extension (dating to c.1880s), which is linked to an older element that is set back to the south-west of the plot. This element to the rear is seemingly the oldest part of the building, dating to the 18th Century, and likely to have previously been in use as a dwelling. Internally, the public house is largely open plan, with a central bar. As such, previous partitions separating various ranges of the building have therefore largely been removed.
19. From the evidence before me it appears the existing building was not originally used as a public house. Instead, based upon historic mapping and the building's layout, it is likely that it was formerly used for residential purposes, as well as a beer house, with the building subsequently converted around the 1920s/early 1930s from a domestic dwelling into a public house. It seems therefore that the building would have been under an alternative use when the frontage extension was added (i.e. c.1880s section).

20. From the evidence before me and my observations on site, I find that the significance of the building is largely derived from its age and aesthetic value. Despite its likely previous uses, I also find that its subsequent use as a public house still adds some historic interest to the building.
21. Notably, the building displays a pleasing, rather simple and symmetrical frontage that contributes greatly to its aesthetic value. The frontage consists of painted render walls at groundfloor level, with painted brickwork above the pub's fascia board, set under a slate roof. The frontage also contains attractive timber, light recessed box sash windows. As previously indicated, the proposed development would largely retain the frontage of the building with only very limited alterations proposed (e.g. removal of fascia board, replacement door, re-painting of existing render/brickwork). The footprint of the 19th century extension to the building would be retained and incorporated into the development proposal. Thereby largely preserving its appearance and significance.
22. I am inclined to agree with the Council's conservation officer that the alterations proposed to the 18th Century aspect of the building are rather generic in style. However, the historic footprint of this element would again be retained, while the scale of the proposed extensions would not overwhelm the existing building. Additionally, the existing appearance and condition of the rear element of the building is poor, having been fundamentally eroded through previous unsympathetic extensions and alterations. Therefore, whilst the physical proposals may not fully embrace the historic aspects of the building, the level of harm they would cause to its historic significance would be highly limited.
23. Additionally, given the likely previous use of the building as a domestic dwelling that was subsequently converted to a public house, the proposed change in use would not lead to any noteworthy harm to the significance of the building.
24. Despite the limited level of harm to the NDHA, the proposed development would remain in conflict with Policy HE1 of the Borough Local Plan. The policy, amongst other matters, seeks to ensure that development proposals would preserve or enhance the historic environment, including both designated and non-designated heritage assets.
25. In refusing the application, the Council has also made reference to the provisions of Paragraph 202 of the Framework (e.g. harm to be weighted against public benefits). This relates to situations where the proposed development would lead to harm to designated heritage assets and therefore is not applicable in this instance. Instead, Paragraph 203 of the Framework states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. I will return to this as part of my final planning balance below.

Flood Risk

26. The application site lies within Flood Zone 3a as defined by the Framework, which is deemed to have a high probability of flooding. However, the Environment Agency (EA) has identified that the site benefits from flood

defences¹, thereby reducing flood risk. The EA also identified that the 1% annual exceedance probability (AEP), plus a 70% allowance for climate change, flood level equates to 18.22m AOD. Flood modelling² further confirms the appeal site as being outside the 1% AEP (plus a 35% allowance for climate change) flood level.

