



Appeal Decision

Site visit made on 29 August 2023

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2023

Appeal Ref: APP/E0345/W/22/3310834

362 Oxford Road, Reading RG30 1AQ

- 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 Stonegate Homes (Reading) Ltd against the decision of Reading Borough Council.
- The application Ref 220776/FUL, dated 26 May 2022, was refused by notice dated 7 October 2022.
- The development proposed is the erection of a mixed-use development comprising of two commercial units on the ground floor (157.5 sqm), 26 residential units, associated landscaping, car and cycle parking.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a mixed-use development comprising of two commercial units on the ground floor (157.5 sqm), 26 residential units, associated landscaping, car and cycle parking at 362 Oxford Road, Reading RG30 1AQ in accordance with the terms of the application, Ref 220776/FUL, dated 26 May 2022, and the plans submitted with it, subject to the conditions set out in the schedule to this decision.

Preliminary Matters and background

2. A previously approved scheme¹, remains extant on this site, which, I understand in all other aspects is the same scheme, but provided 30% (or 8 units) affordable housing.
3. The application the subject of this appeal, as original submitted to the Council did not include provisions for affordable housing. It was advertised as such to consultees and third parties. However, during the consideration of the application the Council, in negotiation with the appellant, secured 11.5% or 3 units of affordable housing. The application was therefore determined on this basis, and by Members of the planning committee.
4. The appeal before me has been amended and submitted on the basis of the provision of zero affordable housing. I have considered this amendment to the proposed development under the principles established by the Courts². In the interest of natural justice, both main parties have provided comments on this matter, and I have had regard to these.

¹ Application reference 201391, approved on 3rd June 2021

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37] & Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

5. The description of development above does not make reference to affordable housing numbers. In my view, this appeal scheme is not substantively different to the scheme determined by the Council.
6. Moreover, interested third parties have had the opportunity to comment on the appeal and the appellant's statement, in addition to the initial round of consultation/advertisement, and express any concern they may have about the matter. I therefore conclude that to consider the revised scheme would not deprive those who would have been consulted on the change. Therefore, I shall determine the appeal on the basis of no provision of affordable housing.
7. Notwithstanding this, a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 has been provided (UU) as part of this appeal. It includes obligations relating to an open space contribution and construction phase employment skills and training plan. It does not include any provision towards affordable housing.

Main Issue

8. The main issue in this case, therefore, is whether the proposed development should make provision for affordable housing.

Reasons

9. Policy H3 of the Reading Borough Local Plan (2019) (LP) requires residential development of more than 10 units to provide 30% of the total dwellings as affordable housing on site to meet the needs of the area. The supporting text sets out the critical need for affordable housing within Reading.
10. As set out above, an approved extant scheme on the site met this policy requirement. The appellant sets out that following a change in the viability position of the development, the appeal scheme before me was submitted with a financial viability document³, in accordance with the above Policy, which requires the developer *'to clearly demonstrate the circumstances justifying a lower affordable housing contribution'*.
11. This viability appraisal set out that the proposed scheme is in significant deficit and based on the figures provided it would not be financially viable to build and therefore unable to support any affordable housing, particularly due to current high construction costs and modest residential sales values in this peripheral Reading location.
12. The Council's viability assessors agreed with this conclusion and set out it was clear that the development is not viable, either with the provision of on-site affordable housing or a Policy H3 off-site contribution. The Council's viability assessors concluded that *'£0 initial contribution'* was appropriate.
13. The Council have however raised concern regarding the lack of site-specific exceptional cost detail and have referred to other nearby schemes which are policy compliant. However, I have no comprehensive details of these other schemes, their scale of development and build costs etc, and as such I cannot be sure these would be comparable with the scheme before me. Notwithstanding the above, it is noted that the Council's own viability assessors accepted the submitted information with regards to build costs, with minor

³ Montagu Evans Financial Viability Assessment, dated 26 May 2022

differences in opinion related to the figures for professional fees, CIL charges, sales and marketing and sales legal fees. As concluded by the Council's viability assessors, this minor alteration to the submitted total development costs is insufficient to significantly reduce the deficit of the scheme at £634,140, at the time of consideration. There is notably no disagreement otherwise regarding the build costs.

