



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 Ref: APP/N0410/W/23/3316251

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/22/3539/OA, is dated 10 October 2022.
 - The development proposed is described as Demolition of existing dilapidated garage and construction of 4 semi-detached dwellings and 3 flats.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site is the subject of three other appeals¹. The appeals are not being considered together with this one because they are the subject of different applications for materially different proposals, with some differing issues for consideration. As Inspector for the other three appeals, I am aware of the case details and will have regard to them as appropriate.
3. The application is 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.
4. The appeal has been submitted due to the failure of the Council to give notice of its decision within the prescribed time period. The Council subsequently advised it would have refused the application and set out putative reasons for refusal. It states it would have found the proposal harmful to the character and appearance of the area, the living conditions of neighbouring and future occupiers, to highway safety, and it had not been demonstrated adequate provision for the storage and collection of refuse, or that 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.
5. 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 issues below.

¹ Refs. APP/N0410/W/22/3309449, APP/N0410/W/23/3317519, APP/N0410/W/23/3317530.

6. 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.
7. The Council made substantive submissions in respect of refuse collection and storage at the final comments stage. As some of the observations constitute new evidence, in accordance with the Planning Appeals Procedural Guide (2024)² I have not had regard to them in determining this appeal.
8. 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 the Appellant the opportunity to comment upon these and taken them into account in determining this appeal.

Main Issues

9. 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 highway safety;
 - whether or not the proposed development could secure suitable provision for the storage and collection of waste;
 - 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 and Nos 6, 8 and 10 Penn Drive in respect of outlook; and,
 - the effect of the proposed development upon the living conditions of the occupiers of Nos 29 and 31 Green Tiles Lane and the future occupiers of the proposed development in respect of privacy.

Reasons

Flood risk

10. 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.
11. 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

² Paragraph 9.5.7.1.

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.

12. 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). However, 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. The development is of a more vulnerable classification, a type an ST is required, but one is not submitted.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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.

Highway safety

19. 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).
20. The Highway Authority (HA) advises the CPG expects the proposal would result in an overall requirement of 11 spaces, 3 more than shown within the site layout. Moreover, many spaces shown are of a substandard size, so in practice there may be more off-site spaces required. The appellant does not appear to dispute the number of spaces. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. A further approximately 3 – 5 vehicles would exacerbate localised parking stress, resulting in a markedly greater potential for user conflicts, and conditions prejudicial to highway safety. In the appellant's early morning survey period the adverse effects may be more limited. Though 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 accommodated in the wider vicinity would not mitigate this. I am not satisfied that conditions could mitigate the harm.
26. Some of the on-site spaces are clearly deficient from CPG expected sizes, including parallel spaces, and the southern bays are deficient in width and manoeuvring space. The likely resultant increased manoeuvring, including delivery or emergency vehicles within the site and the potential difficulty in them being able to leave in a forward gear could result in increased user conflict and highway safety concerns within the site and on the public highway.
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 development, so this attracts limited weight.
29. 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. It would conflict with the aims of Policy 17 of the LTP, Guidance 1, 5 and 20 of the HDMG and 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.

Waste storage and collection

30. The scheme layout provides an indication of a waste storage area, which the Council suggests is for the flats. The appellant does not appear to dispute this.

Whether or not it is for the flats or development as a whole, the appellant's evidence does not demonstrate it is sufficient. If the bin storage is only for the flats, given the limited space around the four dwellings, modest private outdoor space and cycle parking, it is by no means clear where bin storage would be provided for the houses and the distance of this to the collection point.

31. If the total space necessary were to be larger than indicated this could impact upon the ability to provide parking and circulation space, which already appears not to meet CPG standards. As layout is a matter not reserved for future consideration and in-light of the effects of bin storage in determining the acceptability of the proposal, it is important sufficient information is provided and it is demonstrated that storage can be satisfactorily and safely provided.
32. The bin collection location is on the access road, this would be a considerable distance from the detached dwellings. Given it appears in a similar location to other schemes, it is not clear why the Council has expressed concerns over the pick-up point for this particular appeal scheme only. Subject to the area being designated and ensuring a vehicle can pass, it is unlikely to result in harm. Nevertheless, further information on layout and on-site storage is necessary.
33. Having regard to the scope of suitably worded planning conditions to secure enclosed storage, it is not demonstrated by the Council that refuse storage could result in harmful living conditions to future and neighbouring occupiers. However, given the potential implications for the site layout and its safe and satisfactory operation, there is a clear potential for an unsatisfactory layout, user conflicts and harm to arise.
34. For the reasons set out above, the proposal would not secure suitable provision for the storage of waste having regard to highway safety within the site. This would conflict with the aims of Policies EP3 and H9 of the LP, which in combination, aim to ensure development provides a satisfactory layout that preserves the amenities of the area including through impacts from traffic.

