



Appeal Decision

Site visit made on 17 October 2023

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2023

Appeal Ref: APP/T0355/W/22/3311901

**Old Boundary House and New Boundary House, London Road,
Sunningdale, Ascot SL5 0DJ**

- 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 Elliot Charles Holdings Ltd against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/00721, dated 16 March 2022, was refused by notice dated 7 October 2022.
 - The development proposed is described as demolition of existing buildings and erection of up to 28 No. apartments and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with access, layout, and scale for consideration. Matters relating to appearance and landscaping are reserved for future determination.

Main Issues

3. The main issues are the effect of the proposed development on:
 - Employment floorspace within the borough;
 - The living conditions of future residential occupants with particular reference to private and communal outdoor space; and
 - The character and appearance of the area.

Reasons

Employment Floorspace

4. The development plan supports economic growth and productivity. However, it also permits the loss of employment floorspace subject to credible and robust evidence of marketing.
5. The proposed development is not supported by marketing evidence, the Appellant states that there would be significant other available office space within the borough, some within 2 miles of the appeal site.
6. Even so, the location and layout of office floorspace is equally as important and given the appeal site's position very close to shops, services and a railway

station, I am not convinced that a blunt comparison to office availability across the borough robustly shows there is no legitimate interest in the appeal site.

7. The floorspace comprises older buildings and the Appellant states that these would not be able to provide larger open-plan spaces, break-out areas, or ways of accommodating more flexible working practices. However, limited evidence has been submitted to explain why the floorspace cannot be refurbished and updated.
8. Even if it could not, in the absence of appropriate marketing evidence, I cannot be satisfied that the Appellants evidence is representative of all interest in the market.
9. The Appellant suggests that the site benefits from rights under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order (as amended) ("the Order") to convert the existing buildings to residential uses.
10. However, there is limited evidence before me to show that the appeal site complies with the criteria set out in the Order. It has also not been shown that any proposed changes to the order which are said to be under consultation have come into force and can be applied. This therefore does not alter my overall findings on this main issue.
11. The Royal Borough of Windsor and Maidenhead Borough Local Plan 2022 ("the Local Plan") is a relatively recent document which would have been adopted in the knowledge of an evolving economic market. The market picture is informed by many factors which can include, but not limited to, vacancy trends, office attendance and occupier expectations. In the absence of marketing, it has not been robustly shown there would be no demand for the existing floorspace.
12. Consequently, the proposed development would have an unacceptable impact upon employment floorspace within the borough in conflict with the relevant provisions of Policy ED3 of the Local Plan, Policies NP/E1 and NP/E2 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan 2014 ("the Neighbourhood Plan") and the National Planning Policy Framework ("the Framework"). These, amongst other things, seek to support economic growth.

Living Conditions

13. Proposed development should create places that promote health and well-being, with a high standard of amenity for future users. This includes appropriate private and communal outdoor space to meet household recreational needs.
14. Some of the proposed private outdoor areas for the ground floor flats would be considerably limited in depth. Others would not be as wide as the flat they would serve. The limited size and usability of these spaces would not be acceptable.
15. At least three of these areas would be directly adjacent to parking spaces further reducing their attractiveness as outdoor spaces. Furthermore, it has also not been robustly shown how the ground floor units serving Block A would have a private space given their siting next to the London Road. A considerable number of the upper floors would also provide small balconies with limited floor

area. These spaces would not provide sufficient space to meet household recreational needs.

16. The Appellant has provided an appeal decision from over 21 years ago, reference 1074029. Given the passage of time including changes to policy and guidance in the intervening period, I ascribe this decision limited weight. Indeed, the needs of residential occupants change over time.
17. I have also considered the availability of access to public and open spaces nearby. However, private outdoor spaces provide a 'cushion' between home and the outside world for all occupiers. These spaces are important for activities such as sitting out, external clothes drying or private entertaining. The limited nature of the proposed private spaces would therefore not meet the reasonable needs of future occupiers.
18. I have also considered the recent appeal decision reference 3309308. From the evidence before me, the Inspector in this case did not consider the acceptability of ground floor outdoor space and it is not clear how small the upper floor balconies proposed in this scheme were. In addition, this previous appeal set out, in some detail, the potential negative impacts of deeper balconies. Appeal 3309308 turned on its own evidence, as has my decision.
19. An outdoor communal area would also be proposed, this would be elevated above the carpark and would be privately accessible to all residents. Its height would afford it some privacy from public views, yet it would still benefit from natural surveillance. There is also no substantive evidence to suggest it would not receive adequate sunlight.
20. I therefore find that the communal outdoor space would feel safe and secure and would provide opportunities for comfort and relaxation. However, the absence of harm in this finding does not overcome the unacceptable harm I have identified in respect to private outdoor space serving the individual flats.
21. As a result, the proposed development would not provide acceptable living conditions for future residential occupants with particular reference to private outdoor space. The proposal would unacceptably conflict with the relevant provisions of Policy NP/DG3 of the Neighbourhood Plan, the Framework and the Borough Wide Design Guide. These, amongst other things, address the need for high quality design therefore respecting the living conditions of residential occupiers.
22. While the Borough Wide Design Guide is not part of the development plan, it is a material consideration which has informed my reasoning as set out above.

Character and Appearance

23. To one side of the appeal site a diverse range of close-knit buildings front the pavement. These vary in height between two storey, some with further floorspace in the roof and single storey buildings. These buildings have a commercial nature and given the proximity to the pavement there is very limited landscaping around these buildings.
24. To the other side of the appeal site two storey residential, with further accommodation in the roof, development is set deeper behind the pavement edge and more generous landscaping exists to the London Road and side boundaries.

