



Appeal Decision

Site visit made on 12 December 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

Appeal Ref: APP/N0410/W/22/3309449

Land to the Rear of St. Mary's Road, St Mary's Road, Denham UB9 5JU

- 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 Ghuman of GG Homes Ltd against the decision of Buckinghamshire Council.
 - The application Ref PL/22/1288/FA, dated 7 April 2022, was refused by notice dated 7 September 2022.
 - The development proposed is described as ERECTION OF A DETACHED BUILDING COMPRISING TEN No. TWO-BEDROOM FLATS TOGETHER WITH ALL ASSOCIATED ANCILLARY FACILITIES.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site is the subject of three other appeals¹. They are not being considered together with this one because each are the subject of different applications for different proposals (including for outline permission), with differing issues for consideration. As Inspector for the other appeals, I am aware of the case details and will have regard to them as appropriate.
3. The Council's second reason for refusal does not state specific properties which it is alleged would be subject to harm. I have had regard to observations at my visit and the evidence before me in setting out the relevant main issue below. The Council refers to overshadowing in its delegated report and appeal statement, but as it is not referred to in the second reason for refusal, I have confined my consideration to the specific living conditions quoted in reason 2.
4. The Council did not object to the proposal specifically in respect of the sequential test for flood risk. However, having regard to the evidence before me and the views of interested parties, I have considered this as part of the relevant main issue. I have given the Council and Appellant the opportunity to comment upon this and taken views into account in determining this appeal.
5. Since the appeal was lodged, on 19 December 2023 the 2022 Housing Delivery Test (HDT) results and the revised National Planning Policy Framework (2023) (the Framework) were published. I have given the Council and Appellant the

¹ Refs APP/N0410/W/23/3316251, APP/N0410/W/23/3317519 and APP/N0410/W/23/3317530.

opportunity to comment upon these matters and taken the comments into account in determining this appeal.

Main Issues

6. The main issues are:

- whether or not the proposed development is compliant with policies in respect of flood risk;
- the effect of the proposed development upon the character and appearance of the area;
- the effect of the proposed development upon the living conditions of the occupiers of Nos 25, 27, 29 and 31 Green Tiles Lane with particular reference to outlook and privacy;
- the effect of the proposed development upon highway safety; and,
- whether or not the proposed development is compliant with policies for the provision of affordable housing.

Reasons

Flood Risk

7. Paragraph 165 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk, whether existing or in the future. Paragraph 7-001-20220825 of the Planning Practice Guidance (the PPG) states that areas at risk of flooding can be from any source, including rising groundwater.
8. Paragraphs 167 and 168 of the Framework require the application of the sequential test (the ST) to avoid where possible, flood risk to people and property. Its aim is to steer new development to areas with the lowest risk of flooding from any source and ensure that areas at little or no risk of flooding are developed in preference to areas at higher risk (PPG Ref. 7-023-20220825). Avoiding flood risk through the ST is the most effective way of addressing it and this places the least reliance on measures such as flood defences, infrastructure, flood warnings and property level resilience. This is a fundamental aspect national flood risk policy of high importance.
9. A development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding (paragraph 168). If it is demonstrated it is not possible for a development to be in areas with a lower risk, the exception test (the ET) may have to be applied (paragraph 169). The medium and high surface water flood risk zones do not appear to encroach upon the appeal site. However, the site has a high-risk flood hazard classification for groundwater based upon British Geological Survey (BGS) 2016 data. The risk is identified due to water being between 0 – 3m below ground surface level. This development is of a more vulnerable classification, the type an ST is required, but no ST has been submitted.
10. The PPG states that even where a Flood Risk Assessment (FRA) shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the ST still needs to be satisfied. The appellant's groundwater test data shows groundwater was at approximately 2.35m and 2.4m below surface

level on the days of testing in one of the three test locations. The other two were dry at their depths of 1.55m and 2.4m. The appellant's view is that given the measured water depths, the proposal includes raised floor levels and no cellars, the site is not at risk of groundwater flooding, so the risk is low.

