



Appeal Decision

Site visit made on 30 August 2023

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2023

Appeal Ref: APP/W0340/W/23/3322317

1 West Street, Newbury, Berkshire RG14 1BE

- 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 Mr Duncan Crook of Ressance Land No 56 Limited against the decision of West Berkshire District Council.
 - The application Ref 20/01211/OUTMAJ, dated 28 May 2020, was refused by notice dated 17 November 2022.
 - The development proposed is demolition of the existing building and construction of 24No. flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with only landscaping reserved for future consideration. I have determined the appeal on that basis. The description of development was amended during the Council's determination of the application. This decision is based on the revised description for construction of 23 flats instead of 24 as originally proposed.
3. During the Council's determination of the application, the appellant submitted a revised drawing (Ref RL56/14 Rev C). This reduced the height of the proposed building. However, the Council's decision notice referenced the previous iteration (Ref RL56/14 Rev B). In the interests of fairness, including to interested parties, I have determined the appeal on the basis of the version of the proposal that was considered by the Council (Ref RL56/14 Rev B). I note that the appellant also acknowledges that there is no indication that the Council considered the revised drawing (Rev C).
4. One of the Council's reasons for refusal was that the proposal fails to provide an appropriate level of affordable housing. However, during the course of the appeal the Council advised that it did not wish to defend that matter at appeal. As this matter is not contested between the main parties I return to it under other matters rather than as a main issue.
5. The Planning Inspectorate has the power (under s319(A) of the Town and Country Planning Act 1990) to determine the procedure by which appeals are decided. In light of the Council's withdrawal of their objection on affordable housing, a hearing was no longer required and the procedure was changed to a written representations appeal. Accordingly, the appellant was allowed the opportunity to make final comments on the Council's statement in writing. These have been taken into account in reaching this decision. In light of the change of procedure, the Council also invited any interested parties who had

not written in previously but had intended to make their views known at the hearing to contact the Planning Inspectorate with their comments. Any comments were taken into account. Therefore I consider that no parties were prejudiced as a result of the procedural change.

6. Another of the Council's reasons for refusal was due to the site's location within flood zone 3 and the Council's finding that the proposal fails the flooding sequential test. The Council's statement of case referred to the appellant's sequential test based on a report written in March 2018 being out of date. In the interests of natural justice, I accepted an update to the sequential test submitted during the course of the appeal. This made reference to more recent evidence base documents comprising the Council's Housing and Employment Land Availability Assessment (HELAA) (as at March 2022), 5 Year Housing Land Supply Monitoring Report (March 2022) and Brownfield Land Register (2022). The Council was provided the opportunity to comment on this update and any comments have been taken into account.
7. Policy CS16 of the West Berkshire Core Strategy (2006-2026) (April 2012) (Core Strategy) deals with proposals for development in areas at risk from flooding. Although the Core Strategy was adopted prior to the most recent version of the National Planning Policy Framework (Framework), Policy CS16 is broadly consistent with the approach in the Framework with respect to managing development within areas of flood risk. Therefore, in the context of this appeal it attracts full weight.
8. The proposal is within the Newbury Town Centre Conservation Area. In addition, my attention has been drawn to listed buildings in the vicinity of the site. Therefore, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In addition, Section 66(1) of the Act, requires me to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. I return to this subsequently.

Fallback Position

9. The appellant submits that a valid fallback position exists in the form of an extant planning permission for the appeal site for the development of 20 flats. This is said to comprise an outline planning permission (Ref 18/00207/OUTMAJ) granted in 2018, and a subsequent reserved matters scheme (Ref 20/01568/RESMAJ) approved in September 2020 (the 20 flat scheme). The Council submits that planning permission for the 20 flat scheme has lapsed and therefore that it no longer comprises a valid fallback scheme. Whereas the appellant has submitted evidence seeking to demonstrate that the planning permission has been implemented through a material operation, commencing in August 2022, and therefore remains extant.
10. In that regard, I observed that the interior of the building has been stripped out, including flooring, ceilings, bathrooms and door jambs. Also, an area of floor inside the building had been excavated. However, works to the interior of a building do not normally require planning permission or constitute development. Furthermore, with the exception of one small area of damage to the roof, the building's walls and roof appeared wholly intact and thus were not indicative of works of demolition having commenced.

