



Appeal Decision

Site visit made on 7 August 2024

by Melvyn Middleton BA(Econ), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2025

Appeal Ref: APP/T0355/W/23/3319983

Halfpennys Garage, Kings Road, Sunninghill, Ascot, SL5 7BT

- 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 Wooldridge Developments Ltd. against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 22/01431.
 - The development proposed is demolition of existing buildings and erection of a commercial unit (use class E) and 14 dwellings, including associated vehicular/pedestrian access, parking, bin storage and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was refused for five reasons, four of which related to disagreements about the viability of the proposal and/or the absence of commitments, on the Appellant's part, to mitigate perceived planning harm. At the time of the decision, the Appellant's viability report had not been independently verified but that was subsequently undertaken. The verification concluded that the scheme was viable, even with the costs of mitigation to address reasons for refusal 2, 3 and 4, along with the provision of affordable housing (reason 1), included within the calculations. The Appellant disagreed with the outcome of the verification, considering that the scheme was not viable with the inclusion of all of the Council's requirements, particularly the affordable housing.
3. Following subsequent discussions, between the parties, they still did not reach a full agreement as to the scheme's viability, there being significant differences with regard to construction costs, profit margin, benchmark land value and the sales period. Nevertheless, the Appellant submitted a Unilateral Undertaking, dated 14 December 2023 that was signed by itself and the owners. In this they agree to the Council's requested contributions but subject to the decision maker making a ruling on the overall viability of the scheme and its ability to fund them.
4. I asked the parties to reassess their viability calculations and to prepare a joint Statement of Common Ground that indicated where and why they disagreed on matters related to viability. I also provisionally arranged a Hearing for April 2024, in order to discuss any outstanding disagreements.

5. The fundamental disagreement between the Appellant and the Council relates to the extent (if any) of the provision of affordable housing. LP Policy HO3 requires the provision of 30% affordable housing on a development that would include 14 residential units (4 dwellings). This is supported by Section 5 of the NPPF, which requires the delivery of affordable housing on major development involving the provision of housing. The Council's viability assessment, which allows for the financial contributions, necessitated by the other obligations, suggests that a full contribution (£475,723) is appropriate, the Appellant suggests the reverse. Nevertheless, that sum is agreed to in the Unilateral Undertaking but subject to the above proviso.
6. Whilst the Unilateral Undertaking anticipates that I would determine whether or not the scheme's viability is sufficient to accommodate the costs of the Council's full affordable housing provision, in addition to the other contributions, in the circumstances, that is not possible. The differences between the parties is such that I would need to question them together in a Hearing format in order to arrive at an understanding that would allow me to reach a fair conclusion. Both parties rejected my proposal for a hearing and so such an outcome is not an option.
7. Notwithstanding that, the parties subsequently agreed that a contribution of £154,000 toward affordable housing would be acceptable but subject to an early-stage review. Following a subsequent joint request to cancel the Hearing, I acceded. Despite an indication from the Appellant, in April 2024, that a supplement to the Unilateral Undertaking, incorporating the agreed changes was being finalised, a revised agreement has not been submitted. Nevertheless, in the above circumstances, were an up to date and signed Unilateral Undertaking to that effect before me, then the proposal could be in accordance with Policy HO3 of the adopted Royal Borough of Windsor and Maidenhead Local Plan 2013-33 (LP) and reason for refusal 1 would fall away.
8. The Undertaking also contains a provision for the preparation and implementation of Commercial and Residential Travel Plans, which the Council has accepted. The proposal is therefore in accordance with LP Policy IF2 and Policy NP/SV1.1 of the adopted Ascot, Sunninghill and Sunningdale Neighbourhood Plan 2011-2026 (NP). Reason for refusal 3 therefore also falls away.
9. The parties to the Undertaking also agreed to make a contribution to the provision of Suitable Alternative Natural Green Space (SANG), provisionally at Sunningdale Park and to make a financial contribution to the Strategic Access, Management and Monitoring (SAMM) programme for the Thames Basin Heaths Special Protection Area. The Undertaking refers to the provision of a SANG Confirmation Consent and the making of an Excess Sang Agreement. These have been subsequently drafted and signed. The proposal is therefore now in accordance with LP Policy NR4, Policy NRM6 of the Southeast Plan and Section 15 of the National Planning Policy Framework (NPPF). Reason for refusal 4 therefore falls away.
10. In the Undertaking, the Appellant and the landowners also agreed to make a Building Environment and a Lifestyle contribution, assuming that the decision maker considers such payments to be justified. In such circumstances the proposal would be in accordance with LP Policy SP2 and reason for refusal 5

would fall away. I return to the appropriateness of a requirement for a Building Environment and Lifestyle contribution later in the decision.

Main Issue

11. In the above circumstances I consider the main issues in this case to be the effect of the proposal on the character and appearance of the area and the heritage assets within it.

