



Appeal Decision

Site visit made on 23 July 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2024

Appeal Ref: APP/T0355/W/23/3331739

The Ark, 20 Ray Street, Maidenhead, Windsor and Maidenhead SL6 8PX

- 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 Mr Gary Stevens on behalf of Hatpin Ltd against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 23/00936.
 - The development proposed is side and upper floor extensions to the Ark Public House, Maidenhead and residential development on adjacent land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have had regard to the Written Ministerial Statement and draft National Planning Policy Framework published on 30 July 2024. Whilst national policies relating to housing land supply are proposed to change as part of this consultation, these changes can only be given limited weight at this stage. Even if the proposed changes were to be accepted, it would not materially affect the outcome of my decision since I have identified conflict with the development plan in respect of other main issues. Therefore, in this instance it has not been necessary to consult the parties on these changes.

Main Issues

3. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on the living conditions of occupants of nos 1, 3, and 10 Ray Park Lane, with particular regard to privacy and outlook;
 - The effect of the proposed development on flood risk;
 - Whether the proposed development would provide adequate climate change mitigation; and
 - The effect of the proposed development on biodiversity.

Reasons

Character and appearance

4. The appeal site comprises The Ark public house and its residential apartment, outbuildings, beer garden, and area of hardstanding providing staff car parking.
5. The pub occupies a corner plot at the junction of Ray Street and Ray Park Lane and has a tapered, narrow corner elevation with signage providing a prominent entrance. The Victorian pub building is constructed of buff brick with Gothic window heads and hipped slate roof, and addresses both streets. Due to its age, architectural features, design, and siting at the junction, the pub is attractive and forms a visually prominent landmark that contributes positively to the character of the area.
6. The beer garden and parking area run parallel to Ray Park Lane, terminating at the bend in the street. The site's boundary treatment abuts the carriageway edge of Ray Park Lane, a narrow residential street with no pedestrian footway. The beer garden and parking area permit views of the rear elevation of a terrace row period properties and of nos 10 and 12, beyond the bend. The open, undeveloped character of the rear portion of the site contributes spaciousness to the street scene of Ray Park Lane.
7. The pub is situated at the end of a row of Victorian terrace houses fronting onto Ray Street. Behind the site, is a terrace row oriented to Ray Park Lane. Therefore, land between Ray Street and Ray Park Lane is characterised predominantly by period properties that are contemporary with the pub. The pub is viewed within the context of the terrace rows, and buildings of this age make a distinct contribution to the area's character.
8. To the south and east of Ray Park Lane is interwar housing and a modern housing cul-de-sac. Development along Salters Road to the west comprises a mid-20th century style. Further to the south, at the junction between Ray Street and Bridge Road, are modern apartment complexes. The area is therefore also characterised by its range of building styles and ages and variety of built form.
9. The proposed development would provide a 2.5 storey apartment building comprising two dwellings with undercroft parking. The apartment building would be located on the eastern side of the site on the existing parking area. The apartment building would be sited close to the highway edge, set back slightly by a hedgerow, to follow the building line of the adjacent terrace row.
10. The design of the proposed apartment block seeks to reflect the character of the area whilst achieving a bold design to its street frontage. However, the undercroft parking would appear as a modern feature, out of keeping with the pattern of development which consists of driveways and parking courts.
11. The roof space of the apartment building would include roof dormers and would be utilised for living accommodation. The building would be of similar height to no 10 Ray Park Lane, a two-storey dwelling opposite. However, through its wide front elevation, undercroft parking, and prominent gables, the proposed building would appear large in scale.
12. The design of the building includes a curved frontage which responds to the road layout. However, through its location at the inside bend of Ray Park Lane the building would be prominently sited and would appear dominant in the

street scene. The scale and siting of the building would obstruct sight lines across the bend and would provide significant enclosure of Ray Park Lane and would appear out of keeping with the pattern of development in the area. Through its siting at the carriageway edge, the proposed building would erode the open character of the site and would appear cramped in the street scene.