27. The appellant's flood risk assessment (FRA) contends that the development can be made safe for its lifetime without increasing flood risk elsewhere. This would be achieved by incorporating finished floor levels on the proposed new build dwelling above the 1% AEP, plus allowance for climate change. While flood resistant and resilient fittings are proposed to the existing building that is to be converted. Indeed, no objection to the proposal was raised by the EA, subject to the inclusion of a planning condition that the development be carried out in accordance with the submitted FRA and landscape plan, including the proposed mitigation measures they incorporate.
28. Nevertheless, the Council refused the application on the grounds that it had not been demonstrated that the proposed development would provide safe access/egress in a flood event and because the proposal had not been demonstrated to comply with the sequential test for flooding.
29. With regards to the concerns over safe access and egress from the site, the Framework classifies both the existing public house use and proposed dwelling use as 'More Vulnerable Uses' for flood risk purposes. Additionally, the proposal would utilise the same vehicle parking area as the existing public house, whilst access and egress arrangements to the properties would remain very similar. Furthermore, it is likely that the proposed use of the site as dwellings would involve less people being present at peak times than the public house use. Should an emergency flood event occur, occupants of the proposed development are likely to have a greater knowledge of the site and local area than potential infrequent (or first time) customers to the existing public house.
30. Given the site-specific context (e.g. existing/proposed use, existing/proposed access arrangements, surrounding residential nature and the existence of flood defence measures), I am satisfied that there would be no detrimental impacts associated with safe access/egress from the proposed development.
31. I note the appellant's arguments that the sequential and exceptions tests are not applicable to the site given that flood defences exist which effectively result in the flood risk equating to that of Flood Zone 1. In any case, the appellant has provided a sequential test as part of the appeal submission.
32. The submitted sequential test has been undertaken by suitably qualified professionals. It reviewed 179 sites identified from the Borough's Housing and Economic Land Availability Assessment, these were subsequently narrowed down to suitable and available site for development based on factors including their size, capacity, Flood Zone and availability for development. Of which only five potential suitable sites were identified to be in a sequentially preferable flood zone.
33. Each of the five sequentially preferable sites have been discounted by the appellant for a variety of reasons. This includes their previous planning histories and issues related to heritage, highway safety, location within the

¹ The Jubilee River Flood Alleviation Scheme

² The Lower Thames 2019 Flood Model

Green Belt, as well as greater risks from surface water flooding. Accordingly, it is deemed that there are no reasonably available sites in low and medium risk areas. The findings of the appellant's sequential test have not been refuted by the Council, and from the evidence before me, I have no reason to disagree with the conclusions reached.

34. I also note that the EA consultation response identified that it did not object to the proposal, and this was in part based on its view that the development is safe in line with the exceptions test.
35. Consequently, based on the evidence before me, and subject to suitable conditions in respect of the detailed drainage design, I am satisfied that the proposal would comply with Policy NR1 of the BLP, which seeks to appropriately manage the effects of flood risk. Likewise, the development would comply with the aims of the Framework in respect of the sequential approach to managing flood risk.

Climate Change

36. Policy SP2 of the Borough Local Plan requires development to demonstrate measures to adapt to and mitigate climate change. The policy sets out several design measures that are expected to be explored to maximise climate change resilience in development. The policy does not set a specific standard that developments are expected to achieve (i.e. carbon neutrality) but does indicate the need for applicants to refer to related Supplementary Planning Documents (SPD), or successor documents, for further guidance to the policy.
37. The original application was determined before the requirements of Policy SP2 were in place and the appellant has not directly addressed the requirements of the policy. Nevertheless, my decision still needs to have regard to the current development plan policy.
38. There is a lack of information (e.g. an energy statement) to demonstrate that the proposed development would maximise resistance and resilience to climate change, working towards the Council's aims of achieving net zero emissions. Accordingly, the proposal fails to adhere to Policy SP2 of the Borough Local Plan.

Other Matters

39. I appreciate that some local residents will be upset by the loss of the public house use, whilst I note the concerns that have been raised in this respect, including the adequacy of the submitted viability report. However, the Council did not raise an objection to the principle of the development having regard to its adopted development plan policies, the availability of other public houses nearby, or the submitted viability evidence. No robust reasons have been presented for me to reach an alternative conclusion.
40. I am also aware that since the original application, the appeal site has been listed as an Asset of Community Value (ACV). Whilst the property may now be an ACV, the provisions do not place any restriction on what an owner can do with their property, once listed, if it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites.
41. Rosemary Cottage (Grade II listed) lies to the south of the appeal site. The significance of Rosemary Cottage largely lies in its age, aesthetic value, and

likely historic value as one of the earliest buildings in the area. The setting of the listed building is already largely defined by the mix of surrounding residential properties including twentieth century dwellings immediately opposite, that provide a rather urban quality to the area. The Council has not specifically objected to the appeal scheme based on any harm to this heritage asset and given my above findings that the proposal would not cause harm to the character and appearance of the area, I am satisfied that the setting of the listed building would be preserved.

42. A third party has suggested that the deeds of the property require the public house use to be maintained. However, this would be a legal matter outside the scope of this appeal.

Planning Balance

43. I have found the proposal to be contrary to Borough Local Plan Policy HE1 in respect of preserving or enhancing the significance of NDHA, albeit the harm that would arise to the NDHA would be very limited.
44. The proposal is also contrary to the requirements established under Policy SP2 of the Borough Local Plan. This is due to a lack of information being provided to demonstrate the sustainability credentials of the scheme, as opposed to any identified deficiencies in its design. There are some inherent sustainability qualities to the proposal through the site's generally sustainable location for residential development, whilst the proposal would deliver new dwellings that would need to meet current building regulations. Accordingly, I attach only moderate weight to the conflict with Policy SP2.
45. The proposal's lack of harm to the character and appearance of the area is a neutral matter in the planning balance. Similarly, compliance with other development plan policies, including in respect of flood risk are also neutral matters.
46. Regardless of whether or not the Council is able to provide a five-year housing land supply, the Framework still seeks to significantly boost the supply of housing. Additionally, the appeal site is a sustainable location for residential development. Although the development of three dwellings is modest in scale, it would nevertheless offer socio-economic benefits, including through the provision of new homes and economic activity associated with their construction and subsequent use.
47. The proposed development would also provide benefits through the preservation of the building's frontage, whilst also securing a long-term future for the appeal building. The vacant nature of the appeal site is a further consideration that has weighed in favour of the proposal.
48. Whilst each of the identified benefits are fairly modest, cumulatively, I find that they would outweigh the limited harm to the NDHA and the proposal's conflict with Borough Local Plan Policies HE1 and SP2.

Conditions

49. Suggested draft conditions have been provided to and commented upon by both main parties.

50. A condition is needed to secure compliance with the approved plans and documents, for the avoidance of doubt and in the interests of proper planning. It is necessary to attach a pre-commencement condition requiring the approval of a construction method statement in the interest of highway safety and the living conditions of neighbouring residents.
51. Conditions requiring the approval of details of external lighting and biodiversity enhancements are reasonable and necessary in the interests of biodiversity. Likewise, conditions restricting the clearance of vegetation, as well as requiring relevant works to be completed under the supervision of an appropriately qualified ecologist are also needed in the interest of biodiversity.
52. A condition to ensure habitable rooms in the development are served by appropriate acoustic insulation and ventilation is reasonable to protect the living conditions of future occupiers, given the development's location in relation to air traffic.
53. Restrictions on the hours of demolition/construction and deliveries to the site during the construction period are required in the interest of the living conditions of neighbouring residents.
54. A condition requiring the approval of sample materials is necessary in the interest of the appearance of the development. It is also necessary to attach a condition that the development is carried out in accordance with the submitted flood risk assessment (including specified mitigation measures). This is to ensure the development does not increase flood risk on or off-site.
55. Finally, conditions requiring delivery and maintenance of the vehicle parking spaces, cycle spaces, and refuse storage are needed to ensure a satisfactory form of development.

Conclusion

56. For the reasons outlined above, having regard to the development plan and all other material considerations, the appeal is allowed.

Lewis Condé

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
 2. The development hereby approved shall be carried out in accordance with the following drawing numbers:
 - 13. 21.01 - 00.00 A Site Location Plan
 - 6. 21.01 - 10.00 E Proposed Site Plan
 - 5. 21.01 - 10.01 C Proposed Floor Plans Plot 1
 - 21.01 - 10.03 B Proposed Floor Plans Plot 2 and 3
 - 4. 21.01 - 10.02 C Proposed Elevations Plot 1
 - 2. 21.01 - 10.04 C Proposed Elevations Plot 2 & 3
 - 3. 21.01 - 10.05 D Proposed Street Scene
 - 21.01 - 10.06 E Proposed Landscape Plan
 3. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
 4. No development above 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 (if external lighting is proposed) shall include the following figures and appendices:
 - A layout plan with beam orientation
 - 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 external lighting plan shall thereafter be implemented and maintained as agreed.
5. Demolition works of potential bat roost features shall be undertaken under the supervision of an appropriately qualified ecologist [full member of CIEEM and or a Natural England Bat licence holder with experience of supervising demolitions where there is a risk of bats being present]. Works are to follow a method statement agreed in writing between the ecologist and the contractor detailing techniques, including the careful removal of tiles by hand, and the procedure to follow should bats or signs of bats be found. A closing-out report including details of the methods used, and any bats or signs of bats found, is to be issued to the council.
 6. Demolition works and clearance of all areas of hedges, scrub or similar vegetation where birds may nest are to be undertaken outside the bird-nesting season (March - August inclusive), or if demolition and/or vegetation

clearance during the bird-nesting season cannot reasonably be avoided, a suitably qualified ecologist will check the areas to be affected immediately prior to demolition/clearance and advise whether nesting birds are present. If active nests are recorded, no demolition, vegetation clearance, or other works that may disturb active nests, shall proceed until all young have fledged the nest.

7. Prior to the commencement of the development above slab level, details of biodiversity enhancements, to include integral bird and bat boxes, tiles or bricks on the new buildings, and native and wildlife friendly landscaping (including insect hotels, pollen-rich and fruit-bearing planting, and gaps at the bases of fences to allow hedgehogs (and other wildlife) to traverse through the gardens), shall be submitted to and approved in writing by the council. The biodiversity enhancements shall thereafter be installed as approved and a brief letter report confirming that the enhancements have been installed, including a simple plan showing their location and photographs of the enhancements in situ, is to be submitted to and approved in writing by the Council.
 8. No development above slab level shall commence until details of the measures to be taken to acoustically insulate all habitable rooms of the development hereby permitted against aircraft noise, together with details of the methods of providing ventilation to habitable rooms has been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
 9. Prior to their use in the development hereby permitted, details / samples of the materials to be used in the construction of the external surfaces shall first have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
 10. The development shall be carried out in accordance with the submitted flood risk assessment (reference 21005, issue 2, dated 8 March 2021 and prepared by Aqua Callidus Consulting), drawing titled Proposed Landscape Plan (dated 24 March 2021 and prepared by Cordage Design) and the following mitigation measures they detail:
 - Finished floor levels for each plot shall be set no lower than the levels set out in the Proposed Landscape Plan, and no lower than the existing levels such that:
 - Finished floor levels of Plot 1 shall be set no lower than 18.33 metres above Ordnance Datum (mAOD)
 - Finished floor levels for Plot 2 shall be set no lower than 18.21mAOD
 - Finished floor levels for Plot 3 shall be set no lower than 18.06mAOD
- These mitigation measures shall be fully implemented prior to occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.
11. No groundwork, demolition or construction work shall be carried out or plant operated other than between the following hours:

- Monday-Friday 08.00-18.00
- Saturday 08.00-13.00
- No working on Sundays or Bank Holidays.

12. There should be no collections from or deliveries to the site during the demolition and construction stages outside the following hours:

- Monday-Friday 08.00-18.00
- Saturday 08.00-13.00
- No working on Sundays or Bank Holidays.

13. No dwelling shall be occupied until the parking spaces (for six cars) and cycle storage has been made available for use in accordance with drawing no. 21.01 – 10.00 E. The spaces/cycle storage shall thereafter be kept available at all times for the parking/storage of vehicles.

14. No dwelling shall be occupied until its respective provision for the storage of recycling and waste containers has been made in accordance with details which have been submitted and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details.