



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: 16th October 2024

Appeal Ref: APP/T0355/W/24/3336559

Witchwood, Nightingale Lane, Maidenhead, Berkshire SL6 7QL

- 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 David Herbert Architects Limited against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 23/01732.
 - The development proposed is the construction of 3no. detached dwellings following demolition of the existing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted a revised car parking plan to the council before the planning application was determined. Planning Practice Guidance (PPG)¹ indicates that whilst it is possible for an applicant to suggest changes to an application, it is at the discretion of the local planning authority whether to accept such changes. The Council have confirmed that the application was determined on the basis of the drawings originally submitted. I proceed to determine the appeal on the basis of the proposed plans upon which the Council made its decision, as it is not the role of the appeal process to evolve a development scheme.
3. It follows that the communication with the council regarding the amendments and submission of other documents during the course of the application process is between the parties and has little bearing on my determination of this appeal.
4. There is a planning permission² for alterations to the existing dwelling to form a new first floor, side extension and detached garage. The appellant presents this as a fallback position in terms of a comparison of the appeal scheme with the extent of approved built development on the appeal site. Although the permission dates from 2012, the hardstanding of the garage has been laid. I am satisfied that there would be a reasonable prospect of this being completed as a fallback scheme and as such it is a material consideration.

¹ paragraph 061, Reference ID: 14-061-20140306 - revision date 06 03 2014

² Ref 12/02955

Main Issues

5. The main issues are the effect of the appeal proposal on:
- the character and appearance of the surrounding area;
 - highway safety, with particular regard to parking provision and visibility at the site access;
 - ecology and biodiversity;
 - carbon emissions; and,
 - the living conditions of neighbouring occupiers with particular regard to outlook.

Reasons

Character and appearance

6. Witchwood comprises a single storey dwelling set on a large plot with generous gardens to the front and rear. A vehicular and pedestrian access from Nightingale Lane is shared with the adjacent house known as Nightingales.
7. Nightingale Lane itself is a single-track road bordering open fields to the north and residential development running along its south side, to either side of the appeal site. The residential development along the lane largely comprises detached houses set well back from the road in spacious plots, often screened by planting and high hedgerows. The open landscape and low-density development in large plots give this part of Nightingale Lane a semi-rural, spacious and verdant character.
8. The appeal proposal would replace the single storey dwelling with a row of three detached three-storey houses, each with its own access, off street parking and rear garden.
9. The high-density, terrace-like form of the houses would not respect or reflect the pattern and grain of built development locally. The proposal, spanning the full width of the plot, taken together with the buildings' height and roof form, strong vertical emphasis and minimal separation, would be at odds with the prevailing pattern of low density, mostly two-storey development along Nightingale Lane.
10. When compared with the fallback position, the footprint of the proposed houses would have greater depth, along with greater height and bulk adjacent to the side boundaries. Whilst the overall height of the two schemes would be similar, the appeal scheme's additional bulk close to the boundaries would give the proposal a cramped appearance relative to the size of the site, at odds with the established pattern and grain of development in this location.
11. My attention has been drawn to an example of recently completed higher density development on Cannon Court Road some distance to the west of the appeal site. This road has a much more regular, high-density pattern of linear development as reflected in the semi-detached and terraced housing lining the street; the example referenced is a terrace of three houses. The character of Cannon Court Road, along with the example referenced are not comparable to

the appeal scheme and its surroundings and as such I attach limited weight to it in my decision.

12. The creation of three separate driveways would involve the removal of significant areas of the existing front boundary hedgerow. The drawings indicate that this would be replaced by low level planting next to the access points. The extent of hardstanding, taken together with the loss of the boundary hedgerow, would harm the verdant appearance of the site and erode its contribution to the wider semi-rural setting of Nightingale Lane. The degree of hardstanding would offer limited opportunities for soft landscaping and planting. This would conflict with the guidance contained in principle 9.3 of the Borough Wide Design Guide Supplementary Planning Document 2020 which seeks to minimise the extent of hardstanding.
13. Due to their scale, height, bulk, extent of hardstanding, position relative to the plot and consequent disruption to the rhythm of the townscape, the proposed dwellings would harm the character and appearance of the surrounding area. This would conflict with the aims of Policy QP3 of the Borough Local Plan 2022 (BLP) which, amongst other things, seeks to minimise the visual impact of traffic and parking and requires development to respect and enhance the local character paying particular regard to matters including urban grain, layouts, rhythm, density, scale, bulk and massing.

