



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: 11th October 2024

Appeal Ref: APP/T0355/W/23/333352

24 Fairfield Avenue, Datchet, Slough SL3 9NQ

- 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 A Nazir against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 23/00635.
 - The development proposed is for a new detached dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of their appeal submission, the appellant has provided an ecological assessment and biodiversity net gain calculation. The submission of the additional information has not changed the scheme that was considered by the Council and upon which they consulted neighbours at application stage. Both the Council and any interested parties have had the opportunity to comment on the information as part of this appeal. As such, I am satisfied that no party has been prejudiced by the submission of the additional information.
3. There is a planning permission for a two-storey side extension to No. 24¹, which the appellant presents as a fallback position. The approved extension would be attached to the side of the building, with the ridge height set slightly lower than the main house. The permission was dated 31 August 2021 and was extant at the time the appeal was submitted. There has been no clarification regarding its implementation. Given the uncertainty in this regard, I have treated it as a genuine fallback position and as such it is a material consideration in the determination of the appeal.

Main Issues

4. The main issues are the effect of the appeal proposal on:
 - the character and appearance of the area;
 - biodiversity;
 - carbon emissions;
 - highway safety; and,

¹ Reference 21/02049/FULL dated 31 August 2021

- the living conditions of future occupiers with particular regard to refuse and cycle storage.

Reasons

Character and appearance

5. 24 Fairfield Avenue is a semi-detached two storey house with a substantial garden surrounding the front, side and rear of the property. The proposal is for the subdivision of the plot and the erection of a detached two-storey house which would occupy the side garden between the host property and adjacent house at No. 22. The proposed house would share a single vehicular access with No. 24, with two parking spaces either side of the access.
6. Fairfield Avenue is lined with two-storey, predominantly semi-detached dwellings with front and rear gardens. The grass verge, front gardens and boundary hedges give the area a spacious and verdant character. The street contains two distinct styles of housing. To the west of the appeal site are 1930s bay-fronted houses finished with hung tiles, brickwork and pebbledash. In contrast, to the east side of the appeal site the houses, whilst still semi-detached, are post-war and a simple cottage style with less articulation and wider frontages. Each style of house presents a very uniform street frontage in terms of rhythm and ridge height.
7. The appeal property forms the last of the post-war group, with the adjacent house at No. 22 being a 1930s house set slightly further forward than No. 24. The size of the gap between the appeal site and No. 22 is unusual in the street, but also acts as a breathing space between the two distinct styles of dwelling.
8. Although the simple facade of the appeal proposal would reflect the existing post-war properties on the street, the dwelling would be narrower, set forward of the established building line and would have a higher ridge height than those properties to the east. Taken together, its position within the plot as a detached dwelling, along with its scale would have the effect of disrupting the established rhythm of the townscape in this location.
9. When compared to the appeal proposal, the previous permission presented as a fallback scheme would clearly be read as an extension to the existing building. It would not project forward of the building line and would form a subservient addition. As set out above, the appeal scheme would have a harmful effect on the street scene, both compared to the existing situation and compared to the previous permission.
10. The loss of the lawned front garden given over to hardstanding for four vehicles would leave little space available for planting. The result would be an area of hardstanding dominated by car parking which as a consequence would harm the verdant character of the area and would conflict with the guidance contained in principle 9.3 of the Borough Wide Design Guide Supplementary Planning Document 2020 (BWDG) which seeks to minimise the extent of hardstanding.
11. Due to its scale, extent of hardstanding, position relative to the plot and consequent disruption to the rhythm of the townscape, the proposed dwelling would harm the character and appearance of the area. This would run contrary to the aims of Policy QP3 of the Borough Local Plan 2022 (BLP) and Datchet Neighbourhood Plan 2022-2033 (DNP) Policy DAT2. Taken together, and amongst other things, these policies seek to minimise the visual impact of traffic and

parking, secure high-quality design and layout, and require development to respect and enhance the local character paying particular regard to matters including urban grain, layouts, rhythm and density.

Biodiversity

12. Although the Council acknowledges that the proposal would be acceptable in terms of its effect upon protected species, the evidence shows that there would be a small loss of biodiversity.
13. BLP Policy NR2 requires development proposals to demonstrate a net gain in biodiversity by quantifiable methods such as the use of a biodiversity metric. It goes on to state that compensatory measures involving biodiversity offsetting will be considered as a means to prevent biodiversity loss where avoidance and mitigation cannot be achieved. In the event that this cannot be secured on-site, as acknowledged by the parties, an appropriate financial contribution towards offsetting would be required to make the proposal acceptable in planning terms.
14. Whilst the appellant acknowledges that the scheme does not result in a net gain in biodiversity, they do not consider the matter determinative. In any event, they indicate that their mortgage company would not be able to execute a deed within the required timescales and consider a condition would be a reasonable alternative.
15. Planning Practice Guidance (PPG)² makes it clear that securing a planning obligation by a negatively worded condition should only be done in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk. The PPG suggests that this might be applicable in the case of particularly complex development schemes. I do not consider that the appeal proposal is a complex scheme, and there is not sufficient evidence before me regarding the mortgage company issue which would justify the use of a condition in these circumstances.
16. My attention has been drawn to a condition on another planning permission in the Borough in which details of biodiversity enhancements are required³. The Council points out that in that case, a financial contribution was not required as the net gain was secured on site. An example has also been provided of a condition from a decision in the London Borough of Haringey where a condition secured details of biodiversity enhancements⁴. As no details of the context or development plan policies are before me, I do not consider this a reasonable comparison. These examples do not change my view that the biodiversity net gain contribution would need to be secured by planning obligation.
17. I note the suggested condition to secure details of the ecological enhancements, but this is a matter separate to the net gain in biodiversity which in this scheme would not be achieved on site. In conclusion therefore, without a planning obligation there would be no certainty that the required mitigation for the lack of on-site biodiversity net gain would be achieved. This would conflict with the requirements of BLP Policy NR2 and DNP Policy DAT8 insofar as they aim to secure net biodiversity gains through development schemes. The scheme before me would therefore have a harmful effect upon biodiversity.