14. From the information in front of me, I have no reason to disagree that the viability methodology meets the requirements of LP Policy H3 and the Supplementary Planning Document Affordable Housing (2021) (SPD). As such, based on the information before me, I find that the conclusions of the submitted viability appraisal is robust and sound, and the circumstances for zero affordable housing contribution demonstrated.
15. A deferred payment mechanism requirement is detailed within the SPD, however this is guidance rather than policy. As set out by the Planning Practice Guidance (PPG), plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. LP Policy H3 does not do this.
16. Based on the evidence before me and in this instance therefore, I am satisfied that there is no conflict with LP Policy H3 and accordingly, a deferred payment mechanism is not necessary to make the development acceptable in planning terms.
17. On the evidence before me, the need for affordable housing and a deferred payment mechanism sought by the Council would not satisfy the 3 tests in Regulation 122(2) of the CIL Regulations 2010. As such, the proposal has demonstrated that securing affordable housing provision is not necessary. There is therefore no conflict with LP Policy H3.

Planning obligation

18. The submitted UU includes obligations relating to open space contribution (£64,700) and construction phase employment skills and training plan.
19. LP Policy EN9 is clear in stating that all new development should make provision for appropriate open space based on the needs of the development. The open space contribution is required towards the improvement and extension of facilities within Kensington Recreation Ground and Portman Road Park, which is in close proximity to the appeal site. This is because the development, despite the provision of balcony terraces for each unit, would be reliant on public open space. The sum is based on the viability details submitted by the appellant and has been agreed by both parties. I am therefore satisfied that the provisions relating to open space are necessary to ensure that these areas are available to future occupiers of the development.
20. LP Policy CC9 details that amongst the highest priority for contributions is economic development services and infrastructure, including employment, skills and training development initiatives. The requirement for the construction phase employment skills and training plan is set out in the Supplementary Planning Document Employment Skills and Training (2013), as is the formula for the equivalent financial contribution.

21. Overall, I am satisfied that the provisions of the UU are directly related to the development and fairly and reasonably related in scale and kind to it.

Other Matters

22. I have had regard to a letter of objection from a third party. In terms of noise impact, given the city centre location of the appeal site, surrounded by a mix residential and commercial uses, in addition to the busy Oxford Road, the noise impact of further development upon nearby residents would not be significant. Conditions securing an appropriate construction method statement and relating to sound insulation, delivery/waste collection house and mechanical plant noise, would ensure that noise from construction and the finished development are appropriate for the future and surrounding residents.

Conditions

23. A list of suggested conditions has been provided that the Council consider to be appropriate. I have considered these in light of the PPG. For clarity and to ensure compliance with the PPG, I have amended some of the suggested wording.
24. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.
25. Details of landscaping is required to ensure the development sits comfortably within the immediate context and provides visual relief and softening of the surrounding built form. A habitat enhancement scheme is necessary to ensure the avoidance of harm to habitats and species whilst securing biodiversity enhancement, as supported by paragraph 180 of the Framework. A condition ensuring that future residents are not subject to unacceptable noise levels is also appropriate. Given the nearby surrounding built form and constrained site, in the interests of protecting the amenity of neighbouring residents or businesses and highway safety, a Construction Method Statement is necessary. Details of the vehicle access is also necessary, in the interests of highway safety. In order to protect the retained trees on site, a condition securing an Arboricultural Method Statement and Tree Protection Plan is appropriate. Given the limited information submitted regarding contamination of this site, a condition securing a detailed assessment of the nature and extent of contamination, and any required mitigation, is appropriate in order to secure the amenity of future occupiers and users of the development.
26. These seven conditions are required to be pre-commencement to ensure that all details are appropriate, finalised and secured prior to development starting on site.
27. In the interests of sustainability and to comply with local plan policies and the Framework, conditions securing an appropriate energy statement, building emissions rate, sustainable drainage, roof mounted photovoltaics and electric vehicle parking spaces are necessary.
28. In order to ensure a safe and secure development, in accordance with local plan policies, evidence of Secured by Design accreditation is also necessary. Conditions securing appropriate waste and cycle storage and vehicle parking spaces at an appropriate time are necessary to ensure that occupiers have access to these features.

29. In the interests of proper management of the limited parking spaces and therefore highway safety, conditions setting out that future occupiers shall be aware of the limited parking and that the Council is informed of new postal addresses of any occupied unit is appropriate. Also in the interest of highway safety, a condition securing a Delivery and Servicing Plan for the commercial units is necessary.
30. To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers, a condition securing a wheelchair accessible unit is necessary. A condition securing appropriate external lighting is also necessary, in order to protect the amenity of nearby and future occupiers. Conditions setting out the hours for deliveries and/or waste collection and opening hours of the commercial premises is necessary, in addition to securing appropriate mechanical plant details and preventing the burning of any materials or waste on site, again, in order to protect the amenity of nearby and future occupiers.
31. Finally, a condition ensuring the materials used in the external surfaces of the development is as detailed in the submitted plans is necessary to maintain the character and appearance of the street scene.

