
Appeal Decision

Site visit made on 27 February 2024

by Philip Mileham BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2024

Appeal Ref: APP/T0355/W/23/3321814

29 Slough Road, Datchet, SLOUGH, SL3 9AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Setplan Town and Environmental Consultants against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 22/01737.
 - The development proposed is the retention of existing dwelling and new building accommodating 6 x 2 bedroom flats, access route, car parking and landscaping on land to the rear.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, the Government has published an updated National Planning Policy Framework (The Framework) in December 2023. As such, the parties have been given the opportunity to comment on any changes which may be relevant to the appeal.
3. The Council has referred to a number of policies from the emerging Datchet Neighbourhood Plan (DNP) in the decision notice. At the time the Council determined the original application, the DNP had not been subject to its formal referendum or formally made by the Council. The DNP was subsequently subject to referendum on 4 May 2023 and made by the Council on 27 June 2023. As a result, the relevant policies are afforded full weight in my decision.

Main Issues

4. The main issues are:
 - Whether the proposal would be in a suitable location for residential development having regard to flood risk, including the provisions of the sequential and exceptions tests;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of the occupiers of Nos. 28 and 29 Ruscombe Gardens;
 - The effect of the proposal on nearby trees;
 - Whether the proposal would secure sufficient biodiversity net gain and avoid harm protected and priority species; and

- Whether the proposal complies with adopted policy having regard to climate change.

Reasons

Flood risk and the sequential test

5. The appeal proposal seeks the erection of six 2 bedroom flats to the rear of No. 29 Slough Road. The site is located within Flood Zone 3a which is identified as being at high probability of flooding, and the Planning Practice Guidance (PPG) indicates that residential development is a more vulnerable use.
6. The Framework indicates that sites within Flood Zone 3 should be considered in accordance with the sequential approach to ascertain whether suitable alternative sites are available at lower risk of flooding and following this, the exceptions test would be required. The PPG indicates that the area to apply the sequential test will be defined by local circumstances¹. The appellant's area of search for the sequential test was within the settlement boundary of Datchet village and sought to identify sites including any remaining site allocations or land identified in the Housing and Economic Land Availability Assessment. This resulted in 7 sites being considered in the submitted sequential test.
7. The submitted sequential assessment includes at paragraph 2.1 a number of search criteria which were used to identify sites which then discounted sites that the appellant deemed were too large or were in a similar flood risk zone. However, I find the appellant's search criteria and area of search to be unduly restrictive having regard to the site typology sought, the size of the village and the extent of land at risk of flooding in Datchet. As a result, I do not find the approach to the sequential assessment to be acceptable. As a result, there is considerable uncertainty whether there are reasonably available sites elsewhere in the Borough that would be at lower risk of flooding. Therefore, the sequential test has not been satisfied in this instance. As I do not find the sequential test to have been passed, it is not necessary for me to go on to consider the exceptions test.
8. Notwithstanding the above, Policy NR1(6) of the Royal Borough of Windsor and Maidenhead Borough Local Plan (2022) (the BLP) requires proposals to be constructed with adequate flood resilience and resistance measures for the lifetime of development. The proposal would include living accommodation at ground floor level which the submitted Flood Risk Assessment (FRA) indicates would have a finished floor level set at approximately 18.90 metres Above Ordnance Datum (AOD). However, this would be below the design flood level (1% annual probability incorporating 35% allowance for climate change) which would be approximately 19.38 metres AOD. The proposed use of a flood door would provide a level of approximately 19.50 metres AOD. However, the PPG indicates² that flood resilient construction would be appropriate where there would be a short duration of flooding with a water depth up to approximately 0.6 metres, whereas the FRA indicates design flood levels would be approximately 1.08 metres Above Ground Level (AGL). The PPG also states that such flood resistance measures are unlikely to be suitable as the only mitigation measure to manage flood risk. Whilst the list of circumstances in the PPG where this would be appropriate is not exhaustive, there is no clear

¹ Paragraph: 027 Reference ID: 7-027-20220825

² Paragraph: 068 Reference ID: 7-068-20220825

indication that such measures should be utilised as the only measure where more vulnerable uses such as residential development are proposed.

