



Appeal Decision

Hearing held on 5 December 2023

Site visit made on 6 December 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/N0410/W/23/3325579

Former Electron Works, Willow Avenue, Denham, Uxbridge UB9 4BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by EBS Self-Administered Personal Pension Plan Trustees Ltd against Buckinghamshire Council.
 - The application Ref: PL/22/2842/FA, is dated 2 August 2022.
 - The development proposed is a new three-storey block of student accommodation comprising 38 studios incorporating communal area, laundry, plant room and refuse store.
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Decision

1. The appeal is allowed, and planning permission is granted for a new three-storey block of student accommodation comprising 38 studios incorporating communal area, laundry, plant room and refuse store at Former Electron Works, Willow Avenue, Denham, Uxbridge UB9 4BG in accordance with the terms of the application, Ref PL/22/2842/FA, dated 2 August 2022, subject to the attached schedule of conditions.

Applications for costs

2. An application for costs was submitted by EBS Self-Administered Personal Pension Plan Trustees Ltd against Buckinghamshire Council. This is the subject of a separate decision.

Procedural Matters

3. The appeal documentation included some revised drawings. Although not the subject of a formal determination by the Council, they had been submitted to the Council.
4. These amendments primarily relate to changes to the elevations of the building rather than alterations to its height, siting, or the quantum of development. All parties, through the appeal proceedings, have had the opportunity to comment upon these revised plans.
5. I do not believe that the revised scheme is materially different to the original proposal. In addition, the changes to the building do not result in significant amendments to the design of the development. I have also received written confirmation from the appellant that they have sent copies of the revised drawings to the interested parties.

6. It would therefore not cause prejudice to any party or create procedural unfairness to determine the appeal with reference to the revised drawings. Accordingly, I have proceeded on this basis.
7. The appellant, at a relatively late stage, submitted details which compare the proposal to developments that have previously been approved on the appeal site. Given that this document collates other plans in the appeal documentation, I have considered these details.
8. The Council has submitted information regarding the current local housing supply. Given the potential relevance of this matter to the appeal process and as the appellant has had sufficient time to consider this information, I have had regard to it.
9. At the hearing, the appellant submitted a relatively short document detailing changes in student numbers at Brunel University London. Given its potential relevance to the appeal scheme and the fact that it was discussed at the hearing, I have also had regard to this document.
10. At the point that the Hearing commenced, a Statement of Common Ground had not been agreed between the appellant and the Council. Although I have subsequently received an updated draft, this has not been signed by the Council. I have therefore had regard to the updated draft Statement of Common Ground, in addition to the documents submitted before the hearing and the discussions at the hearing itself.

Main Issues

11. The main issues relevant to this appeal are:

- the effect of the development upon the character and appearance of the surrounding area; and
- the effect of the development upon the occupiers of Apex House, with reference to outlook.

Reasons

Character and appearance

12. The appeal site consists of previously developed land. It is near to some commercial buildings, which have functional designs. Willow Avenue contains a large number of dwellings. These are predominantly bungalows, but there is a notable amount of variation in term of design. The wider area contains a variety of buildings, even though the appeal site is not in a town centre.
13. By reason of the variation of buildings in the area, the appeal site forms a transitional space between the commercial buildings and the residential accommodation beyond. Therefore, within a relatively short distance, there is a notable variety of building designs.
14. There is a variety of roof shapes including buildings that have flat roofs, in addition to those that have gables which face the highway. Some other buildings also feature roof slopes that face the road.

