



Appeal Decision

Site visit made on 24 October 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/T0355/W/23/3322129

Culpeppers, 53 Lower Cookham Road, Maidenhead SL6 8JX

- 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 Siamak Chakaveh (Newtown Estates Ltd) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 22/02506, dated 12 September 2022, was refused by notice dated 16 November 2022.
- The development proposed is construction of 5 dwellings with new access off The Avenue, following demolition of the existing dwelling and annexe.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development in the header is taken from the appeal form and the Council's decision notice. The application form describes the development as the construction of 6 dwellings but this is inconsistent with other information on the form and the submitted plans. I am satisfied it would be fair to all interested parties to base my decision on the description set out above and on the details shown on the appeal drawings.

Main Issues

3. The main issues are (i) whether the proposal would be acceptable with respect to flood risk, (ii) the effect on the character and appearance of the area, (iii) the effect on bats, and (iv) whether the development would be designed so as to adapt and mitigate against climate change.

Reasons

Flood risk

4. The appeal site and the surrounding land lies in flood zone 3 as defined on the Environment Agency's flood map and in the Council's Strategic Flood Risk Assessment. The Planning Practice Guidance (PPG)¹ explains that in flood zone 3 there is a high probability of 1% or greater chance of annual flooding of the site. The risk of flooding is associated with the nearby River Thames.
5. Policy NR1 of the Council's Borough Local Plan 2022 (LP) states that a sequential test (ST) is required for development at risk of flooding except for

¹ Planning Practice Guidance, Flood risk and coastal change section, Paragraph: 078 Reference ID: 7-078-20220825, Revision date: 25 08 2022

sites allocated for development in the LP or in a neighbourhood plan. The appeal site is not allocated and so an appropriate ST needs to be carried out.

6. LP policy NR1 is consistent with advice in the National Planning Policy Framework (the Framework). At paragraph 162, the Framework explains the aim of the ST is to resist development on land liable to flooding when there are available sites appropriate for the development in areas of lower flood risk. The PPG explains that the ST is the most effective way of addressing flood risk as it places the least reliance on flood defences, flood warnings and property level resilience. Even when a flood risk assessment shows the development can be made safe without increasing risk elsewhere, the ST still needs to be satisfied². The PPG also provides advice on how the ST should be applied in the assessment of planning applications.
7. The appellant's ST report seeks to demonstrate that there is no alternative site available for the proposal that is at lower risk of flooding compared to the appeal site. It is stated that the methodology for carrying out the ST has been agreed with the Council. However, it is unclear from the report whether the advice in the PPG has been considered in carrying out the ST assessment.
8. I find the appellant's ST assessment to be unconvincing for several reasons. Firstly, it is based only on sites identified in the Council's Housing and Economic Land Availability Assessment (HELAA) dated September 2019. It is claimed that this represents the most up to date evidence of potential housing sites within the Borough. However, it fails to include additional sites that may have gained planning permission for residential development since September 2019. Also, there is no evidence to show consideration has been given to sites that are available but which are not listed in the HELAA and do not benefit from planning permission. As such, the source list for identifying potential alternative sites is not comprehensive.
9. Secondly, the appellant has only assessed sites larger than 0.19ha as it is contended that smaller sites would be unable to accommodate the proposed development. This approach is contrary to the PPG which states that, in carrying out a ST, reasonably available sites could include a series of smaller sites capable of accommodating the development³. The same paragraph of the PPG also advises that alternatives could be part of a larger site if capable of accommodating the proposed development. As such, there is no sound reason for the appellant's ST assessment to discount sites over 0.25ha in size.
10. Thirdly, the table on pages 9 and 10 of the appellant's ST report indicates that some of the 19 possible alternative sites have been discounted as they are not comparable to the appeal property. However, it does not follow that these plots would be in an unsuitable location for residential development or that they would be unable to accommodate new residences for any other reason.
11. Also, the appellant's report suggests that even if other sites had been identified, a shortfall in housing land supply means the proposal would still meet the ST as other sites combined would not be of sufficient size to meet

² Planning Practice Guidance, Flood risk and coastal change section, Paragraph: 023 Reference ID: 7-023-20220825, Revision date: 25 08 2022

³ Planning Practice Guidance, Flood risk and coastal change section, Paragraph: 028 Reference ID: 7-028-20220825, Revision date: 25 08 2022

housing need. I attach little weight to the appellant's contentions in these regards as the PPG states that the absence of a 5 year land supply is not a relevant consideration for the ST on individual applications.