11. I note that the appeal site is identified as a residential site with planning permission in the Council's HELAA appendix 1, the Council's 5 year housing land supply schedule and is on the Brownfield Land Register 2022. Nevertheless, these do not provide definitive evidence that works have taken place on site such that the planning permission has been implemented. For example, the HELAA was prepared prior to the date at which the 20 flat scheme was due to lapse. Also, the Council highlights that such evidence referring to construction having started may have been based on the developer's indication that work would commence prior to permission lapsing, rather than definitive evidence that implementation of the permission had been undertaken through a material operation on site.
12. In addition, a Demolition Plan Incorporating CPP/CEMP by Wring Group (February 2022) was submitted. Section 7.1 of that Plan sets out a sequence of works, with initial works described as mechanical demolition of the structural beam above the site entrance and opening up of the bricked-up entrance and wall to provide a wider access into the internal areas. I observed that the structural beam indicated on that Plan, and the bricked-up entrance are still in situ. This indicates that the intended demolition works have not progressed.
13. I have also had regard to a range of other documents which seek to demonstrate how planning permission has been implemented, including those submitted in support of a recent application for a lawful development certificate. These include a director's statement and a notification of construction from Archerfield Homes. Also, a notice of intention to demolish, an air clearance report and an air monitoring report. Whilst it appears that asbestos removal from the building's interior has been undertaken, the submitted documents do not provide sufficiently conclusive evidence that any work of demolition of the building that would amount to a material operation has taken place.
14. Consequently, although the Council has not produced substantive evidence from the appeal site to the contrary, neither does the appellant's evidence persuade me that the permission has been implemented in line with the requirements of Section 55 and 56 of the Town and Country Planning Act 1990. Therefore, and whether or not the Council has physically inspected the site, I conclude that works amounting to demolition of the building have not taken place. Accordingly, it appears highly likely that planning permission for the 20 flat scheme has lapsed. I return to this in other matters.

Main Issues

15. The main issues are:

- the effect of the proposal on the character and appearance of the surrounding area, with particular regard to the Newbury Town Centre Conservation Area (the CA);
- whether the proposal provides sufficient outdoor amenity space for its future occupants; and
- whether the proposal is acceptable with respect to flood risk.

Reasons

Character and Appearance

16. The CA incorporates a mix of residential and commercial areas, as well as areas of public open space and waterways. There are many traditional buildings of two and three storeys in height, but also more modern additions extending to four and some five storeys, including in the vicinity of the appeal site. Building facades fronting on to the street are typically punctuated by regularly spaced windows at each floor level. This creates interest in the street scene and aids legibility of the buildings from the public realm. In the context of this appeal, the significance of the CA as a whole is primarily derived from its historic role as a market town, the intimate layout of streets, together with a range of traditional and notable buildings.
17. In the vicinity of the appeal site, there is considerable variation in building styles, roof heights and forms visible in the street scene. There are a range of residential apartments fronting onto West Street. These, such as Regents Court and Pelican House, have a traditional feel with large, regularly spaced windows with vertical proportions. Buildings to the rear of the site, comprising Hillview Place and Central Gate Aparthotel, have a noticeably more modern appearance. Although of considerable scale and bulk, these are articulated by regularly spaced windows.
18. The height of the proposed four storey element of the building addressing West Street would appear broadly comparable to the four storey element of nearby Pelican House. The use of vertically aligned zinc cladding on the section of the building fronting West Street would have a sleek, unfussy appearance and consequently would not be unduly dominant in views towards Northbrook Street. The part of the building that would extend to five storeys would be set back from the West Street frontage. This would limit its dominance in the street scene. In addition, whilst visible in views along West Street towards Northbrook Street, the five storey element would be articulated by a regular pattern of large and small windows on each floor of the western façade. This would help to break up that façade such that, whilst of a contemporary design, it would not appear unduly bulky.
19. In addition, the proposal would remove a vacant and deteriorating building that detracts somewhat from the character and appearance of the CA. Therefore I conclude that the proposal would preserve and enhance the character and appearance of the surrounding area, with particular regard to the CA. Accordingly, the proposal would comply with Policy CS14 of the Core Strategy, which generally seeks to ensure proposals achieve high quality design. Similarly, the proposal would accord with Policy CS19 of the Core Strategy, which includes a requirement for proposals to have regard to local character and heritage assets. It would also accord with chapter 16 of the Framework, which seeks to conserve and enhance the historic environment.

