



Appeal Decision

Site visit made on 24 July 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2024

Appeal Ref: APP/T0355/W/24/3338646

Maynard Court, Clarence Road, Windsor SL4 5BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Haz Sran against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 23/02244.
 - The development proposed is application for prior approval for construction of one additional storey to building to provide 4 no. additional flats (2 x studios and 2 x one bedroom).
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The Council has amended the description of development from that contained on the planning application form. The appellant has used this updated description on their appeal form and I have used it on the banner heading above as it is more concise than the original.
3. Under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for new works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, subject to limitations and conditions.
4. Conditions A.2 (1) require the local planning authority to assess the prior approval application on various defined matters including (d) flooding risks in relation to the building.
5. The Council determined that prior approval was refused on the grounds that the proposal had not passed the sequential test (ST), and it had not been demonstrated that there were no sequentially preferable sites where the development could be undertaken.

Main Issue

6. The main issue relevant to the appeal is the effect of the proposal upon flood risk, with regard to the application of the sequential test.

Reasons

7. Maynard Court is a detached three storey flatted building. It is located in flood zone 2. The proposed single storey addition would provide an additional four flats along with five additional car parking spaces to the rear.
8. With regard to flood risk, Planning Practice Guidance¹ (PPG) and the National Planning Policy Framework (the Framework) classifies housing as a 'more vulnerable' use. 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. Paragraph 167 requires a sequential approach to the location of development, taking into account the potential and future risk of all sources of flooding to avoid, where possible, flood risk to people and property. The aim of the sequential test is to steer 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.
9. Whilst a definition of 'reasonably available' under the terms of the ST is not set out in the Framework, the PPG² advises that reasonably available sites are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. These can include a series of smaller sites or part of a larger site if they would be capable of accommodating the proposal. They do not need to be owned by the appellant.
10. The appellant provided a flood risk assessment including a ST as part of their prior approval application. The ST was updated in January 2024 for the purposes of this appeal. Sites considered in the ST and addendum ST included those that are allocated in the Local Plan and Neighbourhood Plans, those listed on the Council's brownfield register, sites identified by the Council's Housing and Economic Land Availability Assessment (2019) and those sites with planning permission for residential development granted since August 2020. The addendum ST provided an assessment of sites within the search parameters that were listed for sale on the open market. I consider this approach to be reasonable. However, whilst many sites have been identified and discounted in both the original and addendum ST, there is little detail in many of the cases as to why the site was not considered reasonably available.
11. The Council questions three specific sites identified in the ST that the appellant considered not reasonably available. Those sites at 51 St Marks Road, 90 Alma Road and 27a Old Post Office Lane all had permission for small residential developments. There is no detail regarding how or if the appellant verified their assumption that the sites would be developed by the respective applicants.
12. There are also sites identified and discounted which would have a larger capacity than four residential units. There is little evidence to suggest whether the appellants have made an assessment as to whether there would be a prospect of subdivision of any of the larger sites listed in the ST. Similarly, the ST lists many sites with permission for one or two residential units. The ST indicates the garden land identified at Woodside and Ascot Road could be developed as a pair of semi-detached houses; there is no substantive evidence

¹ Table 2 – paragraph 079 ref 7-079-20220825

² Paragraph 028, ref 7-028-20220825

before me to suggest that there would be no reasonable prospect of, for example, the pair of semi-detached houses being subdivided into four flats.

13. There are sites which appear to have been discounted as reasonably available given they are owned by the Council's property development company. There is no evidence of any approach to the Council to verify that those sites were not available for development.
14. There is little evidence of how and when local estate agents were approached regarding land available on the open market. A site for sale at Black Horse Close in Windsor was discounted as not reasonably available due to an expired planning permission for a three-storey terraced house. The Council consider four flats could reasonably be accommodated within a three-storey terrace without compromising the character or appearance of the wider area. I have little evidence before me which would lead me to disagree with that view.
15. The advice in the PPG is clear that development should not be permitted if there are reasonably available sequentially preferable sites. The evidence provided to support the ST and its addendum has not adequately demonstrated that there are no sequentially preferable sites across the borough that could accommodate the appeal proposal. The proposal does not therefore satisfy condition A.2. 1(d) of Schedule 2, Part 20, Class A of the GPDO.

Conclusion

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

L Francis

INSPECTOR