² 010 Reference ID: 21a-010-20190723, revision date 23.7.19

³ Reference 23/01166 dated 29 November 2023

⁴ Reference HGY/2023/3351 dated 22 March 2024

Carbon dioxide emissions

18. BLP Policy SP2 requires all developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. The policy is relatively recently adopted; it does not set specific environmental standards for new development to achieve.
19. An air source heat pump is proposed as a means of addressing the measures required by Policy SP2. The energy statement indicates that it would result in a reduction in carbon emission of 54% over baseline. The scheme would also incorporate measures to reduce water usage. On the basis of the evidence provided, the proposal would meet the requirements of BLP Policy SP2.
20. I have also been referred to a Position Statement on Sustainability and Energy Efficient Design dated March 2021 (the position statement). This sets out that all new development should achieve net zero carbon emissions unless it has been demonstrated to be unfeasible. It clarifies that where this cannot be fully achieved on site, then a financial contribution to the Council's Carbon Offset Fund would be required, which would be used to secure the delivery of greenhouse gas reductions elsewhere in the Borough. However the document is intended as guidance and does not have the same status as the BLP Policy SP2 which has been fully consulted on and adopted. This limits the weight I attribute to it.
21. The PPG⁵ sets out that policies for planning obligations should be set out in plans and examined in public, and that local requirements for a building's sustainability should form part of a Local Plan. Consequently, I am not satisfied that the financial contribution towards the Council's Carbon Offset Fund would meet the tests set out in the Framework and Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
22. My attention has been drawn to an appeal decision⁶ where the Inspector accepted that a financial contribution towards the Carbon Offset Fund was necessary to make the development acceptable in planning terms, and that this must be secured by planning obligation. I note there were different circumstances in that appeal as no energy statement had been submitted. In this case, given the clear guidance contained in the PPG, Framework and CIL Regulations, it does not alter my view that a carbon offset contribution would not meet the relevant tests.
23. The appeal proposal would therefore align with the aims of BLP Policy SP2 and the Framework insofar as they expect development to incorporate measures to adapt to and mitigate climate change. It would therefore be acceptable with regard to its effect on carbon emissions.

Highway safety

24. The dimensions of the parking and manoeuvring areas shown on the proposed plan and clarified in the appellant's statement would be in line with the recommendations of the Highway Authority. On this basis, there is little substantive evidence of any harm to highway safety as a result of the appeal scheme.

⁵ Paragraph: 004 Reference ID: 23b-004-20190901 updated 1.9.19

⁶ Reference APP/T0355/W/22/3298086 dated 28 October 2022

25. The proposed access would involve the removal of a section of existing grass verge and installation of a new dropped kerb. The existing access would be removed and the grass verge reinstated. The grass verge to be reinstated would be outside the appeal site. The appellant suggests a Grampian style condition to secure the reinstatement of the grass verge. Although the Council considers a planning obligation would be necessary to secure this the PPG⁷ advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. I am satisfied this could reasonably be secured by condition to make the development acceptable in planning terms.
26. As such, the proposal would be in line with BLP Policies QP3 and IF2 and DNP Policy DAT9 insofar as they seek to protect and maintain grass verges, create a safe and comfortable environment for pedestrians and retain high quality townscapes. Consequently, the proposal would be acceptable in relation to its effect upon highway safety.

Living conditions of future occupiers

27. The proposed site plan does not indicate any areas dedicated to refuse or cycle storage. Based on the proposed drawings, there would appear to be sufficient space for wheelie-bin storage to the front of the proposed dwelling, set behind the proposed hedge and parking. The appellant indicates that cycle storage would be possible in the rear garden, using the shared side access to access the street. Whilst the gap between the houses would be narrow, it would be possible to wheel a bike along it.
28. In this respect therefore, the proposals would be in line with the guidance contained in principle 9.2 of the BWDG and the aims of BLP Policy IF2 and DNP Policy DAT13 insofar as they require the provision of cycle and refuse storage in new housing schemes. The scheme would therefore have an acceptable effect upon the living conditions of future occupiers with particular regard to refuse and cycle storage.

Planning Balance

29. Set against the harm identified, the proposal would deliver a net gain of one new dwelling. The scheme would be an efficient use of land in a sustainable location. This would support the Government's aim of significantly boosting the supply of homes. However, the addition of a single dwelling would provide a limited contribution in this context and I attach minor weight to this benefit. There would be temporary and ongoing economic benefits from the development through construction and use of local shops and services, but given the single additional dwelling, those benefits would also be limited.
30. The Council acknowledges that they cannot demonstrate a 5-year supply of deliverable housing sites and have clarified that the reported supply is equivalent to 4.69 years. Therefore, paragraph 11d)ii of the Framework is applicable. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

⁷ Paragraph: 003 Reference ID: 23b-003-20190901 updated 1.9.19

31. As described above the benefits associated with a single additional dwelling would be relatively minor even taking account of the Framework's objective of boosting significantly the supply of housing, and the Council's housing land supply position. The Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. It also aims to conserve and enhance the natural environment.
32. The harm to the character and appearance of the area and to biodiversity would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

33. The proposal would conflict with the development plan as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given, the appeal should be dismissed.

L Francis

INSPECTOR