Conclusion

32. There are no material considerations that indicate the development should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, the appeal is allowed.

B Phillips

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 permitted shall be carried out in accordance with the following approved plans: LOC 01 Rev P1, BLOC 01 Rev P1, 050 Rev P1, 200 Rev P1, 210 Rev P1, 211 Rev P1, 212 Rev P1, 213 Rev P1, 214 Rev P1, 215 Rev P1, 216 Rev P1, 240 Rev P1, 241 Rev P1, 242 Rev P1, 243 Rev P2, 244 Rev P1, 245 Rev P2, 260 Rev P1; Air Quality Assessment by Phlorum dated May 2022 report ref 9879.S Rev 3; Land Contamination Preliminary Risk Assessment by Phlorum dated May 2022 project no. 9879 Rev 0.1; Drawings by Groundsure Insights 1-18 pages; Drawings by Groundsure Insights 1-20 pages including Appendix C – Qualitative Risk Assessment, Appendix D – Site Photos, Appendix E – Conceptual Model, Preliminary Ecological Appraisal by Phlorum dated May 2022 project no. 9879 Rev 1; Noise Statement – v2 dated 6th May 2022 by Phlorum; Utility Statement by UCML revision 3 dated 19/05/2022; Schedule of Accommodation – DO.01; BREEAM Pre-Assessment Report by Phlorum dated May 2022 project no. 9879 Rev 1; Daylight & Sunlight Report by eb7 dated May 2022; Energy Statement by Phlorum dated May 2022 project no. 9879 Rev 2; Sustainable Drainage Assessment by GeoSmart Information dated 25/05/2022 report ref: 73227.01R1; Transport Statement by i-Transport dated 12th May 2022 ref: BH/BB/ITB16072-004A-R; Arboricultural Development Statement by CBA Trees dated May 2022 ref: CBA11394 v2.
3. Prior to commencement of development, a comprehensive scheme of hard and soft landscaping reflecting the principles of the Natural Environment Plan shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - a. Means of enclosure (including mammal gaps where appropriate), car parking layouts, other vehicle and pedestrian access and circulation areas;
 - b. Hard surfacing materials and minor artefacts and other ancillary structures (e.g. furniture, refuse or other storage units, signs, lighting, external services, etc);
 - c. Soft landscaping to include a planting plan, specification (including cultivation and other operations associated with plant and grass establishment), tree pit specifications, schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate, and implementation timetable;
 - d. Full detail of the approved green walls as identified on the Natural Environment Plan, specifying species type, planting sizes, spacing and numbers of individual specimens to form the green wall;
 - e. A landscape management plan, including long term design objectives, management responsibilities, timescales and maintenance schedules for all landscape areas including the green wall;
 - f. Routes and details of proposed and existing functional services above and below ground including foul and surface water drainage, soakaways and SUDs details, power, communications cables and water and gas supply pipelines, including access points.

The approved hard and soft landscaping scheme shall be carried out in accordance with the approved details, unless otherwise agreed in writing, no later than during the first planting season following the date when the development hereby permitted is ready for occupation. Any trees, plants or parts of the green walls which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

4. Prior to commencement of development (including demolition or preparatory works), details of a habitat enhancement scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme is to include a programme for implementation and ongoing maintenance. The habitat enhancement scheme shall thereafter be implemented prior to first occupation and adhered to in accordance with agreed programme.
5. Prior to commencement of development, a detailed scheme, informed by an assessment of the current noise environment, including noise from the ground floor commercial units, for protecting the dwellings from the external noise environment of the area shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme itself shall be designed, specified and constructed so that the sound insulation performance of the structure and the layout of the dwellings are such that the indoor ambient noise levels do not exceed the values detailed in Table 4 of BS 8233:2014 and the and that the individual noise events do not exceed 45 dB LA,max,F more than 10 times a night. Where opening windows will lead to an internal noise level increase of 5 dBA or greater above BS 8233:2014 recommended internal levels, the scheme shall include provision of alternative mechanical ventilation with minimum performance equivalent to a mechanical heat 15 recovery (MVHR) system with cool air bypass as an alternative means of cooling and ventilation. Noise from the system should not result in BS8233 internal levels being exceeded. Thereafter, the development shall not be carried out other than in accordance with the approved scheme which shall be completed before any part of the accommodation hereby approved is occupied.
6. Prior to commencement of development (including demolition and any preparatory works), a site specific Construction Method Statement shall be submitted to and been approved in writing by the Local Planning Authority. The Statement shall provide for: a) Space on site where vehicles of site operatives and visitors can be parked with details of how site operatives and visitors will be required to make use of the parking area provided; b) Location on site for storage of plant and materials used in constructing the development; c) The erection and maintenance (including removal of any graffiti or fly posters) of security hoarding around the site, and d) Identification of any footpath closures or road closures needed during construction; e) Required wheel washing facilities on site; f) A scheme for recycling waste resulting from the construction works. g) Measures for controlling the use of site lighting whether required for safe working or for security purposes; h) Required measures to control the emission of dust, dirt and other airborne pollutants during demolition and construction; i) Provisions to be made for the control of noise coming from the site during demolition and construction; j) Full details of pest control measures