15. Therefore, the construction of a new building with a further different design and of a relatively large footprint would not be incongruous, even though there would be an increase in the overall level of built form.
16. Some concerns have been raised regarding the use of some blank sections of walls within the proposed development. However, as part of the surrounding mixed character, buildings have varying proportions and differently sized windows. Therefore, the proposed development would not appear unusual.
17. In addition, such blank elevations would be typically located in less prominent areas. For example, these would either be screened by existing buildings in the surrounding area or located towards the rear of the site, with diminished views from public areas. This means that these features would not have a significant effect upon the area's character.
18. Due to the scale of the proposed development, there is limited room for landscaping in the development, which would be viewable from Willow Avenue. However, owing to the mixture of uses in the surrounding area, combined with the presence of notable amounts of car parking means that landscaping is not a major defining feature of the immediate vicinity of the appeal site. Therefore, the form of the development is not harmful in this regard.
19. The proposed development would be near to the existing bungalow of 1a Willow Avenue. Whilst the bungalow would have a significantly different design to the proposed development, views of the existing and proposed buildings would be against a backdrop which would include the larger proportioned flats at The Alders, some two-storey houses and chalet style bungalows.
20. This means that there is considerable variety in built form in the surrounding area. In result, the relationship between the proposed development and No. 1a would not be discordant and that the scale of the proposed development is compatible with the surrounding area.
21. The proposed development would be visible from close to the start of Willow Avenue. Although the building would be larger than others nearby, the mass of the building would be mitigated through the use of sections of different materials. It would be possible to impose a planning condition that would ensure that the building is constructed from materials that achieve this objective.
22. Furthermore, the massing of the building would also be mitigated through the use of recessed sections, additional fenestration and the building entrance, which would all add interest to the façade and ensure that the proposed development would harmonise with its surroundings. The fenestration pattern would also serve to add interest to the elevations of the building and break up the massing of the façades.
23. The proposed development would also be visible from several other vantage points in the surrounding area, such as other areas of Willow Avenue and Hawthorn Drive, including by passing motorists. It is noted that the wider surrounding area features buildings of varying scales and styles. This includes some buildings that have a large bulk and mass. As these buildings would be visible alongside the appeal scheme, the proposed development would not be incongruous.

24. I therefore conclude that the proposed development would not have an adverse effect upon the character and appearance of the surrounding area. The development, in this regard, would comply with the requirements of Policies EP3 and H9 of the South Buckinghamshire District Local Plan (1999) (the Local Plan) and Policy CP8 of the South Buckinghamshire Core Strategy (2011).
25. Amongst other matters, these seek to ensure that new developments should be in scale with surrounding development; should respect the height of surrounding development; be compatible with the character of the surrounding area in terms of density, layout, design, height, scale, form and materials; and be of a high standard of design and make a positive contribution to the character of the surrounding area.

Living conditions

26. The appeal site is adjacent to Apex House, which is in use as a House in Multiple Occupation (HMO). Apex House is two storeys in height and faces the side boundary of the appeal site. Owing to the nature of the appeal scheme, it would have a relatively large footprint and a height greater than Apex House.
27. Due to these factors, the proposed development would be sited relatively close to the front elevation of Apex House. Although it has been demonstrated that the proposal would not have an adverse effect on the levels of privacy, sunlight and daylight that are experienced by the occupiers of Apex House, the Council has raised concerns regarding the levels of outlook.
28. The broad layout of Apex House, based on the evidence before me, is that, amongst other rooms, there are three bedrooms on the ground floor and three on the first floor near to the appeal site. Of these, one of the ground floor bedrooms is identified in the appeal documentation as being accommodation for the building's manager. The occupier of this bedroom also has the use of additional living accommodation, with a window on the side elevation of Apex House.
29. Although a bedroom is a habitable room, the fact that the occupiers of this room also have alternative space for recreation and other domestic activities means that the proposed development would not have an adverse effect upon the outlook of the relevant occupiers.
30. A further bedroom on the first floor also features a window on the side elevation. Although the occupier of this room would not have an additional living room, the presence of a window orientated away from the appeal scheme means that the occupier would retain sufficient outlook.
31. The other four bedrooms feature windows on the front elevation only. This means that the occupiers of these rooms have no other windows by which they might gain outlook. Notwithstanding this it is necessary to have regard to the planning history of the appeal site.
32. Of note, the appeal site benefits from a planning permission for the development of offices. Although this was approved some years ago, it is common ground that the permission has been implemented and therefore the remainder of the permitted development could be constructed.