11. It appears the Council's adviser is satisfied a freeboard can be provided for the purposes of SUDS infrastructure sufficient to drain the site. However, the measured levels are well within the range set out as being at a high risk by the BGS zone data and there will be assets such as footings and infrastructure below ground level. Site monitoring appears limited, particularly given that in relation to the suggested groundwater levels, one of the boreholes appears particularly shallow. It is also not clear that monitoring results on the 4 days monitored can be regarded as comprehensive enough to reflect the winter recharge period as a whole (November – March or April). I am also not clear whether a climate change allowance is necessary or might influence the levels.
12. Given the aims and purposes of the ST, I am not satisfied the measured groundwater levels are comprehensive for the whole site, or the site is not within a designated high-risk area, or that there is other comprehensive evidence advanced that would allow me to conclude the need to satisfy the ST should not apply. Therefore, an ST is required, and one is not provided.
13. Were I to share the appellant's view that site can truly be classified as at a low-risk, regard would need to be had as to whether the provisions of FRA, surface water management plan and ground investigation report, meet the other necessary Framework and PPG flood risk and drainage requirements. The proposals are to manage surface water run-off via ground infiltration with the storage being held in attenuation porous pavements under which would be underground tanks. In the areas of some trial pits and boreholes certain substances were found that are potentially harmful to human health. The sampling report recommends a detailed Phase 1 contaminated land study to develop a conceptual site model and identify receptor risk.
14. Given the limited groundwater monitoring, the need for further investigation of contaminants, groundwater sampling and remediation measures, the implications for safe and adequate drainage are not fully clear. It appears possible that detailed suitably worded planning conditions, including in respect of contamination, remediation, an emergency flood plan, and SUDS design might overcome concerns and secure safe and appropriate drainage to comply with Policy CP13 of the South Bucks Core Strategy (2011) (the CS) in respect of drainage and water quality. However, even were this to be beyond any doubt, it would not overcome the need to satisfy policies in respect of the ST.
15. Therefore, for the reasons set out above, the proposed development is not compliant with Framework policies in respect of flood risk. It conflicts with the aims of paragraphs 165 and 167 – 169 of the Framework, the relevant provisions of which are set out above.

Character and appearance

16. The appeal site includes approximately 42 disused garages surrounding a sizeable circulation area. On much of three of its sides it is surrounded by generously sized rear gardens of two storey houses of a fairly consistent and simple appearance, addressing the highway. Its southern side is adjoined by a row of trees lining the spacious grounds of a period ornate three storey building

- known as Green Tiles, which is set well away from its plot boundaries. Other larger buildings along Tilehouse Way also exhibit spacious verdant surrounds.
17. Part of the northwest corner of the site and access back onto what appears as garaging, and a service area associated with a mixed use 2.5 storey building. This is a singular example that is less reflective of the prevailing character and appearance with more limited space. However, the main element is away from the north and east boundaries, and well back from the highway.
 18. The immediate and much of the wider more well-related surrounds can be characterised as having a predominant pattern of two and some three storey buildings often addressing the highway within relatively spacious and often verdant plots and surrounds, with limited development and buildings to the rear. This is reflective of some characteristics of 'Suburban Roads' character typology in the Chiltern and South Bucks Townscape Character Study (2017) (the TCS). The distance, nature and pattern of the intervening townscape and highways, means the buildings off the A412 are visible in a different character and context to the appeal site and a different TCS character typology. The limited height of the garages and position behind gardens, means currently the appeal site is not particularly conspicuous, and makes a largely neutral contribution to the character and appearance of the area.
 19. The proposed development would result in a large three storey building. It would be of a significant bulk and mass, in a back-land type position, occupying a significant proportion of the plot. It would lack the degree of spaciousness to that of neighbouring buildings with limited scope for meaningful landscaping. On all but two of its sides, it would have elevations of a significant bulk and mass only roughly 3m from the site boundaries.
 20. While some aspects of the relatively simple architectural design could be considered context appropriate, the new building would appear a rather cramped, stark, intense form of development. It would be visible as a stridently cramped and overdeveloped site in the context of its surrounds. It would be at odds with, not respond positively to, and be significantly harmful to the character and appearance of the area. The harm would have visibility when entering the appeal site, between buildings on Penn Drive, Green Tiles Lane and St Mary's Road, but it would be particularly visible from a number of neighbouring properties to the east and west. Given the scale, footprint and position of the building, the imposition of suitably worded planning conditions could not mitigate the harm.
 21. Therefore, for the reasons set out above, the proposed development would be significantly harmful to the character and appearance of the area. It would conflict with Policies EP3 and H9 of the South Bucks Local Plan (adopted, 1999, consolidated 2007 and 2011) (the LP) and Policy CP8 of the CS. In combination and amongst other things these require that development is of a high standard of design that is compatible with, sympathetic to and makes a positive contribution to the character and appearance of the area, including having regard to matters such as scale, layout, spacing and siting of buildings.
 22. The development would conflict with paragraphs 131 and 135 of the Framework and section C1 of the National Design Guide (2021). These expect development to be well-designed, respond to the site and surrounding context, patterns of built form, be sympathetic to local character and maintain a strong sense of place. It would also conflict with guidance in section 5 of the

Residential Design Guide Supplementary Planning Document (2008) (the RDG) which expects sites to be of an appropriate layout and buildings to provide appropriate spacing.