Reasons

Character and appearance

12. The appeal site is located on the edge of Sunninghill centre at the junction of Kings Road and Sunninghill Road. It has been the location for a vehicle service and repair garage, with associated car sales, since the mid twentieth century. The buildings are consequently set back from the adjacent roads, the space between the buildings and the pavements being used to display cars. The site has a decidedly commercial appearance, with obvious signs of age and decay. In the context of the wider location, the site would benefit from renewal.
13. The Council's Townscape Assessment places the site within the Sunninghill Village Character Area, with the main street described as having an active building frontage but with dwellings set well back from the road. This set back might be a characteristic of the decidedly residential parts within the character area, to the north, north-east and south-east of the appeal site and currently for the appeal site itself. However, Sunninghill centre, which is located immediately to the south-west of the appeal site, is nevertheless characterised by buildings that, for the most part, are commercial, largely shops, but with residential accommodation on the second and third floors of the buildings in many instances and with their facades located on the back of the pavements. Only the primary school is set back from the road, in its case beyond a playground which is elevated above the road.
14. The position of the appeal site is one of transition, but its current character is decidedly commercial. By establishing a ground floor retail unit, the appeal proposal would continue this use. There would be residential properties on the upper floors but this, as explained, is also a characteristic of existing retail units within Sunninghill centre. In this context, I consider the character of Sunninghill centre to be a more appropriate benchmark for the design of the appeal site than the residential properties further along the adjacent roads.
15. A distinctive unifying feature is the centre's roofscape, which to some extent is copied on some nearby residential properties. This is characterised by gables, many of which face the street in the form of roofs and dormers. There are also secondary gables facing the streets on buildings whose main ridges sit parallel to the street.
16. I agree with the Council that the location is prominent and sensitive to the locality. Consequently, the site requires a well-designed building if the proposal is to meet the requirements of LP Policy QP3 and Section 12 of the NPPF. Nevertheless, the fundamental characteristic of the building layout within the village centre is one of a back of pavement location. In this context I see no harm in the appeal proposal copying this characteristic.

17. However, given its prominent location and its inevitable inter-relationship with its surroundings, the design of the building needs to be sensitive to the overall village centre character and indeed the common theme of the roofscape that integrates it with its residential catchment. The appeal design's concept is unapologetically a contemporary approach. This has produced a building design that emphasises the building's horizontality. In addition to the flat roofs and distinctive horizontal window lintels, there are also emphasized horizontal bands across the elevations. Whilst in many locations this building could look admirable, in the context of Sunninghill centre and its surroundings, with its gabled roofscape, I consider that the proposed building would appear alien in its surroundings.
18. A building that was set back into the site, allowing the frontage areas to be landscaped, thereby softening the horizontal elements of the building, would be less intrusive. However, such a solution would inevitably reduce the building's floorspace and the car parking. This would in turn very likely weaken the scheme's viability, which is already an issue.
19. Whilst the proposed building would be three storeys in height, a number of other commercial/residential buildings are also three stories in height. Cordes Hall, which is across the street, may only be single storey but it is not domestic in scale and indeed higher than many two storey buildings in the area, I do not consider the overall height of the proposal, in its setting, to be inappropriate to the context.
20. Nevertheless, and overall, in the context of the building's location on the back of the pavement, it is my view that the design of the proposed elevations would not respect or enhance the site's village setting or respond positively to the appearance of the adjacent commercial and community-built development. The proposal is therefore contrary to LP Policy QP3 and Section 12 of the NPPF.

Heritage assets

21. The centre contains three heritage Assets recorded in the NP (Cordes Hall on King Street, St Michaels Church of England Primary School on Sunninghill Road and The Terrace). The school stands in its own grounds and is located on the north side of a playground that fronts the adjacent road, The Terrace is to the west of the school and even further away from the appeal site. I agree with the Council that there would be no harm to the setting or significance of these heritage assets from the proposed development of the appeal site, because of the distance of the Terrace from the appeal site and the limited intervisibility with the school itself. In my view, because of levels changes and the impact of vegetation, the setting of the school does not meaningfully extend to the south of Sunninghill Road. Consequently, the proposal would not cause any harm to these heritage assets.
22. Cordes Hall is in a prominent location across King's Road from the appeal site. At the present time there are clear views of it across the undeveloped northern part of the appeal site from Sunninghill Road to the east of the appeal site. Being located on the back of the pavement, the proposed building would reduce the extent to which Cordes Hall is visible from Sunninghill Road and harm its setting. However, historical records show that previous buildings on this site had a similar footprint location to their contemporaries within the retail area and indeed Cordes Hall was similarly sited. In the context of a building

- located on the back of the pavement, the proposal would not therefore be a departure from the historic setting of Cordes Hall.
23. Cordes Hall has a roofscape of varying gables and in that context its design reflects other buildings of its period, within the village centre. Locating the appeal building on the back of pavement, rather than setting it back behind landscaping, will clearly have a greater visual impact on Cordes Hall than would otherwise be the case. As proposed the appeal building would sharply contrast with the appearance of the design of Cordes Hall. I consider that the impact would be incongruous and harmful to the setting of Cordes Hall. Overall, I consider that the proposed location and roofscape of the appeal building would be harmful to the heritage asset and although less than substantial at least moderate.
24. Paragraph 208 of the Framework requires me to weigh any less than substantial harm to the significance of heritage assets, resulting from the proposal, against the public benefits of the proposal.
25. At the end of the last monitoring period¹ the Council's housing land supply was 4.69 years. I note the Council's point about the reasons for poor delivery on some sites. However, that is one of the reasons why the NPPF urges Local Planning Authorities to identify a sufficient supply and mix of sites that takes into account their availability. The inclusion of small and medium sized sites in the mix, which can often be built out relatively quickly, can assist in the maintenance of a five-year supply going forward. In my view the small contribution that this site could make to housing delivery should be given some weight.
26. The scheme would provide a limited amount of mixed housing in a Borough where there is currently no five-year housing land supply. This includes much needed affordable housing. The affordable housing is a policy requirement, in any event, so that this does not, of itself, attract significant weight. In addition, there would be short and long-term economic benefits from the development itself as well as improved car parking in the village centre. The redevelopment of the site would also produce environmental benefits for Sunninghill centre.
27. Paragraph 205 of the NPPF says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm. Whilst the totality of the benefits are not insignificant, and the outcome finely balanced, in my view, they are not collectively sufficient to outweigh the potential extent of the identified "less than substantial harm" to the significance of Cordes Hall. In my view, the potential harm to the heritage asset outweighs the suggested benefits of the scheme before me in terms of paragraph 208 of the NPPF.
28. In coming to this conclusion, I have taken account of the somewhat modest scale of housing that would be delivered, and that following the adoption of the LP, going forward the Borough's housing shortfalls are also likely to be temporary. In contrast, the potential harm to the significance of this heritage asset would be of a far more permanent nature.

¹ 31 March 2024

Planning balance

29. On the basis of the illustrative information accompanying the appeal, the proposed scheme could lead to less than substantial harm to the significance of Cordes Hall as a designated heritage asset. There could also be harm, to the character and appearance of the village centre because of the development's layout and the design of the building. The proposal conflicts with LP Policy QP3 and NP Policies DG1, DG2, DG3 and DG4. I consider that the proposal would not be in accordance with the Development Plan as a whole.
30. Because of the potential harm to the heritage asset, the presumption in favour of sustainable development in paragraph 11 of the NPPF does not apply. The harm to the significance and special interest of Cordes Hall as a heritage asset, to the character and appearance of the village centre and also the associated development plan conflict would not be outbalanced by the collective benefits of the scheme, which I discuss above (paragraphs 25 and 26).
31. Consequently, whilst in many respects the proposal would contribute positively to sustainable development objectives, as set out in the NPPF, particularly in terms of housing delivery, the scheme would not overall be sustainable development in the terms of the NPPF such that there is no presumption in its favour.
32. Nevertheless, the proposed building design before me does not represent the only way that a commercial/housing development could be designed and constructed at this site. In my view by creative design, the identified harms to the heritage asset and the wider townscape of the village centre could be reduced such that although there would very likely still be some less than substantial harm to the heritage asset, that harm could be reduced and outweighed by the benefits of the scheme.

Other matter

33. LP Policy SP2 Climate Change requires all developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. It refers applicants to a Design Guide Supplementary Planning Document (SPD) and a Sustainable Design and Construction SPD. Additionally, it refers to the Environmental and Climate Strategy 2020-25, which seeks a 50% reduction in emissions by 2025, along with successor documents. One of these is the Interim Sustainability Position Statement on Climate Change (ISPSCC). It is meant to clarify how the Local Planning Authority will interpret the policy and the climate requirements of the NPPF. It states that new development should make the fullest contribution to minimising CO2 emissions and be net zero carbon, unless it is demonstrated that this would not be feasible. It also sets out the details that energy assessments should include.
34. The application was accompanied by a Sustainability and Energy Statement that suggests that the development as a whole could achieve a 74% reduction in CO2 emissions. The Council has not challenged this but considers that the reduction should be 100% and in that context that a Building Emissions and Lifestyle contribution should be paid to mitigate the remaining 26%.
35. However, neither the policy nor the SPDs specifically require new development to reduce carbon emissions by 100%. Even the ISPSCC, which does not appear to have been the subject of a full public consultation and adoption process,

only requires new development to make the fullest contribution to minimising CO2 emissions. In the above circumstances, I do not consider that it should be given full weight.

36. There is no evidence to suggest that what the appeal scheme would achieve is not consistent with the adopted documents. There is also no reference in the Policy to the ISPSCC, even though it predates the adoption of the LP. Whilst the Council has referred me to a number of appeal decisions that discuss this issue, there are no copies of these with the appeal and no indication of the contexts of these decisions. In any event it is rare for the circumstances of two appeals to be the same.
37. In these circumstances I do not consider the development, by not providing a 100% reduction in CO2 emissions, fails the tests in paragraph 58 of the NPPF or Regulation 122 of the Community Infrastructure Levy Regulations 2010. The proposal would be designed to adapt and mitigate against climate change and as such it would be in accordance with LP Policy SP2. Given that the policy requirements affect all relevant development, the compliance does not attract weight in the planning balance.

Conclusion

38. For the reasons given above the appeal should be dismissed.

Melvyn Middleton

INSPECTOR