9. The proposed development would incorporate under floor voids to offset the increase in built development in the floodplain. However, the PPG indicates that these should not normally be relied upon for compensating for any loss of floodplain storage. The proposed voids would not be sufficient to address the design flood level and consequently do not provide adequate demonstration that flood risk would not be increased elsewhere, contrary to Policy NR1(6)(c) of the BLP.
10. Paragraph 9.1 of the FRA indicates that in the event of a flood, ground floor occupants could choose to evacuate the area. However, having regard to the potential depth of a design flood level of 1.08 metres AGL, there is no evidence before me that there would be a safe egress route for future occupiers that would not be liable to flooding as required by Policy NR1(6)(e) of the BLP or paragraph 173(e) of the Framework.
11. I therefore conclude that the proposal would not be in a suitable location for residential development having regard to flood risk, including the provisions of the sequential and exceptions tests. Consequently, it would fail to accord with Policy NR1 of the BLP which states, amongst other things, that development proposals will only be supported where it is designed to ensure that flood risk from all sources of flooding is acceptable in planning terms and should not increase the number of people, property or infrastructure at risk of flooding.
12. The proposal would also fail to accord with paragraph 173 of the Framework for the reasons set out above.

Character and appearance

13. The area is characterised by principally large detached two storey residential dwellings set back from the road frontage with the dwellings on Slough Road having long rear gardens. The dwellings in the vicinity of the appeal site in Slough Road are predominantly finished with brick and render with hipped roofs, with some nearby properties incorporating pitched front gables. The site is also adjacent to Ruscombe Gardens which is a more recent development principally comprise two storey detached properties with pitched roofs which differ from the dwellings on Slough Road.
14. The appeal proposal would result in the development of a new building containing six flats and would be sited to the rear of No. 29 Slough Road. The proposal would introduce new built development to rear of the building line along this side of Slough Road, and there is no evidence before me of any dwellings located beyond the rear building line. As a result, the proposal would fail to accord with the prevailing grain of development along Slough Road. Whilst the proposal would not be highly visible from Slough Road, glimpsed views would be possible when looking along the proposal's access driveway. Furthermore, the proposal would also fail to have any relationship to the pattern of development in the adjacent Rushcombe Gardens. As such, it would result in a harmful addition to the street scene.
15. The proposal's design would have white rendered walls and an architectural style which the appellant describes as referential to 'Old Bridge House' located elsewhere in the village. However, Old Bridge House is located on a corner plot

in a prominent position and surrounded by a number of properties which have bay windows and light-coloured exterior finishes. Although there are a mix of architectural styles in the village, the properties along Slough Road have a more consistent character utilising brick external finishes as set out above. Furthermore, the appeal proposal's semi-circular bay windows and light finish would appear stark and discordant with the nearby properties and would therefore be out of keeping with the prevailing character of the area.

16. The appeal proposal would have a flat roof which would be in distinct contrast to the architectural style of the nearby properties on Slough Road which predominantly have steep hipped roofs. The proposal would be around 6.6 metres in height and would be around 32.5 metres in width which would span almost the complete width of the plot. As a result, it would introduce a significantly bulky building into a back land location. As a result, I find that the scale of the proposal along with the extent of flat roof would appear incongruous, particularly when viewed from Slough Road.
17. In light of the above, I conclude that the proposal would be harmful to the character and appearance of the area. Consequently, it would fail to accord with Policy QP3 of the BLP, Policy DAT2 of the DNP and principles 6.5, 6.11 and 7.6 of the Borough Wide Design Guide Supplementary Planning Document (2020) (SPD) which seek to, amongst other things, respect and enhance the local character of the environment, demonstrate high quality design, respond to the size, shape and rhythm of surrounding plots, respond positively to existing layouts and integrate well with existing bulk and massing of existing buildings.
18. The proposal would also fail to accord with paragraph 135 of the Framework which seeks to ensure proposals are sympathetic to local character including the surrounding built environment.

Living conditions

19. The proposed development would be located close to Nos. 28 and 29 Ruscombe Gardens and would be sited around 5 metres from the site boundary. The side elevation of Number 28 is itself located in close proximity to its rear garden boundary. Although the appeal site level appears slightly lower than the properties at Ruscombe Gardens, the proposal's overall scale and massing close to the boundary would result in a sense of overbearing for occupiers of Nos.28 and 29, particularly when utilising their rear outdoor space. However, the proposed privacy planting along the northern site boundary would reduce the extent of overbearing which would go some way to reducing its effect. However, due to the scale of the proposal as set out above, this would not be sufficient to fully mitigate the effect of overbearing.
20. In respect of privacy, the proposed development has tall windows at ground and first floor level in the northern flank elevation. The appellant has indicated there are no windows lighting habitable rooms in the dwellings on Ruscombe Gardens facing the proposed building. Nonetheless, the proximity and scale of the proposed windows would still result in the potential for perceived overlooking of the rear gardens rear garden of No.29 particularly from the flat at first floor level. However, the windows in the north side elevation could be subject to a planning condition to ensure they remained obscured glazed and fixed. Therefore, whilst I find harm due to overbearing, the harm to the living

conditions of No.29 in respect of privacy could be mitigated through the imposition of conditions.

21. The proposal includes a parking forecourt and a number of parking spaces which would be in line with No.29 Ruscombe Gardens. Despite the proposed evergreen tree planting along the boundary, the siting of the proposed access in close proximity to the boundary would result in noise and disturbance to the occupiers of No.29 from moving vehicles and accompanying engine noise. Noise and disturbance would also be experienced due to the access being of single width and therefore vehicles would have to wait in the parking forecourt if another vehicle entered the site.
22. The proximity of the parking forecourt would also result in disturbance from vehicle lights directly towards the rear and side of No. 29 outside daylight hours. The proposed boundary planting in this area would take time to establish and as a result, would not be sufficient to screen any light spill from the site for a significant period of time. Therefore, I find that the proposal would give rise to harm to the living conditions of No. 29 as a result of lighting.
23. In light of the above, I conclude that the proposal would result in harm to the living conditions of occupiers of Nos. 28 and 29 Ruscombe Gardens. It would therefore fail to accord with Policy QP3 of the BLP and principles 6.11 and 7.6 of the SPD which seek to ensure development has no unacceptable effect of the amenities of adjoining properties in terms of privacy, light, disturbance and resist proposals which impact on neighbour amenities.
24. The proposal would also fail to accord with paragraph 139 of the Framework which indicates that development that is not well designed should be refused, especially where it fails to reflect local design policies, and taking into account any local design guidance and supplementary planning documents.

Trees

25. The appeal proposal would be accessed utilising part of the existing driveway to No.29 Slough Road. The proposed access is adjacent to a number of trees located directly to the north of the site access beyond the appeal site labelled T4 (Ash-Leaf Maple) and G2 (Sycamore) within the submitted tree survey schedule. The Sycamores are categorised as having a medium landscape value and of Categories B1 and B2. The Council has indicated that the trees to the north of the proposed access are protected by a Tree Preservation Order (TPO).
26. The existing driveway access is within the root protection area of the trees. The appellant notes that the existing tarmac drive is protecting the root protection areas and is likely to have resulted in asymmetric root development with the majority of roots on the adjacent property. However, as the plans show that the proposed access would include a new driveway as part of the development, some works within the root protection area would be expected. However, there is no evidence before me as to the effect of the proposed site access on the trees. Due to the prominent location of the trees, any resultant harm could adversely affect the wider street scene in Slough Road.
27. The evidence provided is not sufficiently satisfactory to reach an informed conclusion about the extent of harm to trees. Nonetheless, it would fail to accord with Policy NR3 of the BLP which seeks to, amongst other things, require that applications be accompanied by an appropriate tree survey.

Biodiversity and protected and priority species

28. The appeal proposal is accompanied by a biodiversity gain report (October 2022) (the BNG report) which shows a 20.6% increase in habitat units based on Natural England's Small Site Metric Tool based on the site conditions in October 2022. However, concerns have been raised that the baseline conditions set out in the BNG report are not fully justified as a walkover survey by Southwest Environmental Limited (2022) is referenced but does not form part of the evidence.
29. The extent of planting proposed and the sustainable drainage swale would provide some habitat enhancement and the BNG report includes within the Concept Landscape and SuDS Plan³ the plant species proposed within the swales. However, page 20 of the BNG report also references the need for off-site biodiversity requirements for heathland and shrub and hedge or lines of trees totalling approximately 0.5872 units. There is no evidence before me of how any such off-site requirements would be secured.
30. The appellant has provided a Preliminary Ecological Assessment (PEA) which identified the habitats on site have suitable foraging, resting and roosting potential for protected species including bats. The PEA recommended emergence/ re-entry surveys for bats resting or breeding and reptile surveys of long grass and ruderal vegetation to determine if reptiles are present on site. However, there is no evidence of these additional surveys having been undertaken or submitted with the appeal. These matters cannot be addressed through the imposition of planning conditions as the full effects on protected and priority species would not be known before this decision is taken.
31. In light of the above, there is insufficient evidence before me to satisfactorily conclude that the proposal would secure sufficient biodiversity net gain and avoid harm protected and priority species. The proposal would therefore fail to accord with Policy NR2 of the BLP and Policy DAT8 of the DNP which require development to deliver net biodiversity gains in addition to protecting existing habitats and species and demonstrate how they maintain, protect and enhance the biodiversity of application sites including the presence of protected species.

Climate change

32. The appeal is accompanied by an Energy and Sustainability statement dated May 2023 which sets out a range of technologies including renewable energy which would reduce the proposal's carbon dioxide emissions by approximately 20.03% above the baseline case of Part L of the Building Regulations. A sustainability statement has been included within this document which details the specification of materials, waste reduction, biodiversity and water use limited by design to 105 litres per person per day.
33. Concerns were raised regarding the veracity of the Energy and Sustainability statement due to references to another Borough and the London Plan which appear erroneous. However, the statement includes clear details of the appeal proposal and the nature of the scheme and number of dwellings proposed and I am therefore satisfied that it relates to the appeal scheme before me.
34. The Council's Interim Sustainability Position Statement on Sustainability and Energy Efficient Design (March 2021) (the IPS) requires all development to be

³ Drawing No. DAT22/01/03

net zero carbon unless demonstrated to be unfeasible. However, the statement is not part of the Development Plan and has not been subject to independent examination. As such, it is afforded limited weight in my decision. Therefore, whilst the proposal has not demonstrated net-zero carbon on site, the proposed reduction in carbon emissions shown would accord with Policy SP2 of the BLP which does not expressly set any specific targets for carbon reduction.

35. Whilst concerns have been raised by the Council that the proposal has not secured contributions to the Carbon Offset Fund as set out in the IPS, this requirement is not set out in Policy SP2. Therefore, I do not find the lack of contribution sufficient to result in conflict with the BLP and overall, I am satisfied that the proposal would include measures that have been designed to adapt to and mitigate the effects of climate change.
36. I therefore conclude that the proposal would comply with adopted policy having regard to climate change. It would therefore accord with Policy SP2 of the BLP which requires all developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change.

Other Matters

37. Concerns have been raised by interested parties in respect of the extent of previous site clearance activity. However, any implications arising from such activities are a matter for the Council and as such, I have not considered this further in my decision.
38. Concerns have also been raised by interested parties in respect of the capacity of local infrastructure to accommodate the proposed development, and the potential for harm to highway safety having regard to the potential conflict with traffic accessing the nearby school. However, as I am dismissing the appeal for other reasons I have not addressed these points further.
39. The proposal would result in economic benefits through construction jobs and in the accompanying material supply chain. Social benefits would arise as a result of future occupiers utilising local services and facilities. The proposal would result in creation of 6 units of residential accommodation which would make a positive contribution to meeting housing need in the area.
40. The appellant has indicated that the proposed flats would be targeted towards older people who may wish to downsize their accommodation. However, there are no proposed restrictions which would limit future occupation to people of particular age groups.

Planning balance

41. The Council cannot currently demonstrate a 5 year supply of housing land that the Framework requires. However, the proposed development would be located in an area at risk of flooding which footnote 7 to paragraph 11(d)(i) of the Framework indicates are one of the policies that protect areas or assets of particular importance which provide a clear reason for refusing the development. Therefore, the proposal does not benefit from the presumption in favour of sustainable development.
42. Although the proposal would result in a number of benefits as set out above, as the proposal would result in 6 residential units these are afforded moderate weight in my decision.

43. I find that the proposal would not satisfy the sequential approach to flood risk, and consequently the exceptions test would not be triggered. The proposal would also result in harm to the character and appearance of the area, living conditions of Nos 28 and 29 Ruscombe Gardens and would not satisfactorily demonstrate avoidance of harm to protected and priority species. There is also uncertainty as to the effect on nearby trees. Whilst I find the proposal comply with policies relating to climate change, this would be expected of all development in the Borough.
44. As set out in the main issues, the proposal would conflict with a number of policies and consequently fails to accord with the Development Plan when read as a whole. It would fail to accord with the Framework for the reasons set out above. I find that there are no considerations advanced of sufficient weight that would outweigh the harms identified above and the conflict with the Development Plan. Therefore, the decision should be made in accordance with the Development Plan in this instance and the appeal should not succeed.

Conclusion

45. For the reasons given above the appeal should be dismissed.

Philip Mileham

INSPECTOR