Character and appearance

35. The appeal site includes approximately 42 disused garages surrounding a sizeable circulation area. On much of three of its sides it is surrounded by the 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.
36. 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.
37. 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 are in 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.
38. The layout of the proposal would result in a sizeable elevation of the proposed flatted building very close to the eastern site boundary and a tall gable elevation close to the site entrance with little scope for and means of landscaping. Therefore, the development would appear rather dominant, cramped and austere, markedly at odds the spacious character and appearance of the surrounding area.
39. The proposed second-floor house dormers would not be characteristic of many nearby roofscapes. However, the 2.5 storey mixed use building includes several large dormer windows. It is a prominent presence that would have a clear intervisibility with the proposed dormers. As a matter of judgement, the new dormers may add some clutter, but would not be out of keeping with the character and appearance of the area as a whole. However, they would add a visible additional floor to a pair of buildings which range from between approximately 1.8m to 4.45m from part of three surrounding site boundaries. Given the limited spacing to the boundaries and an additional visible storey, this would result in a cramped and somewhat bulky appearance that would be harmful at odds with the prevailing character and appearance of the area.
40. The harm would have limited visibility between buildings on Penn Drive, Green Tiles Lane and St Mary's Road, but would be clearly visible when entering the appeal site and from a number of neighbouring properties to the east and west. Though conditions including in respect of reserved matters submissions for details such as landscape and appearance could be imposed, these could not mitigate the harmful effects from the scale and layout of the proposal.
41. Therefore, for the reasons set out above, the proposed development would be harmful to the character and appearance of the area. It would conflict with Policies EP3 and H9 of the LP and Policy CP8 of the CS. In combination and amongst other things these policies 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 layout and siting of buildings. The development would conflict with paragraphs 131 and 135 of the Framework and section C1 of the National Design Guide (2021) which have similar objectives. 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.
42. 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 them.

Living conditions – outlook

43. 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.

44. The distance from the rear windows of neighbouring properties is significantly above the RDG guidance. Given their height, width, and distance, the new buildings would not have a materially adverse effect upon the living conditions of neighbouring occupiers when viewed from the existing dwelling windows. However, the height, width, scale and site layout would result in large mass and bulk of buildings close to the boundaries of the rear gardens of dwellings on Green Tiles Lane and Penn Drive.
45. The flatted building would be particularly close to the boundary with a largely blank wall save for one small window. One of the side elevations of each of the semi-detached houses would also be close to the site boundaries, with large gable walls of a significant height and depth. Given the height, width, scale, and proximity to the neighbouring gardens, the proposal would appear rather overbearing, having an adverse effect upon the outlook from a sizeable proportion of a number of garden spaces. Conditions could not mitigate this.
46. Therefore, for the reasons set out above, the proposed development would harmfully affect 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. This would conflict with Policies EP3, EP5 and H9 of the LP, the relevant provisions of which are set out above.

Living conditions – privacy

47. The RDG guidance of a minimum of 21m is for back-to-back relationships between buildings. It states greater distances will be required where a lack of existing screening allows extensive views over the existing properties. The proposal would result in a distance of approximately 40m to the rear façades of Nos 29 and 31 Green Tiles Lane. However, the proposal would result in a large high building with the vegetation in proximity to the rear boundaries of a limited screening effect.
48. Allowing for the retention of the approximately 3m high rear garage walls there would be some visibility of rear garden spaces from first floor windows. However, the visibility from most would be oblique. Those dwellings that would have a direct facing view from habitable rooms would only directly face the ends of what are relatively long garden spaces. The proximity to the boundary, number of habitable rooms that would have visibility over a limited proportion of the gardens, would have a limited adverse effect in respect of the perceptual and actual level of privacy for occupiers of Nos 29 and 31 Green Tiles Lane. It is not demonstrated this matter could be satisfactorily mitigated by conditions.
49. I am not pointed towards any specific advice the RDG contains for front to front facing properties. Frontage areas often do not have a high degree of privacy. The appeal proposal would result in approximately 12m between front facing elevations. This distance is similar to the likely distances that would result from an occupier close to the end of a rear garden facing towards the

neighbouring opposite window in the back-to-back example of 21m, suggesting the level of privacy afforded may not necessarily be uncommon.

50. The appeal proposal would result in some degree of direct intervisibility between new habitable room windows of the new houses. However, during the day internal spaces are often darker than the outside light, which limits visibility. During darker hours it is not uncommon or unreasonable to expect window coverings to be utilised to provide privacy. As a matter of planning judgement, the proposal would not result unsatisfactory living conditions to the future occupiers of the new development in respect of privacy.
51. For the reasons set out above the proposed development would not result in harmful living conditions to the future occupiers of the new development in respect of privacy. There would be some adverse effect upon the living conditions of the occupiers of Nos 29 and 31, in conflict with the relevant provisions of Policies EP3, EP5 and H9 of the LP. However, the effect would be limited, which is a matter to be weighed in the overall planning balance.

Other Matters

52. 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.
53. The Council has questioned whether the proposed development would result in adequate daylight or be harmful in respect of overshadowing, but these are not directly referred to in its putative reasons for refusal. As I am dismissing this appeal for other substantive reasons, and they are not benefits advanced, I have not considered these matters in detail.

Planning Balance

54. 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.
55. 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 South Bucks area can only demonstrate a 1.3-year HLS. On this basis, localised need could be considered acute, so the delivery of 7 dwellings on this previously developed site would be a benefit that attracts significant weight.
56. Despite the limited scope for landscape provision, 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 limited scope for future enhancements within the scheme, 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.

57. Compliance with policies for the living conditions of future occupiers is a neutral matter. 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 other living conditions neighbouring occupiers not assessed above, the control of effects during construction, arboricultural matters, waste collection, drainage provision, 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.
58. 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 be harmful to the character and appearance of the area. It would also be prejudicial to highway safety in conflict with the LTP and relevant guidance, and conflict with policies to ensure adequate refuse storage. Based upon the evidence before me, the magnitude of these harms is such that they each attract moderate weight against the scheme.
59. 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, I attribute the harm moderate weight in respect of outlook and very limited weight in respect of privacy.
60. Overall, the magnitude of the harms and the degree of policy conflicts are such that these outweigh the policy compliance and benefits of the development. Therefore, the appeal should not succeed.

Conclusion

61. For the reasons set out above, 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