



Appeal Decision

Site visit made on 29 July 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th September 2024

Appeal Ref: APP/T0355/W/24/3337325

Heatherwood Hospital, London Road, North Ascot, Ascot SL5 8AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ashley Joseph (Taylor Wimpey West London) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 23/01949, dated 7 August 2023, was refused by notice dated 1 December 2023.
 - The development proposed is the development of new apartment building comprising 6 no. 2 bedroom units with associated parking, landscaping, cycle and refuse store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement (WMS), which is a material consideration, the proposed changes to the Framework can only be given limited weight at this stage, given that no final document has been published. The main parties have been provided with an opportunity to comment on these documents and their responses have been taken into account, where received.

Main Issue

3. The main issues are:
 - 1) The effect of the proposal on the character and appearance of the area, including with regard to a non-designated heritage asset;
 - 2) the effect of the proposal on the living conditions of neighbouring occupiers of Edenbrook Place, with regard to outlook and privacy;
 - 3) the effect of the proposal on the living conditions of future occupiers with regard to provision of external amenity space; and
 - 4) the effect of the proposal on trees.

Reasons

Character and appearance, Non-designated heritage asset

4. The appeal site comprises a former car park within the former Heatherwood hospital site, backing onto Brook Avenue, separated by intervening planting and car

parking spaces. Brook Avenue is defined by the residential development that sits on either side of the road, primarily comprising 2-3 storey built form that, in facing the street, provides an overall coherent sense of legibility and continuity.

5. On its southern side lies Edenbrook Place, which formed part of the hospital site and is currently in use as apartments. It comprises a main house and service range. The main house has an overall symmetrical appearance, and while certain elements were added at a later date, it overall remains an example of a Victorian country villa in a late classical style. Unlike the built form to the west, where buildings face one another, Edenbrook Place is notably set back from current and approved built form to the north, forming a focal point of the immediate surrounds. The undeveloped nature of the site assists in this regard, allowing Edenbrook Place to be readily experienced among the more modern neighbouring development even with current landscaping, and thus contributes positively to the character of this section of Brook Avenue
6. The proposal is for the erection of an apartment building at the site, which would be part 2.5 and part 3 storey in height and constructed from red brick. It would sit among predominantly red brick residential buildings of similar height with a range of roof forms, with separation distances from surrounding properties that are similar to those existing in the wider development, such that in this sense it would not appear out of place.
7. However, the rear elevation of the proposal would face Brook Avenue where, despite landscaping and intervening car parking spaces, it would remain readily visible. Even noting the articulation along the rear façade of the building and the fact that it would face the new access road and other approved development to the north, the proposal would overall fail to integrate with the coherent pattern of street-facing development on Brook Avenue. As such, it would reduce the overall legibility of this section of Brook Avenue and read as an incongruous feature.
8. In addition, the proposal would introduce vertical built form directly across from Edenbrook Place, screening certain elements of the front façade of that building when viewed from the north. Even acknowledging the landscaping present, its modern style and overall scale would visually compete with Edenbrook Place from this direction, reducing the overall prominence of the traditional building and the contribution it makes to the immediate area. In these respects, the proposal would cause harm to the character of the surrounds.
9. The main parties agree that Edenbrook Place is a non-designated heritage asset (NDHA). The Framework is clear that the effect of an application on the significance of a NDHA should be taken into account and that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the asset. It has been suggested that Edenbrook Place derives its significance from its historic interest, with the Council referencing a prolific Victorian building company. However, I am persuaded by the appellant's Heritage Statement that this company was not involved in the construction of the building, thus reducing its historic significance. Nevertheless, the main parties agree that the building derives significance from its architectural interest.
10. The appeal site is clearly within the setting of the NDHA, defined in the Framework as the surroundings in which a heritage asset is experienced. I note that the original setting of Edenbrook Place featured dense and enclosed woodland that screened the building such that, historically, wider views of the front elevation would not have been possible. I further acknowledge that the surrounding modern

residential development has been built in the setting of Edenbrook Place and altered its context. Nevertheless, the setting of a heritage asset can change over time, and settings which have changed can themselves enhance significance.