33. There is no compelling evidence before that indicates that the office scheme would not be capable of being completed. Indeed, at the hearing, the circumstances that lead to delays in construction work were explained.
34. The office scheme has a comparable height to the section of the development closest to Apex House. It would also be located slightly closer to Apex House than the appeal scheme before me. This means that when the two developments are compared, the proposed development that is the subject of this appeal would not lead to less outlook when compared with the previously permitted scheme. This means that the development would not generate harm in this regard.
35. The office scheme gained planning permission before Apex House was permitted for use as an HMO. This means that permission was given for Apex House in the knowledge that a relatively large office building could be constructed on the appeal site.
36. A notable difference between the appeal scheme and the previous permitted office development is that the office building consists of two separate buildings, rather than the single structure within the development before me. However, the gap between the two office buildings would be sited at an oblique angle from Apex House. This means that the gap between office buildings does not lead to a significant variation in the level of outlook that would be experienced by the occupiers of the HMO.
37. In result, the presence of the gap between the two office buildings would not lead to a different level of outlook when compared to the appeal scheme. Therefore, as the office scheme could still be completed, the occupiers of Apex House would not experience a diminished level of outlook arising from the construction of the current appeal scheme.
38. In addition, owing to the scale and positioning of the proposed development, it would not result in an erosion of the living conditions of the occupiers of other properties in the surrounding area.
39. I therefore conclude that the proposed development would ensure that the occupiers of Apex House would experience sufficient levels of outlook. The development, in this regard, would conform with Policies EP3 and H9 of the Local Plan. Amongst other matters, this seeks to ensure that developments should not adversely affect the amenities of neighbouring properties or the locality in general; and not adversely affect the amenities of nearby properties.

Other Matters

40. The appeal site is near to the Uxbridge Lock Conservation Area (the CA). Owing to the separation distance between the CA and the appeal site and given the variety of buildings both near to, and within, the CA, the proposed development would not result in harm to the character and appearance of the surrounding area.
41. I acknowledge that some concerns have been raised regarding the potential effects of the development upon highway safety. However, the proposed development could only be used for student accommodation. Given this, it is likely that the proposed development would be attractive for students of institutions within the nearby surrounding area.

42. In result, the occupiers of the development would be living in proximity to their academic institution and would therefore have a variety of transport methods to use. This would include walking, cycling and public transport. In result, the proposed development would not generate harm, even though the proposed development would not include car parking.
43. Although pavements are limited in the surrounding area, the nature of the appeal proposal and the presence of a large number of dwellings nearby means that intensification of the use of Willow Avenue would not result in an erosion of highway safety.
44. It has been suggested that the occupiers would generate noise. However, there is limited evidence before me that suggests that any noise would be greater than the effects arising from one of the previously permitted uses on this site. The appeal site is near to a variety of buildings with a mixture of uses and Willow Avenue serves as access to many properties.
45. This means that a notable amount of activity is likely to arise in the vicinity and, in consequence, the appeal scheme would not lead to an adverse effect upon the living conditions of the occupiers of nearby properties with regards to noise. Furthermore, a condition could be imposed regarding the management of the development.
46. Concerns have been raised regarding the need for the proposed development. However, as I have found that the proposal would not result in harm to the character and appearance of the surrounding area, or the living conditions of neighbouring occupiers, the scheme is policy compliant.

Conditions

47. In addition to the standard implementation condition, a condition specifying the approved plans is necessary in the interests of precision. Given that the appeal site is previously developed land, and the development is for a form of residential accommodation, a condition requiring the investigation and remediation of contamination is required to ensure appropriate living conditions. A further condition regarding unsuspected contamination is required for similar reasons.
48. Conditions in respect of drainage are necessary to ensure that the development does not have an adverse effect upon flood risk. Although the appeal site is relatively small, the development would result in an increase in the number of people resident at the site. In result, this is necessary to ensure that flood risk is not increased. A Sustainable Urban Drainage Management Plan is also required to minimise any increase in flood risk.
49. Given the increase in residents, and the scale of the development, a condition in respect of flood evacuation measures is necessary to ensure the safety of the occupiers of the development. In reaching this view, I have had regard to the presence of water courses near to the appeal site.
50. To maintain the living conditions of the occupiers of neighbouring properties, conditions requiring the provision and retention of refuse storage are necessary and reasonable. A further condition is required for the agreement by the Council of a Construction Traffic Management Plan. However, I have amended the wording suggested by the Council to remove references to traffic movements as this might be outside the control of the developer.