23. The Council suggests a conflict in respect of Policy DEN1 of the Denham Parish Neighbourhood Plan (2022) (the DNP) and Policy EP4 of the LP in its delegated report, but these are not referred in the first reason for refusal in its decision notice. Therefore, I have not concluded against the policies.

Living conditions

24. Policies EP3 and H9 of the LP expect the scale, layout and siting of proposals should not adversely affect the amenities (living conditions) of neighbouring properties, and EP5 requires development is compliant with Policy EP3. Some further guidance is provided within the RDG. The RDG advises as a guide, the distance in between rear elevations of dwellings should be a minimum of 21m, indicating this is based upon a roughly equal rear garden depth between two storey dwellings. Greater distances will be required where a lack of existing screening allows extensive views over the existing properties.
25. The proposed development would result in distances of between 33m – 40m to the rear façade of Nos 25 – 31 Green Tiles Lane. However, noting the RDG guidance, the predominant character is one of a spacious layout, the proposal would result in a large high building, and the vegetation in proximity to some of the rear boundaries is of a limited screening effect. Even allowing for the retention of the approximately 3m high rear garage walls, some long high new facades would be 3m from the boundary, meaning the first and second floors of the new building would be largely unscreened.
26. The proximity and direct visibility from the first and second floors would mean a significant proportion of the gardens of Nos 25 – 31 would have little privacy from several habitable rooms and primary living spaces of the new building. I take onboard that the most affected areas would be rear parts of what are some fairly long garden spaces, although these are the areas that are currently least overlooked. Given the proximity to the boundary and number of habitable rooms that would have direct visibility over a large proportion of the gardens, this would have a marked adverse effect in respect of the perceptual and actual level of privacy for the occupiers of Nos 25 – 31 Green Tiles Lane.
27. Visibility from balconies might be mitigated by suitable material treatments. Making the windows non-opening would not be sufficient mitigation as there would still be clear overlooking. Obscure glass to 1.7m is proposed to certain windows facing as set out in the Council's suggested planning condition. However, given the amount of existing and proposed dwellings this would affect and the amount obscured glass, I have doubts that such a significant and material change is possible within the scope of this appeal scheme. Even were this so, there is likely to be insufficient adequate outlook for future occupiers.
28. The proposed layout, height, width and scale would result in very large mass and bulk of building and a projecting second floor balcony in very close proximity to the boundary across much or all of the width of the boundaries. Due to this the proposal would appear overbearing, having an adverse effect upon outlook from a significant proportion of garden spaces of Nos 25 – 31.

29. Given the distance between the rear facades and facing windows, the effect upon the outlook and privacy between habitable room windows, would not be of a level that would have a materially adverse effect upon the internal living conditions of the occupiers of No 25 – 31, so I do not find a policy conflict in this regard. However, this does not mitigate the other harm.
30. For the reasons set out, the proposed development would harmfully affect the living conditions of the occupiers of No 25 – 31 Green Tile Lane with particular reference to outlook and privacy. This would conflict with the aims of Policies EP3, EP5 and H9 of the LP, the relevant provisions of which are set out above.