following any demolition required. Where necessary, capping of drains/sewers and baiting arrangements. k) Full details of hours of construction, demolition or associated deliveries. The measures within the approved Statement shall be adhered to throughout the demolition and construction period.

7. Prior to commencement of development, full details of the vehicle access serving the development shall be submitted to and approved in writing by the Local Planning Authority. The vehicle access shall thereafter be constructed in accordance with the approved details prior to first occupation.
8. Prior to commencement of development (including demolition and any preparatory works), an Arboricultural Method Statement and Tree Protection Plan in accordance with the relevant recommendations of appropriate British Standards or other recognised Codes of Good Practice for all existing trees that are not shown as being removed on the approved drawings, both within and adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.
9. Prior to commencement of development (including demolition and any preparatory works), an assessment of the nature and extent of contamination shall be submitted to and been approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified person, and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: • human health, • property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, • adjoining land, • groundwaters and surface waters, • ecological systems, • archaeological sites and ancient monuments.

If found necessary by this assessment to ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation, prior to commencement of development (including demolition and any preparatory works), a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and been approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures.

The approved remediation scheme shall be implemented in accordance with the approved timetable of works. A validation report (that demonstrates the effectiveness of the remediation carried out) shall be submitted to and approved by the Local Planning Authority before construction above foundation level.

10. In the event that contamination is found at any time when carrying out the approved development not previously identified, development shall be

halted on that part of the site the contamination reported in writing to the Local Planning Authority. An assessment of the nature and extent of contamination shall be undertaken and where remediation is necessary a remediation scheme, together with a timetable for its implementation, shall be submitted in writing to the Local Planning Authority for its written approval. The measures in the approved remediation scheme shall be implemented in accordance with the approved timetable. Halted works shall not be recommenced until the measures identified in the approved remediation scheme have been completed and a validation report has been submitted to and been approved in writing by the Local Planning Authority.

11. Prior to the first occupation of the development hereby approved, written verification shall be submitted to and approved in writing by the Local Planning Authority demonstrating that the development hereby approved has been implemented in accordance with the Energy Statement produced by Phlorum Limited and dated May 2022. The written verification shall be in the form of a 'Design Stage' Standard Assessment Procedure (SAP) Assessment, produced by an accredited energy assessor.
12. Prior to first occupation of the development hereby permitted, verification shall be submitted to and approved in writing by the Local Planning Authority demonstrating that all of the dwellings hereby permitted have achieved a minimum of a 35% improvement in the dwelling emission rate over the target emission rate, as defined in The Building Regulations for England Approved Document L1a: Conservation of Fuel and Power in New Dwellings (2013 edition). The written verification shall be in the form of an 'As Built' Standard Assessment Procedure (SAP) assessment, produced by an accredited energy assessor.
13. Prior to first occupation of the development hereby permitted, the sustainable drainage scheme for the site shall be completed in accordance with the submitted and approved details shown in the submitted Sustainable Drainage Assessment dated 25/05/2022. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the approved details.
14. Prior to the first occupation of the development hereby approved, full details of the proposed roof mounted photovoltaics shall be submitted to and approved in writing by the Local Planning Authority. These details shall include a detailed roof plan showing the final location and position of the Photovoltaics, their dimensions, manufactures specification, and ongoing maintenance arrangements. The approved Photovoltaics shall thereafter be installed in accordance with these approved details prior to first occupation and maintained in good working order to the satisfaction of the Local Planning Authority.
15. Prior to first occupation of residential units hereby approved, details of an electric vehicle (EV) charging scheme comprising a layout plan and detailed specification for a minimum of ten percent of all vehicle parking spaces within the development to be provided with electric vehicle charging points, and a further ten percent of spaces provided with cabling and other supporting infrastructure reasonably required to enable EV charging points to be fitted, has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the scheme has

been fully provided in accordance with the approved details. The spaces shall be maintained for vehicle charging in accordance with the approved Scheme at all times thereafter.