25. Opposite the appeal site there are a mix of buildings, some set back and others closer to the pavement such as the Ambassador building. Landscaping is varied with low key vegetation punctuated by trees at the Ambassador building and more limited landscaping with larger areas of hardstanding to the other buildings adjacent to Chobham Road.
26. The buildings opposite also vary in height including single storey and two storey buildings many with further accommodation in the roof space including the Ambassador building. The predominant character of Chobham Road also features buildings set against the pavement with many over three floors.
27. The proposed building would be located close to the boundaries of the appeal site and would wrap around 3 of its 4 boundaries. This development as proposed would reduce the current spacious and verdant character of the existing appeal site and 31 moderate to low quality trees would also be lost.
28. However, the appeal site would also protect and retain several trees and the Appellant has shown how further tree planting could be achieved on site. The appeal is supported by an Arboricultural Impact Assessment, Method Statement and Tree Protection Plan. This identifies protection for retained trees including temporary protective fencing and hand digging to minimise the impact to tree root systems.
29. There is limited evidence before me to suggest the trees would suffer undue pressure to be removed in the future. If this appeal was acceptable in all other regards, a condition to agree tree management and retention could have been imposed.
30. The appeal site sits within a context where close set buildings either front onto the pavement or sit within areas of hardstanding with limited opportunities for landscaping. The proposed development would have some setback from the London Road which would offer opportunities for lower-level landscaping along this frontage.
31. This would appropriately respond to the local context by integrating into local surroundings both opposite and to the commercial side of the appeal site. Its setback from the pavement would also offer a suitable transition from the hard edge of the commercial buildings toward the more verdant and spacious residential properties to the other side of the appeal site as one travels in the direction of Virginia Water.
32. While appearance is a reserved matter, the Council is satisfied that a part two storey (with accommodation in the roof) and part three storey building would be acceptable given the surrounding context. There is no substantive evidence to come to a different finding in this regard.
33. While I don't have exact density figures for the surrounding area or the proposed development before me, the test goes beyond a numerical exercise. Even if the proposed development would have a higher density than surrounding development, I have considered how it would be visually experienced within its surrounding context. As set out above I have found no unacceptable harm in this regard.
34. The proposed development would therefore be sympathetic to the character and appearance of the area complying with the relevant provisions of Policies QP3 and NR3 of the Local Plan, Policies NP/DG2, NP/DG3 and NP/EN2 of the

Neighbourhood Plan and the Framework. All of which, amongst other things, require development proposals to protect, conserve, and enhance the character of the wider landscape.

Other Matters

35. It has not been robustly shown that Paragraph 14 of the Framework would be engaged. I say this as the Neighbourhood Plan did not become part of the development plan within the last two years. Additionally, I have no reason to believe that weight ascribed to a neighbourhood plan is automatically reduced after 2 years.
36. The Council raise no objection in respect to the future delivery of the allocated site reference AL33. There are no compelling reasons before me to come to a different conclusion.
37. I have also considered the various other concerns raised by interested parties. However, none of the other matters raised outweigh or alter my conclusion on the main issues.
38. The Appellant has provided an appeal decision from 6 June 2023 reference 3309308. This decision sets out that the Council can no longer demonstrate a 5 year housing land supply. In such circumstances, I am required to grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
39. The proposal would be an efficient use of a sustainably located and previously developed small to medium sized windfall site within a settlement area. These sites can often be built out relatively quickly and it would add up to 28 mixed dwellings to housing stock including an affordable housing element. There would be economic benefits both from the construction phase and the future occupiers.
40. It is a key aim of the Framework to boost the supply of housing, all the benefits set out above as a cumulative total carry substantial weight.
41. I have found unacceptable harm arises from the loss of economic floorspace in this location. The Framework supports the economic objectives of building a strong, responsive and competitive economy. A healthy economy ensures that residents have access to as wide a range of employment opportunities as possible. The Framework identifies that significant weight should be placed on the need to support economic growth and productivity.
42. I have also found harm in respect to the proposed private outdoor spaces associated with the development. These harms would be significant and long lasting.
43. I therefore attach more than substantial weight to the proposal's conflict with the development plan and the Framework when read as a whole.
44. While I have found the impact upon the character and appearance of the area to be acceptable, the absence of harm is neutral and neither weighs for nor against the development proposal.
45. With the above in mind, even if I accept there is a lack of a 5 year supply of housing sites, it is sufficiently clear that the adverse impacts of granting

planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The appeal scheme would not, therefore, benefit from the presumption in favour of sustainable development.

46. The appeal site is within influencing distance of the Thames Basin Heaths Special Protection Area. Given my conclusions on the main issues, I do not need to carry out an appropriate assessment as required under The Conservation of Habitats and Species Regulations 2017 (as amended) and therefore do not need to progress this matter any further.
47. At paragraphs 10.40 and 12.6 of the Officer's report to the Committee, the Council raise concerns regarding a potential loss of privacy to neighbouring occupants. However, these concerns are not carried forward to the Council's Decision Notice. This issue is also not addressed in the Council's statement and understandably the Appellant has not provided a rebuttal. Given I am dismissing this appeal for other reasons, I have not pursued this matter further.
48. The Appellant challenges the Council's request for a carbon offsetting contribution. In these cases, I am required to consider if the request would be necessary to make the development acceptable in planning terms, directly related to it, and fairly related in scale and kind. The evidence in this regard is limited. However, as I am dismissing this appeal for other reasons, I have not considered this matter further.

Conclusion

49. The proposal is contrary to the development plan as a whole and there are no other material considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

N Praine

INSPECTOR