13. The proposal would also involve extension and alteration of the pub building to increase the floor area of the public house, providing an open plan layout with additional facilities and level access. The existing apartment within the pub would be replaced with three one-bedroom apartments.
14. The existing brick, single-storey porch projects from the elevation to Ray Park Lane and appears visually prominent from the junction with Ray Street. The porch has a steeply pitched slate roof and its ridge height aligns with the bottom of the first-floor windowsills. The existing porch is therefore well-proportioned and reflects the design and materials of the pub building. Whilst the porch entrance is modest in comparison to the front corner entrance, it is an attractive feature that contributes positively to the building's appearance.
15. The proposed replacement porch would have a flat-roofed form. The height of the porch would project beyond the bottom of the first-floor windows and would be significantly greater in bulk and mass. Its height and form would detract from the building's appearance.
16. The pub building has three chimneys. It is asserted the chimneys are standard in terms of design and visual influence. However, the chimneys are tall features with attractive shaped brickwork and large pots and appear contemporary with the main building. From the front of the building at Ray Street, two chimneys are visually prominent and appear symmetrical in placement and design. Looking toward the building from Ray Park Lane, the two chimneys at the rear dominate the roof plane. The scale and form of the chimneys contributes positively to the pub building's character. The proposal would result in the loss of the chimneys and would adversely impact the appearance of the building.
17. The pub building has a hipped roof which addresses the important front corner elevation. The proposal would alter and extend the roof to accommodate a one-bedroom apartment. The proposal would change the roof's relationship to the corner elevation and would add a flat section at the ridge. There would be two gabled dormers on the roof plane facing Ray Street, and two dormers at the rear. A further gabled dormer would face Ray Park Lane, and would be large, spanning from the wall to just below the roof ridge. The proposal would alter the roof form, adding significant mass and bulk. The added bulk would be visually prominent within the street scene and would appear out of keeping with surrounding development.
18. The appeal scheme has sought to improve on a previous submission, including the design and quantum of development. However, as set out above, the proposed apartment building's scale, form and dominant siting would erode the open character of the site and appear cramped and out of keeping with the pattern and design of development in the area. The extension and alteration of the pub building would result in the loss of important architectural features and add considerable bulk to the building's roof. The proposal would therefore harm the character and appearance of the area.

19. The proposed development would conflict with Policy QP3 of the Borough Local Plan 2022 (BLP) which requires proposals respect and enhance the local and historic character, paying particular regard to urban grain, layouts, scale, bulk, massing, and proportions, and respect and retain existing high-quality townscapes, and retains important local views of historic buildings or features.
20. The proposal would not satisfy paragraph 135 of the National Planning Policy Framework (the Framework) which requires development be visually attractive as a result of good architecture, layout, and be sympathetic to local character and history, including the surrounding built environment and landscape setting.

Living conditions

21. The proposed rear-facing balcony at the pub would be 8 metres from the boundary of no 1, and therefore the separation distance would be short. A privacy screen on the north-facing side would prevent overlooking of no 22 Ray Street. However, whilst nos 1 to 3 Ray Park Lane would be at an angle, the modest rear gardens would be clearly within the field of view from the balcony, providing opportunities for overlooking. The proposal would therefore result in a harmful loss of privacy for occupants of nos 1 to 3 Ray Park Lane.
22. The proposed apartment building would be sited near the site boundary. Ray Park Lane is narrow and no 10 is set back from the carriageway edge by a short front garden. The proposed apartment building would therefore be sited close to no 10 Ray Park Lane.
23. The Council's Borough Wide Design Guide 2020 requires a 10-metre minimum separation distance between the front elevation of two storey buildings. The distance between the front elevations of the proposed apartment block and no 10 would be less than 10m. Therefore, the siting of the apartment block would not comply with the design guide.
24. The apartment block would be two-storeys with a large, pitched roof with dormers providing living accommodation. The arrangement of windows on the curved front elevation seeks to avoid directly facing windows at no 10. However, due to its scale, mass and siting, the proposed apartment building would have a significant enclosing effect resulting in a harmful loss of outlook for occupants of no 10, particularly from habitable rooms at the front.
25. Having particular regard to privacy and outlook, the development would harm the living conditions of occupants of nos 1, 3 and 10 Ray Park Lane.
26. The proposal would conflict with BLP Policy QP3 which requires development have no unacceptable effect on the amenities enjoyed by the occupants of adjoining properties. In addition, the proposal would not satisfy paragraph 135 of the Framework which requires development provide a high standard of amenity for existing users.

Flood risk

27. The Flood Risk Assessment (FRA) identifies the site as being within Flood Zone 3a, and therefore in an area with high probability of flooding. The proposal would involve residential development which the FRA identifies as 'more vulnerable' to the effects of flooding.

28. Paragraph 165 of the Framework seeks to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk. At paragraph 167, the Framework advocates a sequential, risk-based approach to the location of development. At paragraph 168, the Framework states the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
29. The FRA's sequential test fails to consider larger sites, including those listed in the Council's HELAA data, and the search area is constrained to a 3km radius without reasonable justification. The sequential test therefore fails to take into consideration all reasonably available sites across the borough.
30. The appellant considers critique of the sequential test to be outside the scope of the reason for refusal. However, the sequential test is a component of the FRA, provided at chapter 6 of the document, and a fundamental aspect of the methodology in assessing flood risk.
31. Notably, the sequential test is crucial to the application of national policies for managing flood risk through directing development away from areas at highest risk. Consequently, the proposed development cannot be deemed to be acceptable in flood risk terms without passing a comprehensive and robust sequential test. I am therefore satisfied the sequential test is relevant to the reason for refusal.
32. For the reasons set out above, the sequential test is not sufficiently comprehensive and robust and fails to demonstrate that there are no reasonably available, lower-risk sites, suitable for the proposed development. The proposal therefore provides insufficient information to justify locating the development in an area of high flood risk and does not demonstrate that it would not increase flood risk on the site or elsewhere.
33. The proposal would therefore conflict with BLP Policy NR1 which supports development proposals only where an appropriate flood risk assessment has been carried out and it has been demonstrated that development is located and designed to ensure that flood risk from all sources of flooding is acceptable in planning terms, requiring a sequential test for all development in areas at risk of flooding and taking account of all sources of flood risk and having regard to availability of suitable alternative sites in areas of lower flood risk

Climate change mitigation

34. The Council has declared a climate emergency and seeks to achieve net-zero carbon emissions by 2050. The Interim Sustainability Position Statement 2021 expects proposals offset carbon emissions associated with the proposed building and lifestyle factors of future occupants through contributing to the Council's Carbon Offset Fund to support delivery of carbon reduction projects.
35. The Energy Strategy Report provides SAP calculations and sets out how the proposed development would minimise energy consumption and carbon emissions through construction techniques, the fabric of the building, south-facing outlook, and renewable energy production from air source heat pumps.
36. It is proposed that carbon emissions generated by the development would be mitigated through a financial contribution toward the Borough's Carbon Offset

Fund. The procedural guidance for appeals¹ requires the appellant provide an executed and certified copy of the planning obligation at the time of making the appeal. However, no planning obligation has been provided.

37. The proposed development would be of energy efficient design that seeks to minimise carbon emissions. However, in the absence of a legal agreement containing a planning obligation to secure a financial contribution toward the Council's Carbon Offset Fund, the proposal fails to demonstrate that the net-zero standard would be achieved.
38. The proposal would therefore fail to adequately mitigate climate change in accordance with the Position Statement. The proposal would conflict with BLP Policy SP2 which requires proposals incorporate measures to adapt to and mitigate climate change.

Biodiversity

39. An Ecology Statement was submitted prior to the Council's determination of the planning application. I am satisfied there would have been sufficient opportunity to consult relevant stakeholders prior to the Council's decision and during the course of the appeal.
40. The Ecology Statement identified no evidence of badgers on site. Inspection of the buildings identified no evidence of bats, and the site offers very limited bat foraging opportunities. The site offers no breeding opportunities for amphibians and no suitable terrestrial habitat for any species of herpetofauna. The Ecology Statement concludes there is no realistic prospect of protected species being on site and identifies no ecological constraints to development.
41. The Ecology Statement recommends inclusion of a range of mitigation and enhancement measures including planting of native species, flowering plants, shrubs and trees; permeable boundary treatments to allow free movement of wildlife; and provision of roosting, nesting and sheltering opportunities such as nest boxes, bug hotels, and bat boxes; and external lighting designed to minimise light pollution.
42. The urban site comprising the pub building, lawn, ornamental planting, and hardstanding offers limited ecological value. I am satisfied the proposed development would be capable of providing modest ecological enhancement.
43. The proposed development would not have an adverse impact on biodiversity and would comply with BLP Policy NR2 which requires proposals recognise the importance of urban wildlife and demonstrate how they maintain, protect and enhance the biodiversity of sites. In addition, the proposal would satisfy paragraph 180 of the Framework which requires proposals minimise impacts on and provide net gains for biodiversity.

Other Matters

44. The proposal would provide a net gain of four dwellings and therefore would contribute positively to the supply of housing in the area. The Council accepts its current housing land supply of 4.83 years represents a shortfall against the requirement at paragraph 76 of the Framework to maintain a five-year supply of housing land.

¹ Paragraph 18.2.2.1. Procedural Guide: Planning appeals – England

45. In such circumstances, paragraph 11d) of the Framework requires permission be granted unless the Framework's policies that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. As explained at footnote 7 of the Framework, such policies include those relating to areas at risk of flooding.
46. As set out above, the proposal would provide more vulnerable development within an area of high probability of flooding (Flood Zone 3a) and has failed to adequately apply the sequential test. I have found the proposal would conflict with paragraphs 165 and 168 of the Framework. Therefore, the application of policies in the Framework which direct development away from areas at highest risk provide a clear reason for refusal. I note the examples of case law illustrating the application of the 'tilted balance'. However, the proposal does not benefit from the presumption in favour of sustainable development.
47. In addition to the provision of housing, the proposal seeks to modernise the pub thereby providing improvement of a community facility. The proposal would be mixed use and utilise previously developed land, thereby promoting an efficient use of land as advocated by paragraph 123 of the Framework. Whilst such benefits attract moderate weight in favour of the proposal, they do not outweigh the identified conflict with the development plan to which I afford significant negative weight.

Conclusion

48. The proposal would conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

E Dade

INSPECTOR