



Appeal Decision

Site visit made on 26 September 2024

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2024

Appeal Ref: APP/T0355/W/24/3344592

Land adjacent to Hedsordene, Lower Road, Cookham SL6 9HW

- 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 Palatine Homes Ltd against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 23/01539.
 - The development proposed is for the construction of 4 no. detached houses with car ports, parking, landscaping and improvements to the access onto Lower Road.
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Decision

1. The appeal is dismissed.

Procedural and Preliminary Matters

2. The appellant has submitted a signed Unilateral Undertaking (UU) dated 22 August 2024. This contains obligations and provisions for payments in relation to the Council's carbon offset fund and Biodiversity Net Gain (BNG). I shall return to these matters below.
3. The reasons for refusal included ecological concerns. As part of the appeal process the appellant has provided further information in relation to the trees and potential for bats roosting. The Council's Ecologist confirms that no further surveys are required as no evidence of bats was found. The Council has therefore advised that this aspect of reason for refusal 1 relating to the impact on protected species has been addressed, subject to a number of recommended conditions. I have seen nothing that would lead me to a different conclusion on this matter. However, the Council has not withdrawn its objection in relation to the BNG aspect of that reason for refusal.

Main Issues

4. The main issues are the effect of the development on: -
 - i) Highway safety
 - ii) Surface water flood risk
 - iii) Biodiversity Net Gain; and
 - iv) Whether the Planning Obligation secures financial contributions, where deemed necessary, for biodiversity offsetting and towards the Council's Carbon Offset Fund.

Reasons

Highway Safety

5. The proposal would make a number of alterations to the existing access, which is currently a single-width private access and adjoins Lower Road very close to the level railway crossing. It is located within the centre of Cookham and while my site visit can only represent a snapshot of the normal conditions, the area around the access was busy with vehicles and pedestrians accessing the railway station, a range of shops and other community facilities. Opposite the access is the station car park and High Road, and there is a dropped kerb pedestrian crossing point located between these two access points.
6. The access to the development would be widened to 4.8m with a 1.8m wide footpath to the first 13m. It would then narrow in front of Inglenook before widening again to the front of the proposed houses and accommodate a turning area between plots 2 and 3. To improve visibility, the existing garage to Sulby Cottage, is to be removed, and the boundary along Lower Road realigned.
7. The visibility would be an improvement over the existing situation. The splay to the west would be based on traffic speed and short of the 2.4 x 43m standard splay for a 30mph road. The splay distance to the east is achieved, albeit with the centreline rather than the kerb. The guidance within Manual for Streets 2 does allow for this in some circumstances where vehicles are unlikely to cross the centreline, however, a solid white line on the road does not prevent vehicles from crossing and is not the same as the example of physical segregation referenced. Additionally, views to the left are over the railway crossing with a parking layby outside the convenience store beyond, and access to the station opposite. Thereby, this is not a straight, uninterrupted stretch of road and vehicles will be making a variety of manoeuvres.
8. Due to the proximity to the railway crossing, any vehicle behind that waiting to turn right into the access would be within the clearance area for the level crossing. There would be the possibility of traffic backing up over the railway with potential consequences for highway and railway safety. Whilst this situation could occur with vehicles associated with the existing properties, the number of properties it serves would be doubled, and the occurrence of such manoeuvres would be increased. Additionally, the alterations enable the use of the access by a range of vehicles, and the change to the appearance visually gives it more prominence, which, in my view, is likely to encourage use by larger vehicles, compared to the existing and somewhat concealed private driveway.
9. The plans indicate that the first section of the access could accommodate two cars passing, although this is the minimum width for two-way traffic. It would not accommodate the passing of a larger vehicle, and there is a limited buffer with the eastern boundary along the access comprising high palisade fencing enclosing vegetation associated with the railway. The scheme also includes direct refuse collection, and based on the swept path plan, a refuse vehicle would utilise the full width of the entrance, and the only point for passing a large vehicle would be at the turning head, which is a significant distance into the site from the Lower Road.
10. Drawing these elements together, it has not been adequately demonstrated that the arrangements would safeguard the operation of the railway crossing and/or that appropriate traffic management is proposed to limit the likelihood of conflicts. Adding 'keep clear' to the access would not mitigate the issue

because unless the other side of the carriageway is clear, and the access driveway can accommodate the vehicle(s) when the railway barrier activates, the vehicles would have nowhere to go. The fact that the crossing is only activated for 55 to 70 seconds for each closure does not diminish the potential risk of an accident occurring.

11. In relative terms, based on the appellant's TRICS data, the increase in additional traffic passing over the level crossing from the proposed properties would be limited. I also acknowledge that the data indicates that there have been no reported accidents. However, that does not infer that the altered access would be safe, and the additional traffic and the type of vehicles using the access increase the potential for conflicting interactions. Network Rail advises that they have an extensive history of incidents at this crossing, ranging from pedestrians weaving around the barriers to cars being stationary on the crossing when the barriers have begun to lower and even being struck. Significantly, the interference of a vehicle with the level crossing could have very serious consequences.
12. Reference is made to a scheme for the site in 2008 for 9 houses, which the appellant advises the highway authority did not object to. Nevertheless, it was refused, with one of the reasons for refusal similarly being the relationship between the access and the railway crossing, and there is no substantive evidence before me that the traffic conditions 14 years ago are comparable to those now. Moreover, it does not provide a fallback and also predates the current development plan.
13. For the reasons set out, the proposal does not demonstrate that the visibility splays and the access arrangement would safeguard users of the highway and not result in harm to highway safety, with specific regard to the proximity of the railway crossing. The development would, therefore, fail to accord with BLP Policies QP3 and IF2, which, amongst other things, require the delivery of easy and safe access and movement for pedestrians, cyclists, cars and service vehicles. This is echoed in the Framework (paragraph 115) which advises that development should be refused on highway grounds if there would be an unacceptable impact on highway safety.

Surface Water

14. The Framework advises that inappropriate development in areas at risk of flooding should be avoided and promotes a sequential approach to managing flood risk from all sources directing development away from areas at highest risk.
15. The appellant's Flood Risk Assessment and Drainage Strategy (FRA) prepared by JNP Group concludes that the development is not at risk of flooding. The site is located within Flood Zone 1, but it is also, as the FRA identifies, located within a high area for surface water flood risk.
16. The appellant considers that the Environment Agency surface water flood map of the area does not accurately represent the likely flooding on the ground as it does not take into account the topography, the raised level of tennis court and barriers to flooding. However, the area of risk relates to the majority of the site with just the access point to Lower Road outside, which is notably on higher ground. Whilst acknowledging the difference in the site levels and potential deficiencies in the mapping, I have not been provided with any other modelling

and any potential amendments to the mapping have not been discussed or agreed upon with the Environment Agency.

17. Additionally, whilst the Environment Agency records do not indicate any flood events, the Council as Lead Local Flood Authority (LLFA) has advised of records of surface water flooding in the area, and photographs of flooding have been provided as part of the representations from occupiers of properties adjacent to the site in Burnt Oak. There is, therefore, evidence of surface water flooding in this area, and whilst the area at risk may not be the full extent of that on the Environment Agency mapping, the appellant's evidence does not provide confirmation that all of the site is not at risk from surface water flooding.
18. While the FRA advises that the sequential test is not required due to the site being within flood zone 1, BLP Policy NR1 and national policy advise that the sequential approach applies to all sources of flooding. In accordance with the Framework (paragraph 168), development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. No sequential test has been undertaken to assess that, and therefore, the proposal fails to accord with the requirements of the Framework and would be contrary to BLP Policy NR1, which seeks to manage flood risk.
19. Given this finding, I have not considered the other aspects in terms of the drainage arrangements and the proposed layout in relation to the highway culvert any further. Although the sequential test did not form part of the Council's reason for refusal, I am bound to consider the proposal against national policy and guidance. It is a direct conflict, and the flood protection measures proposed within the development do not eliminate the need for the sequential test, nor is it a matter which could be addressed through a condition.

Biodiversity Net Gain (BNG)

20. The application was submitted prior to the legislation requiring the mandatory 10% net gain came into effect. Nonetheless, the Framework seeks net gains for biodiversity (Paragraph 180 (d)), and BLP Policy NR2 requires development proposals to demonstrate a net gain in biodiversity by quantifiable methods such as the use of a biodiversity metric. Neither quantifies the gain required, and policy NR2 allows for a financial offsetting contribution to make the proposal acceptable in planning terms where provision cannot be secured on-site.
21. As part of the appeal, the appellant has provided further information comprising a revised Technical Note: Biodiversity Net Gain, prepared by AAe Environmental Consultants and a Biodiversity Net Gain Small Sites Metric. These advise that there would be a net loss of -1.6972 habitat units and a net gain of 0.0420 hedgerow units. The appellant proposes to address the biodiversity metric deficit through a contribution to an off-site scheme to be secured via the Unilateral Undertaking (UU).
22. The UU would provide for a contribution equivalent to the 1.7 habitat units to be lost. Additionally, a number of other provisions are also proposed on-site, including tree planting and wildlife boxes. The Council raise concerns that the hierarchy which requires on-site provision to be considered first has not been followed. However, given that the site is to accommodate four properties

compared to the existing garden use, there would be an inevitable loss of habitat. The layout responds to the linear form of the site, and there is limited space outside the individual plots, as such, it is difficult to see how further meaningful habitat provision could be accommodated on-site.

23. Notwithstanding this, the Council's Ecologist indicates that there is a loss of trees, and the trading standards have not been satisfied, which is also flagged in the metric. Whilst the parties note that individual trees are not included in the Small Site Metric calculations, that metric has been used, and details of the urban tree habitat have been provided. The appellant's Technical Note and accompanying plans indicate that the existing area of urban trees is 2564m². The proposal would create 407m² from new tree planting outside the private garden areas, and 448m² would be retained. Consequently, there would be a net loss of 1709m². The appellant does not directly address this in terms of compensation or how it relates to the need to demonstrate a gain in biodiversity. The proposed replacement trees do not therefore provide adequate mitigation. Moreover, the financial contributions proposed do not appear to be sufficient to address this additional reduction in biodiversity.
24. In conclusion, the only on-site gain in biodiversity aligning with the metric would be the additional hedgerow, but this represents a very small amount overall (an increase of 26m² equal to 0.0420 hedgerow units). The proposed financial contribution just covers the habitat loss identified in the metric, and the other on-site provisions are also limited. While there is a lack of clarity in the evidence of the parties relating to how the trees should be considered in terms of the metric, it is nevertheless the case that they have biodiversity value, and the evidence suggests that 'trading standards' have not been satisfied. This issue has not been satisfactorily addressed by the evidence and thus I cannot conclude with any certainty that the development would lead to a net gain in biodiversity, as required by BLP Policy NR2 or the Framework.

Planning Obligation

25. A signed and dated s106 Undertaking has been submitted in relation to securing a financial contribution of £74,800 towards a Biodiversity Net Gain Offset Fund and £3,647.34 payable into the Council's Carbon Offset Fund.
26. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) state that a planning obligation may only constitute a reason for granting planning permission if the obligation is, necessary to make the development acceptable in planning terms, directly related to the development and fairly related in scale and kind to the development.
27. For the reasons given above, even with the BNG contribution in place, it is not clear that the proposal would demonstrate a net gain in biodiversity. Therefore, the means of securing the contribution is not determinative, as it would not make the development acceptable in planning terms as the policy is not satisfied. For this reason, I have also not given any further consideration to matters raised in relation to the trigger for any contribution.
28. In relation to the Council's Carbon Offset Fund, the appellant has referred me to other appeal decisions where this provision has not been found to meet the tests. The Council have also referred to a couple of appeal decisions where a contribution was secured, although they are earlier decisions, and I have to be satisfied that the proposal accords with the CIL requirements.

29. BLP Policy SP2 relating to climate change requires developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. The application is accompanied by a Sustainability and Energy Statement, which indicates a 79% reduction in carbon emissions based on the provisions proposed, and the policy does not include any specific target.
30. While the policy refers to Supplementary Planning Documents and further guidance, there is no direct reference to the Council's Position Statement on Sustainability and Energy Efficient Design – March 2021 (the Position Statement), which seeks net-zero and introduces the carbon offset fund, and pre-dates the adoption of the BLP in February 2022.
31. Additionally, as referenced in the appeal decision (APP/T0355/W/23/3333834) a Written Ministerial Statement (WMS) was issued on 13 December 2023 in relation to local energy efficiency standards. The WMS sets out that the Government does not expect plan makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. It also indicates that *"Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned buildings regulation should be rejected at examination if they do not have a well-reasoned and robustly costed rationale that ensures:*
- *That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.*
 - *The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP)."*
32. The Council's Position Statement is not policy and also does not reflect the other requirements of the Written Ministerial Statement. Therefore, I am not that 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).
33. My conclusions on these matters, however, do not affect my findings on the other main issues.

Other Matters

34. The appellant has raised concerns that some issues and, in particular, technical highway matters were raised at a late stage. They have, however, responded to all of those issues, and have also provided a range of further documentation in relation to various matters as part of the appeal. I also understand the appellant's frustration in trying to discuss the proposal with LLFA without success. However, these issues primarily relate to communications between the parties and relevant bodies as part of the application process and are outside the scope of the appeal.

Planning Balance

35. Based on the most recent Statement on the 5-year housing land supply published by the Council in March 2024, as directed to by the appellant, the Council cannot currently demonstrate a five-year supply of deliverable housing

sites as required by Framework. Whilst this would generally invoke the 'tilted balance' paragraph 11 (d) (i) advises it is not applied where the application of policies in the Framework provides a clear reason for refusing the development. One of the policy exceptions under footnote 7 is areas at risk of flooding. Given my findings above in relation to surface water, the site is at risk of flooding, and therefore, the presumption in favour of sustainable development is not applied. I have therefore undertaken a standard (non-tilted) balance.

36. The scheme would be an efficient use of land in a sustainable location which would allow for non-car mode travel. The development would support the Government's aim of significantly boosting the supply of homes, and the development of a small site. Paragraph 70 of the Framework advises that great weight is to be given to the benefits of using suitable sites within an existing settlement for homes, which is the case here.
37. There would also be temporary and ongoing economic benefits from the development through the construction and use of local shops and services, but given the small number of dwellings, those benefits would be limited. Maintaining the character of the area and providing appropriate amenities, parking, landscaping, and energy efficiency measures which afford compliance with other policies are neutral matters.
38. Conversely, I have found that the proposed development would be contrary to the development plan on all the main issues. Even if I had come to a different conclusion on the matter of Biodiversity Net Gain both highway safety and flood risk are matters where the Framework advised that the development should be refused.
39. Overall, I do not find that the benefits of the scheme outweigh the identified harm and the conflict with the development plan and the policies in the Framework taken as a whole.

Conclusion

40. The proposed development conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out and having regard to all other matters raised the appeal is dismissed.

G Ellis

INSPECTOR