Highway Safety

14. The proposed drawings annotate a study/games room on the second floor which could be used as a bedroom, making the dwellings up to four bedrooms. The Highway Authority require three off street parking spaces for dwellings of this size. The drawings on which the Council determined the application show two parking spaces per dwelling. Whilst three spaces could be provided in front of the dwellings, there would be very limited space for manoeuvring. This would particularly be so in plots 1 and 2 which appear to have less available space in front of the houses and could lead to vehicles performing unsafe reversing manoeuvres onto the adjacent lane.
15. Nightingale Lane is a narrow carriageway with no practical space for any on-street parking. The effect of any cars parking along this lane would be to reduce the available carriageway width so as to make it virtually impassable to other vehicles and so would harm the safety of the highway. Increased parking demand resulting from the proposed development that could not safely be accommodated on site may lead to additional parking demand on-street, as drivers would be forced to seek parking spaces on other streets in the area or park illegally, which would be detrimental to highway safety.
16. The requirements of BLP Policies QP3 and IF2 do not extend to providing evidence of sightlines from proposed driveways. The removal of the high hedgerow currently enclosing the front of the site would provide greater visibility in both directions along Nightingale Lane. There are several existing residential driveways leading from this road, and due to the nature and configuration of the road vehicle speeds would generally be slow. As such I am satisfied that the scheme would be acceptable in terms of highway safety in this regard.
17. In conclusion, even though I have found that acceptable visibility can be achieved at the site access, the proposed parking provision would nonetheless

have a harmful effect on highway safety. The proposal would therefore conflict with the requirements of BLP Policies QP3 and IF2 insofar as they require development to deliver easy and safe access and movement for cars and service vehicles and vehicular parking standards, with consideration given to any potential impacts associated with overspill parking in the local area.

Ecology and Biodiversity

18. Part 2a of BLP Policy NR2 expects development proposals to demonstrate how they maintain, protect and enhance the biodiversity of application sites including features of conservation value such as hedgerows, trees, river corridors and other water bodies and the presence of protected species. I note that no ecological assessments by a suitably qualified professional, including those to identify the presence or otherwise of protected species such as bats, have been submitted with the appeal proposal. There are no mitigation or enhancement measures proposed as part of the appeal scheme. I cannot therefore be satisfied that there would be no potential for the presence of protected species on site, how the proposals would affect any species identified and what mitigation measures might be necessary.
19. In relation to biodiversity, 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 to enable compliance with Policy NR2.
20. Although the proposals would be limited to areas of the site which already contain hardstanding, there would be potential through demolition and construction works for disturbance to flora and fauna present on the appeal site. I have limited information before me that has assessed any such potential effects or means of mitigation.
21. No quantitative assessment of the effect of the proposals on biodiversity has been submitted with the appeal scheme. I conclude that there is insufficient information before me to provide certainty as to how the proposal would affect site ecology and biodiversity, along with any mitigation measures, so as to not have an unacceptable effect on ecology and biodiversity.
22. Given my conclusions on the above matters, the proposals would conflict with the aims of Policy NR2 insofar as they seek to protect and enhance ecology and biodiversity within development proposals.

Carbon Emissions

23. 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.
24. An air source heat pump, solar panels and measures to reduce water consumption are amongst the features proposed as a means of addressing the measures required by BLP Policy SP2. On the basis of the evidence provided, the proposal would meet the requirements of BLP Policy SP2.

25. I have 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. The appellant has completed a Unilateral Undertaking to provide a Carbon Offset Contribution in line with the position statement.
26. Whilst the position statement provides guidance, it does not have the same status as BLP Policy SP2 which has been fully consulted on and adopted. The position statement pre-dates the adopted BLP and the wording of Policy SP2 itself does not reference the position statement or the requirement to achieve net zero carbon emissions. This limits the weight I attribute to it.
27. The PPG³ 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 proposed 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).
28. In conclusion, the appeal proposal would 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.

Living Conditions

29. There would be an increase in height and bulk of built development running along the boundary with Nightingale Cottage next door to the appeal site. Nightingale Cottage itself is set within a large garden and the rear wing is substantially set back from the boundary with the appeal site. There are also several large trees along this boundary which would assist in mitigating the effect of the flank wall of the proposed house closest to Nightingale Cottage.
30. The increase in bulk would be apparent from the rear garden and in views from some of the windows facing the appeal site. However, given the relative distances between the appeal proposal and windows directly facing the side boundary, along with the size of the garden itself, the appeal scheme would have a limited effect on outlook from both the windows and garden area.
31. In conclusion therefore, the proposal would have an acceptable effect on the living conditions of neighbouring occupiers, with particular regard to outlook. As such, the proposal would not conflict with the aims of BLP Policy QP3 insofar as they seek to ensure that new development has no unacceptable effect on the amenities enjoyed by the occupants of adjoining properties.

Planning Balance

32. Set against the harm identified, the proposal would deliver a net gain of two new dwellings. The scheme would be an efficient use of land in a sustainable location. This would support the Government's aim of significantly boosting the

³ Paragraph: 004 Reference ID: 23b-004-20190901 updated 1.9.19

supply of homes. However, the addition of two dwellings 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 scheme contains only two additional dwellings, those benefits would be limited.

33. 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.
34. As described above the benefits associated with two additional dwellings 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 and ensure that safe and suitable access to a site can be achieved for all users.
35. The harm to the character and appearance of the area, to biodiversity, ecology and highway safety 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

36. 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