Outdoor Amenity Space

20. The Council is concerned that the proposal would not provide outdoor amenity space and as such would not provide adequate living conditions for its future occupants. I note that Part 2 of the West Berkshire Quality Design Supplementary Planning Document (June 2006) seeks to ensure outdoor amenity space is provided for most new residential developments, and

guideline figures for the quantity of such space for flats is provided. In the absence of any meaningful outdoor amenity space, the proposal would not accord with those guidelines.

21. However, I observed that a reasonably direct and safe pedestrian route is available from the appeal site to Victoria Park, which is a short distance from the proposal. Northcroft Park also appeared to be similarly accessible from the appeal site. Therefore, despite not being in compliance with the SPD and an absence of private outdoor space, future occupants of the proposal would have access to a good deal of high quality public open space. Accordingly, in light of the accessibility, quality and amount of public open space in the locality, I consider that the proposal would provide acceptable living conditions for its future occupants, with particular regard to access to outdoor amenity space.
22. Consequently, with respect to this main issue, the proposal would accord with Policy CS14 of the Core Strategy which generally aims to ensure proposals achieve good design. The Council has drawn my attention to an appeal scheme in Thatcham (Ref APP/W0340/W/20/3251653). However that decision does not reference the proximity of that site to good quality public open space. As such, it does not appear comparable to the context of the scheme before me and does not alter my reasoning on this main issue.

Flood Risk

23. Policy CS16 requires that a sequential approach is followed for sites in areas of flood risk, in accordance with the approach in the Framework. Paragraph 162 of the Framework advises that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Framework footnote 56 confirms that changes of use are exempt from requiring a sequential test. Paragraph 27¹ of the Planning Practice Guidance (PPG) also confirms that the Sequential Test should be applied to development in areas at risk of flooding unless the site has been allocated for development, is in an area at low risk from all sources of flooding or is exempt as specified in Framework footnote 56.
24. At application stage, the area of search for the submitted sequential test was agreed with the Council to be limited to the Town Centre Commercial Area in Newbury. However, the Council's officer report for the appeal scheme subsequently considered that the sequential test area should have been extended to include the settlement areas within Newbury district. Notwithstanding that the Council changed its opinion on that matter, the sequential test area of search was not extended to include the other settlements for this appeal.
25. Whilst I note that the Environment Agency did not object to the proposal in their final comments, as the relevant decision maker I must consider whether the sequential test has been passed, including with regard to whether it has been carried out using an appropriate area of search. The sequential test submitted with the appeal related to the development of 20 flats. Although the appeal scheme is for 23 flats, the appeal site area and nature of the proposal is broadly consistent with that considered in the sequential test.

¹ PPG Paragraph: 027 Reference ID: 7-027-20220825

26. The PPG confirms that the area to apply the sequential test will be defined by local circumstances relating to the catchment area for the type of development proposed and relevant spatial policies². Also, that where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives³. In addition, the PPG confirms that 'reasonably available' sites are those in a suitable location for the type of development proposed.
27. In the case of this appeal, the proposal is for open market flats. Policy CS1 of the Core Strategy seeks to deliver new homes primarily within settlement boundaries. The appellant submits that Newbury Town Centre is the only centre in which densities of greater than 200 dwellings per hectare are present and consequently the proposed development comprising a density of 270 dwellings per hectare necessarily should be accommodated there. I note that Policy CS4 of the Core Strategy promotes higher densities within town centres, including Newbury.
28. In addition, Policy ADPP1 of the Core Strategy seeks to avoid significant intensification of areas that lack supporting infrastructure or accessibility. Also, Newbury Town Centre Masterplan (published 2022, though not adopted planning policy) supports residential development within Newbury town centre. Furthermore, the Council's evidence base document, West Berkshire Council's Density Pattern Book (2019), indicates that there is an aspiration for higher density developments to be accommodated in the large town centres of Newbury and Thatcham.
29. However, the PPG is clear that reasonably available sites could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development⁴. Therefore, whilst adopted planning policies and evidence base documents offer support for proposals of this nature being within Newbury town centre, the proposed scale and density of development is not sufficient to justify such a confined sequential test area, excluding other areas and settlements where open market flats could also be supported.
30. The revised evidence in support of the sequential test submitted during the course of the appeal also found no suitable alternative sites. However, that did not broaden the area of search to include all other settlements in the District. Accordingly, the submitted sequential test area is unduly restrictive and does not provide sufficient reassurance that there are no reasonably available sites at lower flood risk that could accommodate the proposal. As such, the sequential test has not been satisfied.
31. Notwithstanding the above, the appellant submits that the proposal is exempt from requiring a sequential test on the basis of it being a change of use. However, whilst the use of the land would change, the proposal is not solely a change of use through conversion of an existing building. It is instead a demolition and new build development. Moreover, I am not persuaded that it is the intention of the PPG that such proposals are exempt from the requirement to undertake a sequential test on the basis of their being a change of use. That