16. Prior to first occupation of the development hereby approved, evidence of Secured By Design accreditation shall be submitted to and approved in writing by the Local Planning Authority.
17. Prior to first occupation of the development hereby approved, the refuse and recycling storage facility shall be implemented fully in accordance with those details shown on the approved plans and thereafter retained for use by occupiers of the dwelling/building at all times.
18. Prior to the first occupation of the development hereby approved, a plan showing how the proposed cycle parking spaces can satisfactorily be provided on site shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking spaces shall be provided in full accordance with the approved details prior to first occupation and thereafter kept free of obstruction and retained in accordance with the approved details and shall remain available for the parking of vehicles at all times.
19. Prior to first occupation of the development hereby approved, all vehicle parking spaces shall be provided in accordance with the plans hereby approved. The spaces shall be kept available for parking at all times thereafter.
20. Prior to first occupation of residential units hereby approved, the Local Planning Authority shall be notified in writing of the full postal address of the relevant unit. The notification shall be sent to the Local Planning Authority quoting the application reference specified on this Notice.
21. Prior to any agreement being entered into for a new occupation of, or transfer of any interest in, the residential units hereby approved, the prospective occupier/transferee shall be informed that there is no automatic entitlement to a car parking permit for any existing residential parking permit schemes and future schemes on adjacent and surrounding streets. All material used for advertising or marketing the residential unit(s) for letting or sale shall make it clear to prospective tenants and occupiers that they will not be automatically entitled to a parking permit, but any application for a parking permit will be considered on its merits.
22. Prior to first occupation of each Class E commercial unit hereby approved, a Delivery and Servicing Plan to manage how vehicles shall access each unit without creating safety concerns and congestion based on the anticipated number of vehicle trips associated with delivery and servicing vehicles for that unit shall be submitted to the Local Planning Authority for approval in writing. Thereafter deliveries and servicing will be carried out for each unit in accordance with the approved Delivery and Servicing Plan
23. Prior to the first occupation of any market residential unit hereby approved, details of at least 1 wheelchair adaptable units (as per Part M of Building Regulations) shall be submitted to and approved in writing by the Local Planning Authority. The wheelchair adaptable residential units shall remain wheelchair adaptable residential units thereafter.

24. Prior to first occupation or the use first commenced, full details of all external lighting to be installed within the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a plan indicating the locations of the lights, specifications, height, luminance; lens shape/beam pattern and orientation, any hoods/shades, and an isolux contour map to show light spill levels (down to 2 lux if operating between 23:00 and 07:00, or down to 10 lux if operating only between 07:00 and 23:00) and showing neighbouring buildings. The details shall demonstrate that light levels will not exceed the relevant guidance lux levels specified in the Institute of Lighting Professionals: Guidance Notes for the Reduction of Obtrusive Light GN01:2011 and shall also demonstrate how glare will be controlled. The approved scheme shall thereafter be installed before first occupation of the buildings or use commenced and the external lighting shall thereafter be maintained and operated in accordance with the approved details.
25. Hours for deliveries and/or waste collection are restricted to between 0700 to 2300 on Mondays to Saturdays and 1000 to 1600 on Sundays or Bank Holidays.
26. The commercial premises shall not be used by members of the public outside the hours of 0600 to 0000 seven days a week.
27. No mechanical plant shall be installed until a noise assessment of the proposed mechanical plant has been submitted and approved by the Local Planning Authority. The assessment shall be carried out for in accordance with BS4142:2014 methodology. The predicted specific sound level (LAeq,TR) (with reference to BS:4142) as measured at a point 1 metre external to the nearest noise-sensitive facade shall be at least 10dB below the pre-existing background sound level, LA90,T when all plant/equipment (or any part of it) is in operation. The predicted rating level, LAr,Tr (specific sound level plus any adjustment for the characteristic features of the sound) as measured at a point 1 metre external to the nearest noise-sensitive façade (habitable window of a dwelling) shall not exceed the pre-existing background sound level, LA90,T when all plant/equipment (or any part of it) is in operation. The plant shall thereafter only be installed in accordance with the assessment and shall thereafter be maintained so that it operates to the same standard.
28. No materials or green waste produced as a result of the clearance of the site, demolition works or construction works associated with the development hereby approved shall be burnt on site.
29. The external surfaces of the development hereby permitted shall be constructed in the materials listed in condition 2.