Highway safety

31. Policy CP7 of the CS and TR5 of the LP aim to ensure a safe and sustainable transport network. Policy 17 of the Buckinghamshire Local Transport Plan (2016) (the LTP) aims to support and improve road safety. The Highways Development Management Guidance document (2018) (the HDMG) sets out policy aims for development to meet its own transport needs (Guidance 1), to protect the safe and convenient use of the highway (Guidance 5) and proposals to demonstrate the provision of adequate parking (Guidance 20) in accordance with the Buckinghamshire Countywide Parking Guidance (2015) (the CPG).
32. The CPG expects the proposal would result in an overall requirement of 20 spaces, 10 more than is proposed within the site layout. The CPG takes site location into account in its zonal approach. Though there cannot be full certainty over the future car ownership and travel patterns of new occupiers, the evidence including reference to 2011 census data does not demonstrate or persuade me parking needs are likely to materially depart from the CPG.
33. The aim of undertaking a Lambeth methodology parking survey is to ensure peak demand is captured. For a residential area it is suggested the surveys should be undertaken between 00:30 – 05:30hrs. I do not have a reason to doubt the appellant's survey results are accurate at that time. It showed typical car ownership of residents and off-street parking levels means parking stress levels were between approximately 41% – 48% within 200m of the site.
34. The Highway Authority (HA) survey was not as per the Lambeth methodology, but the comprehensive photographs clearly indicate high levels of parking, particularly on St Mary's Road and Penn Drive associated with surrounding uses such as businesses and Denham railway station. It showed signs of high parking stress, which does not suggest the Lambeth Survey represents the peak demand time of all highway users in this location. A few photographs of a peak-hour from the appellant suggest there might be some quiet times, but do not demonstrate the HAs findings are unusual. Interested parties have provided anecdotal accounts and evidence suggesting the HA findings is not untypical and there are user conflicts around St Mary's Road.
35. My visit is a brief snapshot in time. During this, the level of daytime parking along the western part of St Mary's Road and northern part of Penn Drive was more reflective of the HA's survey findings. Therefore, it appears the appellant's survey has not in this instance, assessed parking when demand is at its greatest. That there have been no personal injury accidents cannot be taken as a full demonstration there hasn't been damage accidents.

36. It is likely that cars generated by development residents and visitors would seek to park as close as they are reasonably able. If most on-street spaces are occupied along St Mary's Road, it effectively becomes a single lane width for most of its length. Potentially the only spaces for vehicles to give way, may be at either of its junctions, the driveways along it or the accesses at the appeal site and Courtney House. This is likely to cause difficulties for larger vehicles such as emergency or service vehicles.
37. A further approximately 10 vehicles would markedly exacerbate localised parking stress, resulting in a significantly greater potential for user conflicts, and conditions prejudicial to highway safety. Even with the early morning levels in the appellant's surveys, a further around parked 10 cars in the vicinity of the appeal site would markedly intensify nearby parking levels. I am mindful there could also be times when residents or visitors of the flats return from work but those non-residents parking nearby are yet to pick-up their vehicles, which adds to my concerns. That additional vehicle numbers might be accommodated in the wider vicinity would not mitigate this. I am not satisfied that planning conditions could mitigate the harm.
38. The pre-application advice is not a formal decision of an authority, and there is evidence of likely harmful effects because of these proposals. It is not clear whether or not the Council has attempted to remedy existing conditions via a Traffic Regulation Order (TRO). However, this is a process under highways legislation and the appellant has not provided substantive evidence that demonstrates TRO is likely to be successfully achieved and implemented by the Council, so I attribute this matter limited weight.
39. Though many appear to require refurbishment and the size might not accommodate some larger cars, the Council does not appear to dispute the fall-back position is for a 100% use of the existing garages. In this scenario, there would be a greater number of vehicle movements, but it would also be likely that a number of car owners may buy or lease those garages reducing levels of highway parking. Therefore, it would not be likely to result in the same effects as the proposed development, so this attracts limited weight.
40. For the reasons set out above the proposed development would be likely to have an adverse effect upon and give rise to conditions prejudicial to highway safety. Therefore, it would conflict with the aims of Policy 17 of the LTP, Guidance 1, 5 and 20 of the HDMG and the levels of parking set out in the CPG, the relevant provisions of which are set out above. It would also conflict with the aims of paragraph 115 of the Framework, as it has not been demonstrated the proposal would not have an unacceptable impact upon highway safety.

Affordable Housing

41. Policy CP2 of the CS and paragraph 65 of the Framework expect the appeal proposal should provide affordable housing. Policy CP3 of the CS states at least 40% of the dwellings should be affordable, unless it is clearly demonstrated that this is not economically viable. Both the Council and Appellant have submitted a Viability Assessment (VA).
42. Due to a general difficulty in identifying a Registered Provider for smaller schemes, if there is a surplus generated by a full market housing scheme, this should fund affordable housing off-site, which the Council's VA suggests is an

appropriate approach. An equivalent of 40% affordable housing provision off-site, would equate to a financial contribution of approximately £603,750.

