



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: 24 January 2024

Appeal A: Ref: APP/N0410/W/23/3317519

Land to the rear of St Mary's Road, Denham UB9 6JU

- 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 outline planning permission.
 - The appeal is made by Mr Lakhvir Ghuman of GG Homes Ltd against Buckinghamshire Council.
 - The application Ref PL/22/3538/OA, is dated 10 October 2022.
 - The development proposed is described as Demolition of existing dilapidated garage and construction of 8 Flats.
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Appeal B: Ref: APP/N0410/W/23/3317530

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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. Each appeal relates to separate proposals on the same site. The proposals, the Council's reasons it stated it would have refused permission, the appellant's grounds of appeal, and the circumstances of each proposal raise similar issues for my consideration. It is the footprint, layout and form of the buildings that differ. While I have considered each appeal on its own merits, to avoid duplication I have dealt with them together, except where otherwise indicated.
4. The appeal site is the subject of two other appeals¹. The appeals are not being considered together with these proposals because they are applications for materially different proposals. However, as Inspector for those appeals, I am aware of their details and will have regard to them as appropriate.

¹ Refs APP/N0410/W/23/3316251 and APP/N0410/W/22/3309449.

5. Both applications are made in outline with approval sought for access, layout and scale. Appearance and landscaping are reserved for future approval. Therefore, insofar as they relate to appearance and landscaping, I have considered the submitted plans as indicative only.
6. The appeals have been submitted due to the failure of the Council to give notice of their decisions within the prescribed time period. The Council subsequently advised it would have refused the applications and set out putative reasons for refusal. It states it would have found the proposals harmful to the character and appearance of the area, the living conditions of neighbouring occupiers, to highway safety, and it had not been demonstrated drainage was feasible so as to ensure resilience and resistance to the risk of flooding. I have had regard to these matters in setting out the main issues.
7. In respect of the second putative reason for refusal as specific properties are not named, I have had regard to what I saw at my visit and the evidence before me in setting out the properties in the relevant main issue below.
8. The Council did not object to the proposals 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 the appeals.
9. Since the appeals were 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 the Appellant the opportunity to comment upon these matters and taken these into account in determining these appeals.

Main Issues

10. The main issues for Appeal A and Appeal B are:

- whether or not the proposed developments are compliant with policies in respect of flood risk;
- the effect of the proposed developments upon highway safety;
- the effect of the proposed developments upon the character and appearance of the area; and,
- the effect of the proposed developments upon the living conditions of the occupiers of Nos 25, 27, 29 and 31 Green Tiles Lane and Nos 6, 8 and 10 Penn Drive with particular reference to outlook and privacy.

Reasons

Flood risk

11. 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.

12. 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.
13. 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. These developments are of a more vulnerable classification, the type for which an ST is required, but no ST is submitted.
14. 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.
15. 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.
16. Given the aims and purposes of flood risk policy and the ST, I am not satisfied the measured groundwater level is comprehensive for the 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.
17. 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.

18. 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.
19. Therefore, for the reasons set out above, the proposed developments subject of Appeal A and Appeal B are not compliant with Framework policies in respect of flood risk. They conflict with the aims of paragraphs 165 and 167 – 169 of the Framework, the relevant provisions of which are set out above.

Highway safety

20. Policy CP7 of the CS and TR5 of the South Bucks Local Plan (adopted, 1999, consolidated 2007 and 2011) (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).
21. The Highway Authority (HA) advises the CPG expects the developments result in a requirement for approximately 16 spaces, 7 more than shown in the layouts. 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.
22. The aim of undertaking a Lambeth methodology 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 not accurate at that time. It showed parking stress levels were between approximately 41% – 48% within 200m of the site.
23. The HA's 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.