11. At present Edenbrook Place, and its architecture, is clearly seen and experienced in its own right, among but set back from surrounding residential development. The lack of vertical built form at the site allows such views of the building from the north where, even acknowledging landscaping, the front façade is on the whole legible, visible, and prominent, with views unfettered by competing built form. As such, I find the site currently contributes positively to the setting of the NDHA.
12. I have found above that the development of the proposal at the site would serve to mask views of Edenbrook Place from the north, and that the modern, 2.5 to 3 storey apartment building proposed would visually compete with this NDHA. As such, the proposal would diminish the positive contribution the site currently makes to the setting of Edenbrook Place, and thereby its significance. Given the significance of the NDHA as a result of its architectural style, the overall scale of harm caused by the proposal in this regard would not be justified.
13. For the reasons given, the proposal would result in significant adverse harm to the character and appearance of the area, including with regard to a non-designated heritage asset. As such, it would fail to comply with Policies HE1 and QP3 of the Royal Borough of Windsor and Maidenhead Borough Local Plan 2013-2033 (the Local Plan); Policies DG1, DG2 and DG3 of the Ascot, Sunninghill and Sunningdale Neighbourhood Plan (the Neighbourhood Plan); and the Royal Borough of Windsor and Maidenhead Borough Wide Design Guide 2020 (the Design Guide) insofar as they seek to ensure high quality development that respects local character and distinctiveness, ensures layouts that are legible, and that the historic environment is conserved and enhanced.

Living Conditions – Edenbrook Place

14. The proposed apartment building would be sited opposite Edenbrook Place, with the main parties in agreement that, at its closest, the rear elevation of the proposal would be some 17m from the front façade of Edenbrook Place, which features facing balconies and windows. This would inevitably alter the outlook experienced by residents of Edenbrook Place from these locations.
15. However, given the residential nature of the wider surrounds, and the similar separation distances present in facing buildings along Brook Avenue, this change in outlook would not result in harm to the living conditions of the occupiers of these apartments. The separation distance would ensure that, despite the introduction of permanent, vertical built form at the site, it would not appear unduly overbearing.
16. I note that the Design Guide states that, for privacy purposes, a minimum distance of 20m is the Council's generally accepted guideline between the rear of two storey buildings directly facing each other, i.e. a back to back relationship. However, this is guidance rather than policy, and the proposal would not have a back to back relationship with Edenbrook Place. In addition, the appellant's submissions demonstrate that the only habitable windows on the southern elevation of the proposal would be kitchen windows, and that those windows of Edenbrook Place that are closest to the proposal do not serve habitable rooms. Combined with the separation distance, this would ensure that the proposal does not result in undue actual or perceived overlooking of the apartments in Edenbrook Place, and would not impact the enjoyment of those spaces by occupiers.

17. For the reasons given, the proposal would not result in significant adverse effects on the living conditions of occupiers of Edenbrook Place, with regard to outlook and privacy. As such, it would comply with Policy QP3 of the Local Plan and Policy NP-DG2 of the Neighbourhood Plan insofar as they seek to ensure that development has no unacceptable effect on the amenities enjoyed by the occupants of adjoining properties.

Living Conditions – Future Occupiers

18. The proposal would provide external terraces of 7sqm on the north elevation of the apartment building. While the Design Guide states that predominantly north facing balconies with no access to sunlight during the year will not be considered to have fulfilled the obligation to provide high quality private outdoor amenity space for flat occupants, this is guidance rather than policy.
19. The terraces provided would be of a sufficient, useable size with a good principal outlook. Even acknowledging the north facing element, there is nothing substantive before me to suggest that the amount of daylight and sunlight reaching these spaces would be of unacceptable levels to impact the useability and quality of the terraces. While trees would be located close to the terraces, particularly on the east of the building, these would be to the side, allowing light from other directions. In addition, it would result in a relationship that would not be dissimilar to the placement of trees relative to windows in other buildings in the immediate area.
20. Taken together with the open space to be provided as part of the adjoining approved residential development that would be within easy access of the proposal, I find that an acceptable level and quality of external amenity space has been provided by the proposal.
21. For the reasons given, the proposal would not result in a significant adverse effect on the living conditions of future occupiers with regard to provision of external amenity space. As such, it would comply with Policy QP3 of the Local Plan insofar as it seeks to ensure that development provides sufficient levels of high quality private and public amenity space.