43. There are many aspects of scheme outturn for which there are similarities between the Council's and appellant's VA. The main areas of difference are in respect of the Benchmark Land Value (BLV), that the appellant's VA does not provide pre-sales and has set a longer sales period of 3-months. Due primarily to the Council's BLV at £614,000 and the appellant's BLV at £1,178,750, there is a large difference in the financial outturn financial positions. Based upon all the Council's outturn analysis being correct, its VA suggests small surplus of +£8,969 based upon the size and type of units, exclusive of the potential findings of any late-stage viability review.
44. The appellant does not appear to dispute the Council's findings in their Final Comments submission, and I generally find the Council's VA assumptions well-reasoned. On this basis, it would not be possible to make a contribution of anything of the order sought by Policy CP3. However, a comparatively modest financial contribution of +£8,969 or as might otherwise be agreed subject to any late-stage viability, should be provided. The appellant's VA suggests any increase in market value may be subject to a commensurate increase in build cost, so is likely to be limited.
45. I have no planning obligation to secure such a contribution, nor do I have suggested planning conditions to that effect. Even were it possible and I had assurance this would be a correct approach having regard to the Planning Practice Guidance, the benefit from the development would be modest.
46. However, for the reasons set out above, the proposed development would not make adequate provision for affordable housing. Therefore, it would conflict with the aims of Policy CP2 of the CS, and the aims of paragraph 65 of the Framework, the relevant provisions of which I have set out above.

Other Matters

47. The Council has not objected to the proposed development in respect of the setting of Green Tiles as a Non-Designated Heritage Asset (NDHA), based upon the provision of suitable landscape screening as mitigation. Were it to have been demonstrated this would be achievable, this would be a neutral matter. Interested parties have raised a number of other matters, such as whether the proposal would result in adequate daylight for the occupiers of some of the new units. As I am dismissing this appeal for other substantive reasons, and they are not benefits advanced, I have not considered such matters in detail.

Planning Balance

48. The Council area does not have a 5-year housing land supply (HLS). Therefore, the policies most important for determining the proposal are considered out of date. Paragraph 11d) of the Framework states that in such circumstances, permission should be granted unless i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, having regard to footnote 7. This includes areas at risk of flooding. Therefore, the tilted balance does not apply.
49. The proposal would result in a moderate temporary economic benefit during construction, and once constructed a moderate on-going benefit to the local economy and support to local services and facilities. Though the evidence

suggests a 97% HDT result, the HLS submissions suggest the South Bucks area can only demonstrate a 1.3-year HLS. On this basis, localised need could be considered acute, so the delivery of 10 dwellings as proposed on this previously developed site is a benefit that attracts significant weight. The contribution for affordable housing provision based upon the VAs would be limited. It has the potential to increase via a review mechanism. On this basis the benefit of a contribution could become a moderate benefit, attracting moderate weight.

50. Notwithstanding the limited scope for landscape provision within the site, given its current condition, it is likely the proposed development could achieve significant biodiversity net gain compared to the existing. However, given its relatively low current value and the scope for future enhancements, at best the level of gain and resultant benefits is likely to be of a magnitude that attracts moderate weight in favour of the scheme. There might be some limited benefit from clearing up to prevent vermin inhabitation.
51. Were I to agree the proposal would be compliant with policies such as those in respect of the principle, accessibility and location of development, the living conditions of future occupiers, providing for satisfactory refuse storage and collection, other living conditions of neighbouring occupiers not assessed under the main issue above, construction effects, drainage provision, arboricultural matters, aerodrome policies and the setting of NDHAs, these would be neutral matters in the balance. The policy compliance and benefits of the development attract significant weight in favour of the appeal scheme.
52. Based upon the substantive evidence before me, the proposed development conflicts with national flood risk policies. This is an important matter to which I attribute substantial weight. The development would also be significantly harmful to the character and appearance of the area and would be prejudicial to highway safety in conflict with the LTP and relevant guidance. The magnitude of these harms is such that they attract significant weight against the scheme. There would be conflicts with development plan policies in respect of the living conditions of neighbouring occupiers. The wording of the plan policies set a modest bar in terms of the thresholds for effects. Having regard to the nature of the harms, I attribute them moderate weight against the scheme.
53. Overall, the magnitude of the harm and the degree of policy conflicts are such that as a whole, they significantly outweigh the policy compliance and benefits of the scheme. Therefore, the appeal should not succeed.

Conclusion

54. The proposal is contrary to the development plan taken as a whole, the Framework and the LTP. There are no material considerations advanced including the policies of the Framework that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR