



Appeal Decision

Site visit made on 30 July 2024

by R Cahalane BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2024

Appeal Ref: APP/T0355/W/24/3343752

Land Between Blocks 4C And 1E Cavalry Crescent, Windsor SL4 3LN

- 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 E Kay (Annington Properties Ltd) against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 24/00474.
 - The development proposed was described as: "Construction of 2 x three bedroom dwellings, with access off Cavalry Crescent, associated car and cycle parking and landscaping on land between 4C & 1A Cavalry Crescent Windsor".
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Decision

1. The appeal is allowed and planning permission is granted for construction of 2 no. dwellings with access off Cavalry Crescent, associated car and cycle parking, EV charging point and landscaping at Land Between Blocks 4C And 1E Cavalry Crescent, Windsor SL4 3LN in accordance with the terms of the application, Ref 24/00474, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matter

2. The description of development in my decision differs to that in the banner heading above. The parties confirmed that the amended description in the decision notice is agreed, which reflects that used in my decision. This accurately describes the proposed development as shown in the submitted plans. I have determined the appeal on this basis.

Main Issues

3. The main issues are:
 - whether or not the proposed development would incorporate required measures to mitigate its climate change impact; and,
 - whether or not it would be appropriate to protect the appeal site as existing open space from the proposed development.

Reasons

Climate change mitigation

4. The first reason for refusal cites conflict with Policy SP2 of the Borough Local Plan 2022 (BLP) which requires, amongst other things, developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. Conflict with the Council's "Interim Sustainability

Position Statement” 2021 (ISPS) is also cited. Although this is not adopted planning policy, it clearly aligns with and supports the Policy SP2 requirements.

5. The ISPS advises that the Council will establish a Carbon Offset Fund which will be ring-fenced for the sole purpose of delivering carbon reduction projects within the Council. Monies will be collected and administered through the Section 106 process, to be ring-fenced and spent on carbon-reduction projects. A specific calculation methodology is provided for residential developments.
6. A Unilateral Undertaking (UU) is provided with the appeal, which includes a “Building Emissions Contribution” amount of £2,134.00, as set out in the Energy and Sustainability Statement supporting the proposal. This contribution is required to offset both regulated and unregulated emissions arising from the use of the proposed dwellings. The UU also includes a “Lifestyle Contribution” of £2,288.00, which follows the ISPS methodology, and is required to offset activities undertaken by the residents of the dwellings relating but not limited to aviation, agriculture, transport, and waste.
7. Both contributions are necessary to make the development acceptable in planning terms, specifically Policy SP2, and the UU sets out that they will be paid in to the Carbon Offset Fund. They are directly related to the proposal, and fairly and reasonably related in scale and kind to the development. The above contributions satisfy the three tests within Regulation 122 of the Community Infrastructure Regulations 2010, and the tests for planning obligations in Paragraph 57 of the Framework.
8. The proposal subject of this UU would comply with Policy SP2 of the BLP in terms of mitigating its climate change impact. Therefore, the proposed development would incorporate required measures to mitigate its climate change impact.

Existing open space

9. At the time of the Council’s decision, it is understood that the appeal site comprised building waste and materials. When I visited, it mainly comprised a fenced and gravelled parcel of land. It is bordered on either side by terraced dwellings, fronting a cul-de-sac within the residential estate of Cavalry Crescent. It also incorporates an existing section of footpath and communal grassland to the rear of the fenced land. Beyond this lies other land associated with the nearby military accommodation. The site lies within a wider former military housing estate that has recently been refurbished to provide private dwellings. I noted a sales home dwelling and various sales boards throughout the estate, and some of the dwellings appeared to be occupied.
10. Policy IF4 of the BLP states that existing open space in the Borough will, where appropriate, be protected, maintained, and where possible, enhanced to increase capacity and make it more usable, attractive and accessible. Development involving the loss of open space will only be granted permission where the following relevant criteria are met:
 - a. There is clear evidence, for example from the latest published Open Space Study, that the existing facility is no longer required to meet current or projected needs, including for biodiversity improvements/off-setting; or

- b. The existing facility would be replaced by equivalent or improved provision in terms of quality and quantity in a suitable location within walking distance of the existing facility.
11. This policy reflects the intent of Paragraph 103 of the Framework, which states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
 - b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
12. Open space is defined in Annex 2 to the Framework as: "All open space of public value...which offer important opportunities for sport and recreation and can act as a visual amenity". Assessment of whether land is "open" can also be made in both the spatial and visual sense, and not just in terms of whether it can be accessed by the public. Small sites can and do form an important part of the landscape and setting of built development, and can include an open area within a development as well as an area of play.
13. The previous play facility within the appeal site served a number of dwellings, and the Council's Open Space Study (2019) states that more local areas of play are needed across the town of Windsor. Despite this, I have no evidence before me to suggest that provision of play facilities or open space at the appeal site, or any form of public access to it, is mandatory through mechanisms such as a planning condition or legal agreement. Regardless of the specific circumstances in which the play facility was removed, the lack of enforceable mechanism to reintroduce and secure this use significantly and fundamentally limits the site's function as an "existing facility", in the context of Policy IF4. On this basis, it appears that there is no mechanism, or legal or planning reason, setting out why the site condition as a small private fenced off brownfield urban land between existing dwellings will not continue.
14. The appeal site is not visible from the estate's entrance off St Leonards Road (B3022), due to its position within a cul-de-sac off the main estate route. It does not sit in a central location within the estate, which contains some small but more prominent areas of grass verge open space along its main route. Its location therefore limits its visual quality as open space. I accept there is no quantified lower limit in respect of what may comprise open space. Whilst it forms an area of open space or gap between a row of dwellings, due to its limited development in the context of buildings either side of it, its level of enclosure and limited soft landscaping coverage provides no meaningful function as green infrastructure, recreational space, or a green lung in an urban area as set out in the supporting text to Policy IF4.
15. The appeal site very much reads as a leftover parcel of urbanised land within an urban residential setting, despite its past play area use. Whilst a brownfield site such as this can still be viewed as a form of open space, it does not possess any meaningful positive spatial or visual function, value and appearance.

16. For the above reasons, and based on the submitted evidence, the appeal site is not regarded as an “existing facility” in the context of Policy IF4 and also does not have a demonstrable function or value as open space, including either spatially or visually. It is therefore not appropriate to protect the appeal site as existing open space from the proposed development, as I have found no conflict with Policy IF4 of the BLP or paragraph 103 of the Framework.
17. My attention has been also been drawn to two areas of open space within walking distance from the appeal site. The larger facility (Nightingale Walk) is accessed via Ridge Court, a small housing estate off Sinclair Road. The other smaller facility is near to this, and has a pedestrian access off the Sinclair Road footway (with a sign identifying this facility as “Sinclair Road”). The existence of these sites does not automatically render the appeal site a redundant area of open space, or surplus to requirements. I have however assessed the existing condition of the appeal site on its own merits having regard to the submitted evidence, and have found that its development for dwellings would not conflict with Policy IF4 of the BLP or Paragraph 103 of the Framework. Therefore, it would not be appropriate to protect the appeal site as existing open space.

Other Matters

18. The LPA refers to Schedule 14 of the Environment Act 2021 and whilst this relates to biodiversity, it nonetheless considers it reasonable to apply the same baseline value of 30 January 2020 to the appeal site in respect of its former use, which was when it was in use as a play facility. I find such an approach to be wholly inappropriate, as this would in effect apply certain government legislation, not directly related to its scope, unilaterally and retrospectively to other specific planning policies. The same approach could also be applied by others to seek to diminish other requirements of the development plan. There is ultimately no sound planning basis to justify such an approach.
19. In response to the appellant’s statement of case, the LPA highlights a lack of evidence to demonstrate that the appellant explored the possibility of the Council managing the appeal site as an area of play. Conversely, the LPA has provided no evidence to indicate that this arrangement would be feasible. This matter does not appear to have been pursued by either party in any meaningful manner throughout the determination of the application.

Conditions

20. I have considered the Council’s suggested conditions against the tests in the Framework and Planning Practice Guidance, and have amended their wording, where necessary.
21. I agree that a condition specifying time limits for the development (condition 1) is necessary in the interests of planning certainty. A pre-slab level condition requiring agreement of external materials (condition 2) is necessary, in the interests of the character of the area. Conditions 3-6 are necessary to ensure adequate off-street parking, bin and cycle storage, and electric vehicle charging provision, and to provide and encourage sustainable modes of transport. I have amended the wording of all these conditions to provide the same pre-occupation trigger, in the interests of clarity. Also, for clarity I have added the approved proposed site plan drawing number to conditions 3, 5 and 6. I have added a tailpiece to condition 3 to ensure the parking and turning areas are maintained as such.

22. An interested party has commented that the potential for environment and biodiversity support was met by the previous facility within the appeal site and it should be retained. However, the LPA has accepted that the appeal proposal is capable of achieving an on-site biodiversity net gain, and this can be secured by means of a suitably worded planning condition (condition 8) which I regard a necessary requirement having regard to biodiversity policies. Condition 7 is also necessary in the interests of biodiversity and I have added an implementation timetable, to fully secure its requirements. Condition 9 is necessary to ensure that there is no increased flood risk, and Condition 10 is necessary in the interests of sustainability and climate change. Condition 11 is necessary to clarify the approved plan details.

Conclusion

23. The proposal is in accordance with the development plan as a whole and the Framework, and the material considerations do not indicate that a decision should be made other than in accordance with the development plan. The appeal should therefore be allowed.

R Cahalane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be commenced within three years from the date of this permission.
- 2) No development above slab level shall take place until details of the materials to be used on the external surfaces of the development have first been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.
- 3) No part of the development shall be occupied until vehicle parking and turning space has been provided, surfaced and marked out in accordance with the approved drawing number 1532-101 Rev P4. The space approved shall be kept available for parking and turning in association with the development and thereafter maintained.
- 4) Prior to occupation of any dwelling hereby permitted, the parking spaces shall be provided with fast (<7 kW) electric vehicle (EV) charging points. These facilities shall thereafter be retained and kept available in association with the development at all times.
- 5) Prior to occupation of any dwelling hereby permitted, covered and secure cycle parking facilities shall be provided in accordance with the approved drawing number 1532-101 Rev P4. These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times thereafter.
- 6) Prior to occupation of any dwelling hereby permitted, refuse bin storage area and recycling facilities shall be provided in accordance with the approved drawing number 1532-101 Rev P4. These facilities shall be kept available for use in association with the development at all times thereafter.
- 7) Prior to the occupation of any dwelling hereby permitted, and notwithstanding the approved plans, details of the biodiversity enhancements, to include but not limited to locations and elevations of the integral bird boxes on the new buildings and native and wildlife friendly landscaping, and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity enhancements shall thereafter be installed and maintained as approved.
- 8) Prior to the commencement of the development, details of a biodiversity net gain and habitat management plan for onsite delivery and monitoring of biodiversity net gain shall be submitted to and approved in writing by the Local Planning Authority. Details shall include the following:
 - Habitat management plan;
 - Long term aims and objectives for habitats and species;
 - Detailed management prescriptions and operations for newly created habitats, locations, timing, frequency, durations, methods, specialist expertise (if necessary), specialist tools/machinery or equipment and personnel as required to meet the stated aims and objectives;
 - A detailed prescription and specification for the management of the new habitats;
 - Details of any management requirements for species specific habitat enhancements;
 - Annual work schedule for at least a 30 year period;
 - Detailed monitoring strategy for habitats and species and methods of measuring progress towards and achievement of stated objectives;

- Details of proposed reporting to the Council and the Council's Ecology Officer and proposed review and remediation mechanisms; and,
- Proposed costs and resourcing and legal responsibilities.

The biodiversity gain and habitat management plan shall be implemented in accordance with the agreed details and timetable, and all habitats and species specific measures shall be retained and maintained thereafter in accordance with the approved details.

9) The development shall be carried out in complete accordance with the Flood Risk Statement and Drainage Strategy, dated 22nd June 2023 and received on the 23rd February 2024.

10) All recommendations contained within the Energy and Sustainability Statement, dated June 2023 and received on the 23rd February 2024 (or any updated Sustainability Statement submitted to and approved in writing by the Local Planning Authority) shall be carried out and adhered to for the lifetime of the development.

11) The development hereby permitted shall be carried out in accordance with the approved plans listed below.

1532-1000 Rev P1, received on 23 February 2024

1532-101 Rev P4, received on 23 February 2024

1532-102 Rev P3, received on 23 February 2024

1532-103 Rev P3, received on 23 February 2024

1532-105, received on 23 February 2024

A350 PP01 Rev B, received on 23 February 2024

End of Schedule