Trees

22. Numerous trees are located within the vicinity of the site, including a Category B amenity cedar tree and a group of trees to the southwest of the site, all of which contribute positively to the surrounds by providing an element of soft landscaping among the residential built form.
23. With regard to the cedar tree, the Council has expressed concerns that elements of the proposal will encroach on its root protection area (RPA) to an unacceptable degree, stating that foundations will sever or remove roots, including expressing concerns that drainage could not be supported outside of the RPA. The appellant submitted a Tree Survey and Impact Assessment and Tree Protection Plan with the application, and further Tree Statement with the appeal, which the Council has had the opportunity to comment on.
24. The Tree Statement shows the position of the proposal relative to the RPA of the cedar tree, and shows that the proposed building would encroach on a minor element of this, with the appellant calculating a figure of 2.25% of the notional RPA. While other elements of the scheme, including pathways, would also fall within the RPA, these would replace existing hardstanding surfaces already in place. Taken together with measures outlined in the Tree Protection plan, which include the

removal of hardstanding within the RPA and its replacement with soft landscaping to provide a permeable surface, and the installation of drainage using specialist measures such as hand excavation, I am satisfied that, subject to suitable planning conditions to secure the protection measures outlined, the proposal would not have a significant adverse impact on the cedar tree.

25. The Council further outlines that the proposed building would be close to the canopy of the cedar tree, expressing concerns that this could lead to pressure to prune the tree in the future. However, the building is designed such that a flank wall would face the cedar tree, such that its impact on outlook or light from the apartments would be limited. I have also set out above my conclusions regarding the balcony spaces. As such, there is limited information before me to substantiate the position regarding future pruning pressure and, in any event, there is nothing substantive to suggest that such pruning could not be undertaken in a manner to retain the amenity of the tree, if necessary.
26. The Council has further expressed concerns relating to small scale planting proposed. I note that the cedar tree would be pruned to a minor extent as a result of the proposal, and that other trees would be removed. However, I am satisfied that the submitted landscaping plan demonstrates an appropriate level of planting would be incorporated in the proposal from a visual perspective, given the surrounding residential context. Overall, I do not find that the proposal would result in poor juxtaposition with surrounding trees, including the cedar tree and those to the southwest of the site.
27. For the reasons given, the proposal would not result in a significant adverse effect on trees. As such, it would comply with Policies NR3 and QP3 of the Local Plan and Policy NP-EN2 of the Neighbourhood Plan insofar as they seek to ensure development protects trees and provides appropriate landscaping.

Other Matters

28. Policy SP2 of the Local Plan requires development to demonstrate how it will adapt to and mitigate climate change. It states that applicants should refer to a range of related supplementary planning documents for further guidance. An Interim Sustainability Statement has been prepared by the Council which allows for mitigation through a financial contribution towards a carbon off-set fund.
29. The site lies within 5km of the Thames Basin Heath Special Protection Area. Agreed mitigation is for developers to provide Suitable Alternative Natural Greenspace (SANG) or financial contributions towards a Council SANG and a financial contribution towards Strategic Access Management and Monitoring (SAMM).
30. A section 106 agreement has been provided with the appeal. It includes provisions for: the payment of a Building Emissions Contribution into the Council's Carbon Offset Fund; the allocation and provision of a SANG; and the payment of a SAMM Contribution. However, as I am dismissing for other reasons I have not considered these matters further.
31. The proposal would provide six additional housing units that would deliver appropriate living conditions within an established residential area, re-using previously developed land and optimising the use of the site. It also incorporates opportunities to maximise renewable energy generation. This represents a benefit of the scheme, but given the limited number of units proposed I attach only

moderate weight to this. While I have found the proposal would not result in harm to living conditions or trees, such lack of harm is neutral in the planning balance.

Planning Balance and Conclusion

32. The proposal would have a significant adverse effect on the character and appearance of the area, including with regard to a non-designated heritage asset. There would be conflict with Policies HE1 and QP3 of the Local Plan; Policies DG1, DG2 and DG3 of the Neighbourhood Plan; and the Design Guide. The proposal would not accord with the development plan as a whole and this counts significantly against allowing the appeal.
33. The main parties agree that the Council cannot demonstrate a 5 year housing land supply and because of this, paragraph 11(d) of the Framework is engaged. The Framework is clear that while decisions should support development that makes efficient use of land, the desirability of maintaining an area's prevailing character and setting should be taken into account. It also highlights that decisions should ensure that developments are sympathetic to local character and history, including surrounding built environment.
34. As such, even taking account of all other matters outlined above, including the WMS and proposed Framework changes, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. My conclusion in this regard would be the same, even if I were to find that the proposal would make sufficient contributions by way of mitigation in respect of the SPA and carbon off-set. As a result, the presumption in favour of sustainable development does not apply.
35. The proposed development would be contrary to the development plan and there are no other material considerations, including the provisions of the Framework, that outweigh this finding. Therefore, I conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR