
Appeal Decision

Site visit made on 30 April 2024

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th June 2024

Appeal Ref: APP/T0355/W/23/3332356

School House, West Dean, Maidenhead, Windsor and Maidenhead SL6 7JB

- 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 RBWM Property Company Ltd against the decision of The Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 22/02696.
 - The development proposed is demolition of existing building and the erection of affordable homes (Use Class C3) with associated parking and landscaping works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the living conditions of the occupants of 5 West Dean, with particular regard to outlook, sunlight and daylight;
 - the effect of the proposal on highway safety, with particular regard to parking;
 - the effect of the development on protected species and biodiversity; and
 - whether the proposed development would comply with development plan policies in respect of climate change.

Reasons

Living conditions

3. The proposed development would replace an existing dwelling with a pair of semi-detached properties. The proposed dwellings would be set back within the appeal site and the rear elevation of the development would project significantly beyond the rear building line of 5 West Dean. The side wall of proposed Plot 2 would also be positioned close to the boundary with No 5, albeit that some side space would be retained between the two dwellings.
4. At two storeys high and given its depth and proximity, the side wall of Plot 2 would be an imposing structure that would significantly block views across gardens and upwards towards the sky that can currently be gained from the rear windows and garden of No 5. Consequently, the proposed development would be unacceptably dominant in the outlook from the neighbouring property to the degree that it would cause harm to the living conditions of its occupants.

5. Whilst any loss of direct sunlight would be limited to late afternoons during the sunnier months of the year, the proposal would restrict daylight from reaching some rear rooms and part of the garden of No 5 due to its height, depth, and siting. Indeed, the submitted evidence indicates that the proposed dwellings would restrict light to two windows and a doorway on the rear elevation of No 5.
6. I have not been provided with floor plans to demonstrate the internal layout of No 5. However, even if the two affected windows serve non-habitable rooms, I do not have substantive evidence before me to identify the principal sources of light to the internal living space. Therefore, it is reasonably likely that, collectively, the kitchen window and rear doorway provide a principal source of light into the ground floor living space. Therefore, the loss of daylight would cause the internal living area to be a gloomy and oppressive environment, which would be unduly unpleasant for the occupants of the property.
7. It has been put to me that the submitted Lighting Assessment represents a worse-case scenario. However, whilst this may be the case, it nonetheless illustrates that the proposal would cause an unacceptable loss of light to the neighbouring property. The development would therefore fail to accord with the Borough Wide Design Guide (25 June 2020) (Design Guide) insofar as it requires that developments should not result in the occupants of neighbouring dwellings from suffering from a material loss of daylight and sun access.
8. I conclude that the proposed development would cause harm to the living conditions of the occupants of 5 West Dean, with particular regard to outlook, daylight and sunlight. Therefore, there would be conflict with Policy QP3 of the Borough Local Plan 2013-2033 (LP) insofar as it requires that development is of a high-quality design that has no unacceptable effect on the amenities enjoyed by the occupants of adjoining properties.

Highway safety

9. The appeal site is located on a narrow, one-way street which provides access to residential properties on West Dean and North Dean as well as a school and nursery. Some dwellings in the local area have off-road parking spaces. However, the majority of parking provision is provided for on-street.
10. From my observations, there is severe pressure for on-street parking spaces in the area around the appeal site. Due to the lack of spaces, as well as the narrow width of the road, I observed cars parked on corner junctions and across footways. As a result, visibility is restricted for all road users, creating a highway safety hazard. Moreover, the safe and convenient passage of pedestrians along footways is significantly impeded.
11. The proposed development would provide one parking space for each new dwelling, which would be below the maximum standard for developments in areas with poor accessibility as set out in the Royal Borough of Windsor and Maidenhead Parking Strategy (May 2004) (Parking Strategy). However, the Parking Strategy does allow for reduced parking provision in areas with good accessibility.
12. The Parking Strategy pre-dates the LP. However, Policy IF2 of the LP states that, prior to the adoption of the Parking SPD, the parking standards in the Parking Strategy will be used as a guide for determining the appropriate level

of parking provision, with consideration to the accessibility of the site and any potential impacts associated with overspill parking in the area.

13. The site is located close to Maidenhead town centre. Therefore, future occupants of the proposed dwellings could feasibly travel to the town centre on foot or by bicycle or bus. However, the availability of sustainable travel modes, and local policies to encourage their use, does not necessarily correspond with car ownership levels. Therefore, it is reasonably likely that there would still be some demand for car parking spaces at the proposed dwellings.
14. In addition to the accessibility of the site, Policy IF2 of the LP requires consideration to be given to the potential impacts associated with overspill parking in the area. I acknowledge that the appellant has sought to communicate with the neighbouring school to secure safe access for pedestrians and cars. However, due to the severity of parking pressure locally to the appeal site, any increased demand for on-street parking spaces would exacerbate the risk of unsafe parking practices and would cause unacceptable harm to highway safety. This is justification for the proposed development being refused in accordance with paragraph 115 of the National Planning Policy Framework (the Framework).
15. I have had regard to the fact that the Highway Authority suggested additional car parking spaces could be provided through a condition. However, based on the evidence before me, I am not persuaded there would be sufficient space within the site for additional spaces to be provided safely, without obstructing the highway. Therefore, it may not be possible for the condition to be complied with, and it would therefore be unreasonable.
16. Taking all of the above into account, I conclude the proposed development would cause harm to highway safety, with particular regard to parking. Therefore, there would be conflict with Policy IF2 of the LP insofar as it expects development to minimise and manage demand for travel and parking. There would also be conflict with the Framework insofar as it states that development should be prevented or refused where there would be an unacceptable impact on highway safety.

Protected species and biodiversity

17. A Preliminary Ecological Appraisal (PEA) was submitted with the planning application documents. The PEA was undertaken by an Ecologist and followed standard methodology, including a desk top study and walkover survey. The Council has not raised any concerns about the methodology used to compile the PEA and, based on the evidence, I have no reason to disagree.
18. The appellant concedes that there were some errors in the PEA, including the misidentification of grassland and an erroneous reference to a fox earth. However, it has been confirmed during the appeal process that these were typographical errors. The PEA concludes that the proposed development would be unlikely to cause harm to protected species and local biodiversity, and this conclusion has not been disputed by the Council. Therefore, in the absence of any convincing evidence to the contrary, I am satisfied that the PEA provides a robust assessment of the ecological implications of the proposed development.
19. Some ecological enhancement opportunities are identified within the PEA, which could be supplemented and secured through a condition if the appeal

were to be allowed. Moreover, whilst the evidence indicates there has been some site clearance, I am satisfied this has been carried out as part of the typical maintenance required to upkeep the property. Therefore, and due to the generous size of the rear garden, I have no reason to conclude that a biodiversity net gain could not be achieved on site.

20. I conclude that the development would not cause harm to protected species and biodiversity. Consequently, there would be no conflict with Policy NR2 of the LP and the Framework, which taken together seek to ensure that protected species and habitats are safeguarded from harm or loss and are enhanced where possible.

Climate change

21. Policy SP2 of the LP expects proposals to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. The policy includes a list of measures to be incorporated into developments, relating to heating and ventilation, materials, landscaping, and drainage amongst other things. However, no specific environmental standards are imposed by Policy SP2 of the LP.
22. The proposed new dwellings would incorporate air source heat pumps and would enable travel by sustainable modes by providing bicycle storage facilities. Moreover, climate change adaptation and mitigation measures could be enhanced through the details of landscaping, materials, and drainage, which could be secured through condition if the appeal were to be allowed. Furthermore, whilst the dwellings would be orientated to reflect neighbouring properties rather than to prioritise passive solar design, the dwellings would be dual aspect to facilitate natural ventilation. Therefore, the proposal would broadly follow the climate change guidance set out in the Design Guide.
23. Overall, given the modest scale of the proposal, the proposed climate adaptation and mitigation measures would be reasonable and proportionate. Consequently, there would be no conflict with Policy SP2 of the LP.
24. The Council has stated that a financial contribution towards the Council's Carbon Offset fund would be required. Whilst I have been provided with a draft unilateral undertaking on this matter, I am not in receipt of a signed and dated planning obligation. Therefore, there is no provision before me through which a financial contribution could be secured.
25. The basis for the financial contribution is predicated on the content of the Council's Position Statement on Sustainability and Energy Efficient Design (March 2021) (PSSEED), which requires new dwellings to achieve net-zero carbon emissions through on-site measures or a financial contribution in lieu. However, I am not satisfied that the PSSEED meets the criteria set out in the Planning Practice Guidance for local sustainability requirements as it does not form part of a Local Plan.
26. Moreover, the PSSEED, which pre-dates the LP, is not referenced in Policy SP2 of the LP and it does not carry the same weight as development plan policy. Therefore, I am not persuaded on the basis of the evidence before me that a financial contribution towards the Carbon Offset Fund would be necessary to make the development acceptable in planning terms.

27. Taking all of the above into account, I conclude that the proposed development would comply with development plan policies in respect of climate change. Accordingly, there would be no conflict with Policy SP2 of the LP insofar as it expects proposals to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change.

Other Matters

28. The appeal scheme has evolved in response to concerns raised to previous iterations of the development. Moreover, amended plans were submitted during the lifetime of the planning application and the appellant commenced the preparation of a legal agreement on the understanding that the scheme could be supported by the Council. However, I have considered the proposed development on its own merits and, therefore, these matters have not been determinative to my decision.

Planning Balance

29. Although I have not identified that any harm would be caused to protected species and biodiversity and there would be no conflict with development plan policies in respect of climate change, the proposal would conflict with the aforementioned policies in respect of the living conditions of neighbours and highway safety. This is sufficient to bring the development into conflict with the development plan when read as a whole. Proposed development that conflicts with the development plan should normally be refused unless material considerations indicate otherwise.
30. The Council concedes that it cannot currently demonstrate a five-year supply of deliverable housing sites. The evidence indicates the current supply is 4.69 years which is a modest shortfall. In these circumstances, paragraph 11(d) of the Framework is engaged.
31. The proposed development would redevelop a site which has fallen into disrepair. Therefore, there would be benefits to the character and appearance of the area. However, there is no substantive evidence before me to indicate that the appeal scheme is the only way to improve the condition of the site. Therefore, this benefit carries limited weight in favour of the proposal.
32. The development proposes to provide two affordable homes for affordable rent, which would meet the needs of a group with specific housing requirements. This would undoubtedly be a benefit of the proposal. However, the contribution of two affordable units would be modest. Moreover, there is no substantive evidence before me to demonstrate the mechanism through which the proposed affordable housing would be secured and delivered. Therefore, I cannot be certain that the affordable housing provision would be enforceable. Consequently, in the specific circumstances of the appeal scheme, the provision of affordable housing carries moderate weight in favour of the development.
33. Overall, the cumulative weight of the benefits is moderate, and would be significantly and demonstrably outweighed by the harm to the living conditions of the occupants of 5 West Dean and highway safety when assessed against the policies of the Framework, when taken as a whole. Consequently, the presumption in favour of sustainable development does not apply.

Conclusion

34. The proposed development would conflict with the development plan. The material considerations do not indicate a decision should be made otherwise than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

E Catcheside

INSPECTOR