51. To maintain the living conditions of the occupiers of the neighbouring properties, a condition that would enable the Council to consider external lighting details is appropriate. For similar reasons, a condition to enable the Council to consider land levels is necessary.
52. Furthermore, in order to ensure that the development does not generate excessive noise that may impinge upon living conditions, a condition that would enable the Council to consider and approve a management plan is necessary and reasonable. Although such a condition was not attached to previous approvals, there is a likelihood that the appeal scheme would feature more residents and therefore such a condition is needed. This difference in number of residents also means that a condition in respect of flood evacuation measures is required.
53. The proposed development does not include any car parking. However, the evidence before me is clear that the planning application was submitted on the basis that it would provide accommodation for students at Brunel University London, which is relatively close to the appeal site. Therefore, to prevent a notable number of cars being brought to the vicinity of the appeal site, which may be parked inappropriately, conditions limiting the occupation of the development to students of Brunel University London only; and the submission, and agreement of a Travel Plan are necessary.
54. Given that there is a policy requirement to ensure improvements to biodiversity and ecology, conditions in respect of these areas are required. However, I am not satisfied that there is currently sufficient planning policy basis to prescribe an exact percentage increase in biodiversity.
55. In order to ensure that the development does not have an adverse effect on the character of the area, conditions in respect of external materials and landscaping are needed.
56. Some conditions need to be agreed prior to the commencement of development in order to ensure that mitigation is in place at an appropriate stage of the construction process.
57. The Council's Statement of Case included a draft schedule of conditions, which I have had regard to. However, given that the permitted development clearly relates to student accommodation that would be of permanent construction, I am not persuaded that a condition covering use outside of term time is needed.
58. Given the layout of the proposed development and its relationship with the neighbouring properties, I do not believe that there are exceptional circumstances to justify limiting the installation of further windows. The submitted plans also clearly define the proposed development. Therefore, a condition in respect of architectural detailing is not needed.

Conclusion

59. For the preceding reasons, I conclude that the appeal should be allowed and planning permission granted, subject to conditions.

Benjamin Clarke

INSPECTOR

APPEARANCES

For the appellant:

Anjoli Foster	Landmark Chambers
Innes Gray	Visao Ltd
Nairita Chakraborty	Townscape Consultant

For the Local Planning Authority:

Helen Braine	Buckinghamshire Council
Rachel Marber	Buckinghamshire Council
Yeun Wong	Buckinghamshire Council

Interested Parties:

Derek Wilson	Denham Parish Council
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Document submitted at the hearing:

Summary of student numbers at Brunel University London

Document submitted after the hearing closed:

Updated draft Statement of Common Ground

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development shall be carried out in accordance with the following approved plans: 00-2E Ground Floor; 00-3F First Floor; 00-4G Second Floor; 00-5B Roof Plan; 9-2 (D) Building Footprint USE comparisons; 9-6(B) Site Layout Scale Bar GRD Floor; 9-9(B) 1st Floor Site Layout with footprint comparison; 9-10(C) 2nd Floor Site Layout with footprint comparison; 21-1 (M) Elevations; and 21-3(B) Elevations defined.
3. Prior to the commencement of the development hereby permitted, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to, and approved in writing, by the Local Planning Authority:
 - A) A preliminary risk assessment which has identified.
 - All previous uses;
 - Potential contaminants associated with those uses;
 - A conceptual model of the site including sources, pathways and receptors; and
 - Potentially unacceptable risks arising from contamination at the site.
 - B) A site investigation scheme, based on A) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. This should include an assessment of the potential risks to; human health; property (existing and proposed), including buildings, crops, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monument.
 - C) The site investigation results and detailed risk assessment B) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - D) Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relation to exported and imported soils shall be submitted to, and approved in writing, by the Local Planning Authority. The approved monitoring and maintenance programme shall be implemented in full.
4. In the event that contamination not previously identified is found at any time when carrying out the development hereby permitted, this contamination must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 3, which is subject to submission to, and approval in writing, by the Local Planning Authority. Following the completion of measures identified in the approved remediation scheme a verification report

must be prepared, submitted to, and approved in writing, by the Local Planning Authority, in accordance with Condition 3. The development shall be carried out in accordance with the approved remediation scheme verification report.

5. No development shall commence (other than demolition) until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall include the following details:

- Water quality assessment demonstrating that the total pollution mitigation index equals or exceeds the pollution hazard index; priority should be given to above ground SuDS components.
 - Existing and proposed discharge rates and volumes
 - Full construction details of all SuDS and drainage components
 - Detailed drainage layout with pipe numbers, gradients and pipe sizes complete, together with storage volumes of all SuDS components
 - Calculations to demonstrate that the proposed drainage system can contain up to the 1 in 30 storm event without flooding. Any onsite flooding between the 1 in 30 and the 1 in 100 plus climate change storm event should be safely contained on site.
 - Details of proposed overland flood flow routes in the event of system exceedance or failure, with demonstration that such flows can be appropriately managed on site without increasing flood risk to occupants, or to adjacent or downstream sites.
- i) Flow direction

The development shall be carried out in accordance with the approved surface water drainage scheme, which shall be fully implemented prior to first use of the development and retained thereafter.