² PPG Paragraph: 027 Reference ID: 7-027-20220825 and Paragraph: 029 Reference ID: 7-029-20220825

³ PPG Paragraph: 027 Reference ID: 7-027-20220825

⁴ PPG Paragraph: 028 Reference ID: 7-028-20220825

- would run counter to the aim of steering new development to areas with the lowest risk of flooding as set out in both the Framework and the PPG.
32. Consequently, the appeal scheme is not exempt from the requirement for a sequential test. Furthermore, although the site has been listed as a potential housing site in an appendix to the HELAA, it is not an allocated housing site within the adopted local plan. As such, it does not meet any of the PPG criteria under which a sequential test would not be required.
33. The appellant has also questioned the need for a sequential test to be undertaken on the basis of advice in the Flood Risk Guidance for Applicants (updated February 2017). This indicates that a sequential test would not be required if one has already been carried out for a development of the same type and on the same site as proposed. Whilst that flood risk guidance has not been withdrawn, proposals must be determined in light of current planning guidance and policy which can change during the course of determination. There is no indication in the more recently adopted Framework, that the previous sequential test for 20 flat scheme should remove the need for a further sequential test of the appeal scheme. In any event, for the reasons given I have found that the 2018 sequential test, and its subsequent update, is not sufficient to demonstrate that the sequential test has been passed.
34. I have had regard to the appellant's comments on the appeal decisions referenced by the Council in respect of flood risk matters. In the Malt Shovel scheme (Ref APP/W0340/W/19/3240289) the appellant did not specify a search area for the sequential test, however the Inspector found that the starting point for the search area was the whole District. Nevertheless, that proposal was for a single dwelling in a rural location and therefore it is not directly comparable to this appeal scheme.
35. In the scheme at 1 and 3 Kennet Road, although the Inspector raised concerns on the sequential test, these were not specifically in relation to the area of search and therefore that reasoning is not directly relevant here. Also in that decision, the Inspector differentiates that proposal from another appeal at Newspaper House (Ref APP/W0340/W/20/3252212) on the basis that the Newspaper House scheme was far larger and on a site with different locational characteristics. Whereas this appeal for 23 flats is more comparable to the Newspaper House scheme which was for 71 flats and, though not within the town centre commercial area, was also within Newbury.
36. In the Newspaper House case the Inspector found that, notwithstanding the potential benefits and general policy support for a development of that nature within Newbury, there was insufficient evidence to demonstrate whether other sites outside of the town could accommodate that proposal in areas at lower flood risk. As such, and regardless of the timing at which the Council specified that a larger sequential test area was required in that case, the Newspaper House appeal decision aligns with my approach to this appeal.
37. Accordingly, I conclude that the proposal would not be acceptable with respect to flood risk. Therefore it would conflict with Policy CS16 of the Core Strategy. It would also be contrary to chapter 14 of the Framework in respect of flood risk and in particular, the requirement to direct development away from areas at highest flood risk (paragraph 159).

Other Matters

Fallback Position

38. In respect of the 20 flat scheme, I concluded that the planning permission is likely to have lapsed. A valid fallback position can exist in such circumstances, where it is reasonably likely that a proposal of a similar nature would be granted. Notwithstanding the Council's previous decision on this site, evidence before me on flood risk raises considerable uncertainty over the likelihood that planning permission for such a scheme would now be granted here. Whilst consistency in decision making is important, this should not be at the expense of ensuring developments are appropriately located. Consequently, it has not been demonstrated that there is a greater than theoretical possibility that the 20 flat scheme or a similar scale and nature of development would be granted here. As such, the fallback scheme attracts minimal weight and does not alter my reasoning in respect of flood risk.

Listed Buildings

39. I have had regard to the potential for the proposal to impact the setting of grade II listed buildings in the vicinity of the site, comprising 70, 73, 77 and 80 Northbrook Street and 2, 3 and 6 Cromwell Place. Those on Northbrook Street are two and three storey buildings with shop fronts at groundfloor level and sash windows above. Those on Cromwell Place are a terrace of former two storey cottages converted to offices. Insofar as it is relevant to this appeal, their special interest primarily derives from their historic built form and architectural details, and their historical connection with the role of the market town. However, in light of the separation distances, intervening buildings, and nature of the surrounding context, I find no harm in this respect.

Affordable Housing

40. The Council's revised position on affordable housing provision was reached in light of a correction to their conclusions on the appellant's viability evidence and having regard to the appellant's updated Economic Viability Assessment (2023). Evidence before me indicates that, in the event that the appeal were to be allowed, the absence of an affordable housing contribution would be justified in this instance. The proposal would thus accord with Policy CS6 of the Core Strategy and its requirement for an absence of affordable housing provision to be justified. This is a neutral consideration.

Planning Balance

41. The proposal would provide 23 new homes in an accessible location which would contribute to the supply of housing in the district. Although the Council can demonstrate in excess of five years' housing land supply, this would nonetheless contribute to the Government's objective of boosting the supply of homes and as such attracts moderate weight. The proposal would remove a vacant building which detracts somewhat from the character and appearance of the CA. Also, the proposal would preserve and enhance the character and appearance of the CA. The proposal could be constructed to high energy efficiency standards, albeit details in that regard are limited.

42. In addition, the construction of the building would provide short term benefits to the local and wider economy; and the occupants would be likely to stimulate consumer spending, boost local labour supply and help to support local

services, which would all constitute modest benefits in social and economic terms. Such benefits are supported by the Framework, including in chapter 7 on town centres. It would also accord with the Newbury Town Centre Masterplan. However as this is not adopted guidance, compliance with its aspirations carries little weight. An absence of harm in respect of matters such as highway safety and ecology are neutral considerations.

43. Nevertheless, the proposal has failed the flood risk sequential test. Accordingly, and despite the existence of flood defences, it has not been demonstrated that the location of the development is acceptable with respect to flood risk. The development is on previously developed land, however given the flood risk concerns I find that it would not make effective use of land.
44. Moreover, even if I was able to conclude that the sequential test had been satisfied, to be acceptable with respect to flood risk the proposal would need to pass the exception test. In accordance with paragraph 164 of the Framework, this requires that the development provides wider sustainability benefits to the community that outweigh the flood risk (criterion a); and the development will be safe for its lifetime, and where possible, will reduce flood risk overall (criterion b).
45. With respect to criterion a, the PPG advises that wider sustainability benefits could include the re-use of suitable brownfield land as part of a local regeneration scheme; an overall reduction in flood risk to the wider community; or provision of multifunctional sustainable drainage systems, significantly exceeding national policy requirements.
46. Notwithstanding the modest benefits already highlighted, the proposal is not part of a local regeneration scheme. Furthermore, whilst it would boost housing supply more generally the Council's has indicated that it can demonstrate in excess of a five year housing land supply, therefore it would not address a particular need for housing here. Moreover, although the proposal is said to reduce the extent of impermeable surfaces within the site boundary, evidence that it would reduce flood risk to the wider community to any significant degree is not sufficiently persuasive.
47. Accordingly, in respect of Framework paragraph 164 criterion a), that the wider sustainability benefits to the community from development of this site would outweigh the flood risk, has not been robustly demonstrated. Consequently criterion a) of the exception test has not been satisfied. As such, even if the sequential test had been met, the exception test has not.

Conclusion

48. Therefore, despite some areas of compliance, the proposal conflicts with the development plan and the Framework when taken as a whole. Material considerations do not indicate the decision should be made other than in accordance with the development plan. Consequently, the appeal should not succeed.

Rachel Hall

INSPECTOR