12. The appellant's report goes on to consider the exception test (ET), as referred to in the Framework. The PPG is clear in stating that the ET is not a tool to justify development in flood risk areas when the ST has already shown there are reasonably available sites at lower risk. Even if I accept the proposal would pass the ET, there is insufficient evidence to demonstrate there are no other sites available to accommodate the proposal and that are at a lower flood risk.
13. Therefore, I conclude that the ST has not been met and that in these regards the development would be unacceptable in terms of flood risk. For these reasons, the proposal would not accord with LP policy NR1.

Character and appearance

14. The appeal property is a bungalow facing Lower Cookham Road. It is set back from the highway and behind trees and bushes on the roadside boundary but it can still be viewed from the street through 2 accesses. There is a detached, single storey annexe building in the back garden. The plot is quite wide and it stretches around the rear boundary of the neighbouring property, 51 Lower Cookham Road (No 51) so that it has a border with The Avenue.
15. The site lies in an area defined as leafy residential suburbs in the Council's townscape assessment. This is an appropriate classification for the locality given the prevalent pattern of low density detached houses set in medium and large sized plots enclosed by trees and hedges. The dwellings tend to vary in age with most displaying an individualistic style that adds interest to the street scene. The appeal property is unusual in that it is a bungalow, whereas most other nearby properties are 2 storeys high. Nonetheless, the size of the plot is in keeping with the locality.
16. The proposal would consist of a row of 4 dwellings in the same position as the existing bungalow and facing towards Lower Cookham Road. Even if the existing vegetation to the front of the site is retained, this terrace of houses would be seen from the road through the 2 access points. The other proposed house would be in the current back garden area with its own separate access off The Avenue. This property would be quite close to the road and so it too would be visible from the highway. As such, the proposal would have a noticeable visual effect on the street scene.
17. The 4 houses to the front would each have a back garden area that would meet with the garden to serve the single house off The Avenue. Each of the proposed houses would be in plots markedly smaller than the other properties in the locality. In these regards, the development would be out of keeping with the established urban grain.
18. Moreover, the front elevation of the 4 houses together would have a regular pattern of doors and fenestration with consistent eaves and ridge heights. This uniformity would stretch across the whole frontage of the row, which would be nearly as wide as the plot. The regularity of the building would reinforce its appearance as a small row of terraced housing, at odds with the dominant form of detached dwellings in the locality. Also, the building's uniformity would be markedly at odds with the individualistic style of other local houses. These

aspects would reinforce the impression of the scheme being an unusually dense and less spacious form of development. The incongruity of the scheme in these regards would be unsympathetic to the fundamental characteristics of the area and would undermine local distinctiveness.

19. No 51 adjoins the appeal site and is a wide building although only 2 storeys high. I understand it is split into apartments and so it is not a traditional detached dwelling. Even so, it appears as a single building of individual style in a large plot and so in these respects it is in keeping with local development. The proposed 4 dwellings would be markedly different in appearance to No 51, particularly as they would be clearly read as a terrace of houses. As such, the apartment building at No 51 does not justify the incongruous form of the proposal. There are other apartments in the wider area but these would not be seen in the same context as the development and so they fail to influence my views of the scheme.
20. The row of proposed houses would be taller than No 51 but it would be set further back from the road and so it would not appear unusually dominant. The steeply pitched roof would not mirror the shallow pitch roof at No 51 but there are similar roofs nearby. Also, the proposed front parking area would be comparable to the existing parking on the site and it would not unduly detract from the street scene. Existing vegetation to be retained as well as new planting would help ensure the development maintains a verdant appearance. These acceptable aspects of the proposal are noted but they would not override the detriment caused by the unsympathetic form of the development.
21. The bungalow to be replaced is of little architectural merit but it is low-key and so it does not unduly detract from the street scene. Its demolition does not justify the introduction of a discordant terrace of houses set within unusually narrow plots.
22. For the above reasons, I conclude the development would harm the character and appearance of the area. In these regards, it would not accord with LP policy QP3. Amongst other things, this looks to ensure development respects and enhances local character.

Bats

23. The Conservation of Habitats and Species Regulations 2017 (as amended) impose a duty on me to consider whether European Protected Species (EPS) would be affected by the proposed development and whether associated mitigation measures would be effective in mitigating any harm. LP policy NR2 also requires development proposals to demonstrate how they protect and maintain the biodiversity of sites, including the presence of protected species.
24. Bats and their roosts are protected by law. The appellant's preliminary bat roost assessment explains that no evidence of bat usage was found in 2 lofts in the bungalow that were investigated but that other roof spaces have not been examined. Also, external inspections identified a small number of raised and missing tiles on the bungalow and holes in the soffits of the annex that may provide access for bats into the buildings. As such, it is suggested that at least 1 bat activity survey should be undertaken to determine how the buildings are being used and to inform a EPS mitigation licence application. No such survey has been carried out.