6. No above ground level works shall commence until details of biodiversity features of native planting, two integrated bat boxes and two bird boxes to be incorporated into the building shall have been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved biodiversity features, which shall have been installed prior to the first occupation of the development and retained thereafter.
7. No above ground level works shall commence until a Biodiversity Net Gain Plan (BNGP) has been submitted to and approved in writing by the Local Planning Authority. The BNGP shall include the following:
 - A description and evaluation of the application site and its features as at the date of grant of planning permission (required base-line);
 - A BNG calculation (including the related methodology) in respect of the development hereby permitted to achieve an overall biodiversity net gain
 - A Biodiversity management plan which outlines measures to ensure the management and maintenance of the BNG for at least 30 years.

The development shall be carried out in accordance with the BNGP. Thereafter it shall be managed and maintained in accordance with the approved details.

8. No development shall commence (including any works of demolition and ground works) until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority.

The CTMP shall include details of the following matters in relation to the construction for that relevant part:

- Use of a banksman;
- operating times of construction traffic movements;
- site hours of operation;
- construction compounds and storage and dispensing of fuels, chemicals, oils and any hazardous materials (including hazardous soils);
- location of parking, loading and unloading areas;
- wheel and chassis cleaning mitigation and suppression of dust, vibration, noise and general disturbance (including to residential amenity) and measures to monitor the same;
- location and specification of temporary lighting; and
- location, design, material and scale of hoarding.

The construction of the development permitted shall be carried out in accordance with the approved CTMP.

9. No development above ground level shall commence until full details of external materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained thereafter.
10. No development above ground level shall commence until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority.

The details shall include (but not be limited to the following):

- indications of all existing trees and hedgerows, and details of any to be retained, together with measures for their protection;
- boundary details and means of enclosure;
- hard surfacing areas (e.g. surfacing materials) and their permeable qualities, including details of short term visitor parking/maintenance/deliveries; and
- planting plans including details of schedules or plants noting species, planting sizes and proposed numbers/densities.

The approved scheme shall be implemented so that planting is carried out no later than the first planting season following the first occupation of the building, or the completion of the development, whichever is the sooner. All planted materials shall be maintained for five years and any trees or plants removed, dying, being damaged or becoming diseased within that period shall be replaced in the next planting season with others of similar size and species to these originally required to be planted.

11. Prior to first occupation of the development hereby approved details of the day-to-day management of the student accommodation permitted will be submitted to and approved in writing by the Local Planning Authority.

The details as approved shall be brought into effect upon first occupation of the development and remain in place at all times.

12. Prior to first use of the development, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented upon first occupation of the development and subject to review as per details to be set out within the approved Travel Plan.

13. Prior to the first occupation of the development a SuDs whole-life maintenance plan shall be submitted to and approved in writing by the Local Planning Authority.

The plan shall set out how and when to maintain the full drainage system (including a maintenance schedule for each drainage/SuDS component), with details of who is to be responsible for carrying out the maintenance.

The plan shall also include as as-built drawings and photographic evidence of the drainage scheme. The development shall thereafter be carried out in accordance with the approved plan.

14. Prior to first occupation of the development hereby permitted details of external lighting shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- outline maximum luminance;
- detail location, height, type and direction of light sources and intensity of illumination; and
- details of the lights to be switched off/ and or dimmed at night including times.

The development shall be carried out in accordance with these approved details and retained thereafter.

15. The proposed residential accommodation hereby approved shall be occupied as Student Accommodation for the Brunel University London only, and for no other purpose.

16. Prior to first occupation of the development hereby permitted a waste management plan setting out how waste will be stored and collected shall be submitted to and approved in writing by the Local Planning Authority. The measures shall thereafter be implemented in accordance with the approved waste management plan and retained thereafter.

17. Prior to first occupation of the development hereby permitted a flood resilience plan for the accommodation, including measures to warn future occupants of potential flood events and evacuation procedures, shall be submitted to and approved in writing by the Local Planning Authority. The flood resilience plan shall subsequently be provided to all future occupants of the building.

18. No works or development shall take place until details of the proposed finished floor levels of the building; and of finished ground levels in relation to the surrounding properties; have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented and retained in accordance with these approved details.