24. 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 Lambeth 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.
25. 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 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.
26. A further approximately 7 vehicles would significantly 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 7 cars on the highway 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. That additional vehicle numbers might be able to be accommodated in the wider vicinity would not mitigate this. I am not satisfied that planning conditions could mitigate the harm.
27. The pre-application advice is not a formal decision of an authority, and there is evidence of likely harmful effects because of the 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, so I attribute this matter limited weight.
28. 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 developments, so this attracts limited weight.
29. For the reasons set out above the proposed developments subject of Appeal A and Appeal B would be likely to have a significantly adverse effect upon and give rise to conditions prejudicial to highway safety. Therefore, they 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. They 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.

Character and appearance

30. 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.
31. Part of the northwest corner of the site and access back onto what appears to be 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.
 32. 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, currently means the appeal site is not particularly conspicuous, and makes a largely neutral contribution to the character and appearance of the area.
 33. Notwithstanding the differences between the schemes both proposed developments would result in a sizeable two storey building (one with roof accommodation) of a significant bulk, mass and scale. The appeal scheme A building would only be approximately 3 – 3.5m from the boundaries on three sides and part of the length of its remaining side. Though it would have a much more spacious relationship with the western boundary, the appeal scheme B building would only be approximately 3m – 3.5m from its boundaries on three of its orientations.
 34. By virtue of the close proximity of these sizeable buildings to the boundaries on multiple sides, both schemes would be harmfully at odds with the surrounding character and appearance. Though they exhibit good space on some elevations or parts of elevations, this and the limited scope for meaningful landscaping on some sides, including having regard to the living conditions of future occupiers, could not mitigate the harmful effects. They would be visible as discordantly cramped developments in the context of its surrounds, which would not respond positively to, and be significantly harmful to the character and appearance of the area.
 35. Most roofs in the area are largely uncluttered, with only one example of quite large dormers on a building to the northwest. The proposed appeal scheme A dormers would be significantly smaller with pitched roof forms, and there would also be a number of rooflights. This is not reflective of those within its visual context, so would appear somewhat strident. The extent of the large amount of glazing around first floor balconies are not a characteristic feature of the area and would give the impression of somewhat intense and complicated elevations. The appeal scheme B building would incorporate several particularly large window openings along much of its elevations, which would add to the appearance of a cramped form of development.

36. The aforementioned aspects of the design elevations would add to the incongruent and somewhat cramped appearance of both appeal buildings. Even if such features could be altered sufficiently to mitigate the harm within the scope of reserved matters submissions in relation to 'appearance' for each scheme, this could not mitigate the other harmful aspects of the schemes.
37. The visibility of the harm would be visible when entering the appeal site. Outside it the visibility would vary for each appeal scheme. The harm from appeal scheme A would be visible from between some buildings on Penn Drive, Green Tiles Lane and St Mary's Road, but particularly visible from a number of neighbouring properties to the east and west. The harm from appeal scheme B would be visible from between a number of buildings on Green Tiles Lane and be particularly visible from a number of neighbouring properties to the east. Given the scale, footprint and position of the buildings, the imposition of suitably worded planning conditions could not mitigate the harmful effects.
38. Therefore, for the reasons set out above, the proposed developments would be significantly harmful to the character and appearance of the area. They would conflict with Policies EP3 and H9 of 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 layout, spacing and siting of buildings. The developments would conflict with paragraphs 131 and 135 of the Framework and section C1 of the National Design Guide (2021) which have similar objectives. They 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.
39. 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 appeal statement, but these are not referred in the first putative reason for refusal. Therefore, I have not concluded against the policies.

Living conditions

40. Policies EP3 and H9 of the LP expect that 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. It 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.
41. The appeal schemes would result in distances of between 33m – 40m to the rear façades of Nos 25 – 31 Green Tiles Lane and a minimum of 23m to the rear facades of Nos 6 – 10 Penn Drive. 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 rear boundaries is of a limited screening effect. Even allowing for the retention of the approximately 3m high rear garage walls, some long relatively high new facades would be approximately 3 – 3.5m from certain boundaries, meaning the new first floor windows would be largely unscreened.

42. The proximity and direct visibility from the first and/or second floors would mean a significant proportion of the gardens of Nos 25 – 31 and 6 – 10 would have little privacy from several habitable rooms and primary living spaces of the new buildings. Most affected areas would be rear parts of what are some relatively long garden spaces, although these are the areas that are currently least overlooked. Given the proximity to the boundaries 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 neighbouring occupiers.
43. The site layouts and the proposed forms, height, width and scale of the respective buildings would result in a very large mass and bulk of respective buildings in very close proximity to the boundaries across much or all of the width of various boundaries. Due to this the proposed development would appear rather overbearing, with an adverse effect upon the outlook from a significant proportion of a number of garden spaces of neighbouring properties.
44. The harmful effects in respect of privacy and outlook for appeal scheme A would be to the occupiers of Nos 25, 27 and 29 Green Tiles Lane and Nos 6, 8 and 10 Penn Drive. For appeal scheme B there would be harmful effects to the occupiers of Nos 25, 27, 29 and 31 Green Tiles Lane with reference to outlook and privacy.
45. 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, so I do not find a conflict with the relevant policies in this regard. However, this does not mitigate the other harm I have found.
46. For the reasons set out above, the proposed developments would harmfully affect the living conditions of the occupiers of the aforementioned properties on Green Tiles Lane and Penn Drive 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.

Other Matters

47. The Council has not objected to the proposal in respect of the setting of Green Tiles as a Non-Designated Heritage Asset (NDHA), based upon the provision of suitable landscape screening. Were it to have been demonstrated this would be achievable, it would be a neutral matter. Notwithstanding Policy CP3 of the CS, due to the Framework not requiring affordable housing provision for non-major development, the Council is of the view provision should not be sought, and there is no substantive evidence that would lead me to an alternative view.
48. The Council has questioned whether the proposed development would result in adequate daylight or be harmful in respect of the levels of overshadowing in the gardens of existing neighbouring properties, but this is not directly referred to in its putative reason for refusal. Therefore, 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

49. 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.
50. The proposals 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 South Bucks area can only demonstrate a 1.3-HLS. On this basis, localised need could be considered acute, so the delivery of 8 dwellings on this previously developed site would be a benefit that attracts significant weight.
 51. Despite the limited scope for landscape provision, given its current condition, it is likely the proposed developments could achieve significant biodiversity net gain compared to the existing. However, given its relatively low current value and the limited scope for future enhancements within the schemes, at best the level of gain and resultant benefits from biodiversity and landscaping is likely to be of a magnitude that attracts moderate weight. There might be some limited benefit from clearing up to prevent vermin inhabitation.
 52. Were I to agree the proposals would be compliant with policies such as those in respect of the principle, accessibility and location of development, the living conditions of future occupiers, and other living conditions of neighbouring occupiers not assessed under the main issue above, the control of effects during construction, arboricultural matters, aerodrome policies, refuse and recycling storage and collection, and the setting of NDHAs, these would be neutral matters in the balance. The policy compliance and benefits of the developments attract significant weight in favour of the appeal scheme.
 53. Based upon the substantive evidence before me, the proposed developments conflict with national flood risk policies. This is an important matter to which I attribute substantial weight. The developments would be harmful to the character and appearance of the area and would also 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 schemes.
 54. There would be conflicts with policies in respect of the living conditions of neighbouring occupiers. The wording of the policies set a modest bar in terms of the thresholds for effects. Having regard to the nature of the harms for appeal scheme A, I attribute the harm limited weight in respect of privacy and outlook for the occupiers on Green Tiles Lane. Due to the shorter gardens, I attribute moderate weight to the harm to outlook for the occupiers on Penn Drive. For appeal scheme B the harms in respect of privacy and outlook attract limited weight.
 55. Overall, although they differ in a limited way, I conclude the magnitude of the harms and the degree of policy conflicts for each respective appeal scheme are such that overall, these significantly outweigh the policy compliance and benefits of each respective appeal scheme. Therefore, the appeals should not succeed.

Conclusion

56. For the reasons set out above, the proposals subject of appeal scheme A and appeal scheme B are 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 appeals should not succeed.

Dan Szymanski

INSPECTOR