25. Paragraph 99 of the Officer of the Deputy Prime Minister Circular 06/2005 says it is essential to establish the extent to which EPS may be affected by a proposal before granting planning permission. Without the recommended survey there is only limited knowledge on the possible presence of bat roosts and on the risk of bats being harmed by the proposed development. Also, I am unable to assess whether any mitigation measures would be effective in addressing harm that may be caused by the proposal to the bat population. The imposition of planning conditions to address this matter would not allow me to carry out a proper assessment as required under the aforementioned Regulations. It would also be contrary to the provisions of the referred to government advice.
26. For these reasons, I conclude that insufficient information has been provided that demonstrates the proposal would avoid harm to bats or that any harm could be appropriately mitigated. In these regards, the development would be contrary to LP policy NR2.

Design for climate change

27. LP policy SP2 requires development to incorporate a range of measures to adapt to and mitigate climate change. Reference is made in the policy to an adopted Sustainable Design and Construction Supplementary Planning Document, the Borough Wide Design Guide Supplementary Planning Document and the Environment and Climate Strategy 2020-2025 or successor documents. None of these have been submitted as part of the Council's appeal submissions. Instead, the Council's Position Statement on Sustainability and Energy Efficient Design March 2021 (PSSEED) has been provided.
28. The Council is concerned that the appellant has failed to demonstrate how the proposal has been designed to meet the requirements set out in the PSSEED. In particular, there is no detail provided to calculate the building emissions contribution to offset both regulated and unregulated emissions that would arise from the proposed buildings. Such a contribution may be needed to ensure compliance with the aim set out in the PSSEED for all development to be net-zero carbon.
29. The PSSEED has been published to help ensure developments deliver on the requirements of national and local commitments towards climate change. However, it does not form part of the development plan. It is noteworthy that the PSSEED was published before the adoption of the LP yet it is not referred to in LP policy SP2. Therefore, a failure to accord with the requirements of PSSEED does not mean the proposal would be contrary to LP policy.
30. The appellant explains the proposal has been designed to minimise a southern aspect to reduce solar gain and the need to cool air. The repetitive design would create efficiency savings during the construction process. The development would include energy efficiency measures as well as renewable energy generating features in the form of solar PV panels. Electric vehicle charging points would be included as well as water saving measures and equipment. The Council has not sought to dispute the appellant's claim that such features would ensure the development accords with the underlying aim of LP policy SP2.
31. There is no evidence to show the development would be net-zero carbon even when considering the proposed measures. However, this is not a requirement

of LP policy SP2. The failure to fully accord with the PSSEED in these regards attracts little weight in my deliberations, particularly as it is not referred to in the LP and it does not form part of the development plan.

32. For these reasons, I conclude the proposal would be designed so as to adequately adapt and mitigate against climate change. It would accord with LP policy SP2 in these regards. It has not been shown that the proposal would accord with the provisions of the PSSEED but this compliance failure does not bring the scheme into conflict with LP policy SP2. Acceptability in these respects is a neutral factor in my overall assessment.

Other Matters and Planning Balance

33. For the reasons as set out under the first 3 main issues, I find the proposal would be contrary to LP policies. As such, the scheme would not accord with the development plan when read as a whole. It follows to consider whether there is justification to allow the appeal contrary to the provisions of the development plan.
34. The appellant claims that recent appeal decisions have shown the Council is unable to demonstrate in excess of 5 years supply of housing land. If this position is accepted, footnote 8 of the Framework indicates that the provisions of paragraph 11(d) of the Framework are relevant to this appeal.
35. However, insufficient evidence has been provided to show the scheme complies with the flood risk ST as referred to in the Framework. In light of footnote 7 of the Framework, this failure provides a clear reason for refusing planning permission. The circumstances as set out at paragraph 11(d)(i) of the Framework exist and so the presumption in favour of granting planning permission as laid out under paragraph 11 does not apply.
36. The appellant claims that there is a lack of supply of houses in Maidenhead and so the development would help address a demand for a particular type of property. Also, the scheme would create new residences at a time when there is an apparent shortfall in housing land supply. Within this context, the modest increase in the number of residences attracts moderate weight in my overall assessment of the proposal. However, the benefits of the scheme would not override the harm identified in respect of the first 3 main issues. As such, there is insufficient justification to grant planning permission contrary to LP policies.

Conclusion

37. For the reasons given above, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR