



Appeal Decision

Site visit made on 10 February 2025

by **S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 18th February 2025

Appeal Ref: APP/T0355/W/24/3348429

26 Penn Road, Datchet, Slough SL3 9HT

- 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 Zafar Naseem against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 23/02915.
 - The development proposed is sub-division of the existing dwelling to create 2 no. semi-detached dwellings with associated cycle storage.
-

Decision

1. The appeal is allowed and planning permission is granted for the sub-division of the existing dwelling to create 2 no. semi-detached dwellings with associated cycle storage, at 26 Penn Road, Datchet, Slough SL3 9HT, in accordance with the terms of the application Ref is 23/02915, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) came into effect in December 2024. The main Parties have had the opportunity to comment on the implications of this and comments received have been taken into account. Any references in this Decision to paragraph numbers and footnotes are those of the revised Framework.

Main Issues

3. The third reason for refusal of the planning application relates to the failure to secure a net gain in biodiversity. However, as the application was submitted prior to 12th February 2024, it is exempt from the mandatory requirement to demonstrate a 10% net gain in biodiversity as part of the development and the Council is no longer pursuing this reason for refusal.
4. Therefore the main issues are: whether or not the site is suitable for the proposed development taking into account flood risk; the effect, if any, on the safety of users of the highway as a result of the proposed on-site parking; and whether the proposal complies with development plan policies in respect of climate change.

Reasons

5. The site lies within a residential area in the built-up settlement area of Datchet. It is within walking distance of the town centre with its facilities, services and public transport connections, and so is in an accessible location. In principle residential development is acceptable provided other planning policies and material

considerations are satisfied. Section 7.11 and Policy HO5 of the Royal Borough of Windsor and Maidenhead Local Plan 2022 (the LP) provide for the sub-division of dwellings particularly due to the limited number of suitable development sites available in the Borough.

6. Number 26 Penn Road is a detached house which has been substantially extended and refurbished under planning Ref 16/02594/FULL. The proposal would sub-divide No 26 to provide two separate dwellings. The dwelling has an unusual layout with two front entrances and two internal staircases. There would be no alterations to the area of hard standing at the front and no physical alterations or extensions to the building other than the blocking up of one internal door and removing an internal wall to the lounge. Accordingly there would be no harm to the appearance of the area. No additional bedrooms would be created so the potential extra intensity of use of the site would not materially affect the character of the area.

Flood Risk

7. According to the Environment Agency¹ the appeal site is in Flood Zones 2 and 3 which have medium and high probabilities of flooding respectively. Datchet Common Brook is immediately behind the appeal site with The Queen Mother Reservoir beyond.
8. The Framework takes a sequential test approach to minimising flood risk with the overall aim of steering new development into areas where flood risk is lowest. Paragraph 176 and Footnote 62 of the Framework make it plain that changes of use are not subject to the sequential test. However, there is still a requirement to have adequate flood warnings and to ensure that safe access and escape routes are included as part of an agreed emergency plan.
9. Neighbours have provided photographic evidence showing previous flooding in this part of Penn Road, particularly in the extreme flooding event of 2014. It would appear that floodwater at that time came into contact with the houses at Nos 26, 28 and 30 (evens) and possibly No 32 although it is not clear whether water penetrated the properties.
10. There would be no increase in footprint or hard standing and finished floor levels would remain the same. The submitted Flood Risk Assessment October 2023 (FRA) proposes flood resistance and resilience measures to a level of 19.00m AOD (300 mm above the peak flood levels in a 1:100 year plus 35% climate change event). This would mitigate damage and risks to health in the event that flood water did enter the properties and allow them to be brought back into use more quickly: this would accord with Paragraph 181 of the Framework.
11. As the size of the building is not increasing it seems unlikely there would be a material increase in the number of occupiers in the two smaller properties than could be the case in the one larger property. The Council contends that the number of properties would increase even if the number of occupiers did not. However, the test in the Planning Practice Guidance² (PPG) is to ensure people are not exposed to hazardous flooding; whether adequate flood warnings would be available to people using the development; and the adequacy of evacuation routes and places of safety.

¹ Comments submitted in relation to the appeal dated October 2024

² [Flood risk and coastal change - GOV.UK](https://www.gov.uk/planning-practice-guidance)

12. The PPG³ advises on the important considerations for an emergency plan. The Thames is a well monitored watercourse where floods develop slowly and the response time of the river between the beginning of an extreme rainfall event and the peak flood level at the site is in the order of two weeks. There are two flood warning stations identified along the reach through Datchet providing localised level gauging and alerts for the area; a multi-agency Thames Valley Local Resilience Forum co-ordinates the response to flood events; and there is a Temporary Defences Deployment Plan and a Community Flood Plan in place for Datchet. In the latter the appeal site is defined as being in Area E but does not appear to be shown on the accompanying plans as a location at particular risk based on the 2014 flood event.
13. The FRA proposes a Flood Warning and Evacuation Plan (FWEP) which would improve the available information for future occupiers. The most convenient escape route would be northwest via New Road, Montrose Way and Fairfield Avenue to London Road (B470). The Council is concerned that the escape route would be through areas with a 'danger for most' hazard rating and considers that no safe and/or low hazard escape route has been identified. However, only part of the route is through such areas before reaching low hazard and no hazard on Montrose Way.
14. Whilst the escape route is less than ideal the situation is the same for occupiers of the existing building; it is unlikely there would be a material increase in the numbers of occupiers; and an FWEP would be an improvement the existing situation which would accord with Paragraph 52 of the PPG⁴. I also note that the Environment Agency has no objection to the proposal subject to the mitigation in the FRA being implemented and retained.
15. For the reasons set out above I conclude that the site is not so unsuitable for the development proposed taking into account flood risk as to justify withholding permission. There would be no material conflict with Policy NR1 of the LP or Policy DA10 of the Datchet Neighbourhood Plan 2023 (the NP) or guidance in the Framework or PPG in this respect.

Highway safety

16. Penn Road is an unclassified local distributor road with a speed limit of 30mph and footways to either side. It serves many residential properties. Some have on-site parking; others rely on the separate parking areas or park on the road side.
17. The appeal site has on-site parking for two cars side by side in an under croft to one side and two tandem parking spaces to the rear of the building at the other side. There were three medium sized cars comfortably parked in these spaces and sufficient room for more at the time of my visit. I acknowledge the constraints of the building and the fences to the side boundaries but these are not so great as to prevent the parking of vehicles. The requirements of the Parking Strategy 2004 of two spaces per dwelling would therefore be adequately met on site.
18. Any overspill parking could be met on-street. There may be local competition for parking but at the time of my visit, around 9.00 am, there were a number of empty parking places in the car parks and on the side of the road. I acknowledge that this was a point in time; that parking demand may be greater at other times; and there

³ Reference ID: 7-044-20220825

⁴ Reference ID: 7-052-20220825

might be competition for particular stretches of road side. However, this would not be sufficient reason to justify refusal of the proposal. Nor, whilst there might be some inconvenience, would there be any material effect on the safety of other users of the road should some extra vehicles be parked.

19. There is also ample spaces within both proposed curtilages to store bicycles. These would enable other means of transport than the private vehicle.
20. For the above reasons I conclude there would no material harm to the safety of users of the highway as a result of the adequacy of parking provided on site. Accordingly there would be no conflict with Policies QP3, HO5 or IF2 of the LP, DAT13 of the NP or the Borough Wide Design Guide 2020 in this respect.

Climate change

21. Policy SP2 of the LP requires that developments incorporate measures to adapt to and mitigate climate change. These include maximising opportunities for natural heating, ventilation, energy efficiency, resistance and resilience to climate change and minimising energy demand and waste.
22. Although not provided at application stage a separate Energy Assessment and SAP calculations/spreadsheet dealing with carbon dioxide emissions was submitted with the appeal. This demonstrates cumulative on-site savings of about 61% compared to the current unregulated carbon dioxide emissions (using SAP10 software) for the building. There are limitations on what additional mitigation measures can be incorporated in a small proposal for change of use with little by way of new building operations. In my judgement the proposal would be sufficient to meet the requirements of Policy SP2 which do not specify net zero carbon.
23. The appellant advises that the extension and refurbishment works under planning reference 16/02594 incorporated fully insulated roofs, walls and floors; double glazed windows; ventilation to avoid condensation; energy efficient lighting; and good natural daylight to all habitable rooms. It satisfied the applicable Building Regulations requirements. The Council does not dispute this and I see no reason to disagree.
24. By way of the Sustainability Supplementary Planning Document 2024 (SPD)⁵ the Council seeks to secure a contribution to the Council's Carbon Offset Fund for developments where an Energy Assessment demonstrates that a net zero outcome cannot be fully achieved on site. However, the PPG⁶ is clear that policies for planning obligations should be set out in plans and examined in public so they can be accurately accounted for in the price paid for land. Moreover, It is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination. The SPD is not part of the development plan and has not been subject to independent examination or viability check. Whilst it can encourage developers to exceed current policy and provide best practice recommendations it cannot introduce new compulsory targets. I remain of this view whether or not the way that carbon is calculated changed between the ISPS and the SPD.

⁵ The Sustainability Supplementary Planning Document July 2024, with implementation from September 2024, replaced the Sustainable Design and Construction SPD 2009 and supersedes the Interim Sustainability Policy Statement (the ISPS)

⁶ [Planning obligations - GOV.UK](https://www.gov.uk/planning-obligations)

25. The Written Ministerial Statement issued on 13 December 2023 also states that the Government does not expect plan makers to set local energy efficiency standards for buildings that go beyond current or planned building regulations. On this basis I conclude that a contribution to the Carbon Offset Fund is not necessary to make development acceptable in planning terms and would fail to meet the tests contained in the Community Infrastructure Regulations 2010 (as amended), the Framework and the Guidance. This approach has been taken by colleague Inspectors in previous appeals⁷ and I see no compelling evidence to reach a different view.
26. For the above reasons I conclude that the proposal would not conflict with development plan policies in respect of climate change. There is no conflict with Policy SP2 of the LP in this respect.

Other Matters

27. The appellant asserts that the Council could not demonstrate a five year supply of deliverable housing sites for the purposes of the previous appeals where some 4.7 years was demonstrated in May 2023 and a range of 4.7 to 3.7 years in March 2024. However, as I have found no material conflict with policies in the development plan, I see no need to pursue this matter further in the context of the appeal before me. In any event the proposal would make a small contribution to the supply of small family housing locally and towards the Government's aim of significantly boosting the supply of homes.
28. The proposal would meet the Nationally Described Space Standards and there is useable outdoor amenity space for gardens, refuse and re-cycling storage, and drying space. Even though exempt from the mandatory requirements for 10% net gain in biodiversity Policy NR2 of the LP does seek enhancements on application sites. This could be secured by condition.
29. It has been asserted that sub-division of the property has already taken place although the appellant asserts otherwise. Either way, whilst it is unfortunate when development takes place without planning permission, this would not be a reason for refusing an otherwise acceptable proposal.
30. A neighbour refers to the loss of sunlight and more extensive flooding since the building was extended. However, these are not matters for this appeal. Nor is whether or not there have been previous refusals of similar proposals. The appellant is also entitled to develop property as an investment provided that planning policies are satisfied.
31. It has been asserted that at the time it was extended ground levels were raised at the back of No 26 by about 6 inches although another neighbour says the raised area was there many years before. This is a matter for the Council rather than for this appeal.

Conditions

32. I have considered the proposed conditions against the tests in the Framework and the PPG. Where appropriate I have adjusted the wording of the conditions to improve precision and enforceability.

⁷ APP/T0355/W/22/3309308 and APP/T0355/W/23/3333834

33. As well as the standard condition specifying the time limits for the commencement of development compliance with the approved plans is necessary to provide certainty (1 and 2).
34. The implementation of the recommendations set out in the Energy Assessment and the Flood Risk Assessment are necessary to help mitigate climate change and to improve flood resistance and resilience (3 and 4).
35. Full details of the provision of refuse/recycling storage are necessary in the interests of health and safety and to encourage the re-use of materials (7). A scheme for enhancements is necessary to increase biodiversity within the site and I have added a reason requiring the means of garden sub-division which is necessary to ensure adequate amenity open space for occupiers of both dwellings (5 and 9).
36. Cycle storage and electric vehicle charging are required to encourage travel by means other than that of private motor vehicles (6 and 8). There is ample space in the private rear gardens to provide for 4 cycles as shown on plan no 06-2021 ZPD-22 PL-04A so it is not necessary to require further details to be approved.

Conclusion

37. I have found no material conflict with the policies of the development plan taken as a whole. There are insufficient material considerations to indicate a decision other than in accordance with it. The appeal should be allowed.

S Harley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 06-2021 ZPD-22 PL-01A; 06-2021 ZPD-22 PL-04A; 06-2021 ZPD-22 PL-05 and 06-2021 ZPD-22 PL-06.
- 3) There shall be no more than one dwelling occupied within the appeal site until such time as a certified statement describing the actions that have been taken to implement the recommendations set out in the Energy Assessment by Fenton Energy Ltd., dated 18th July 2024, has been submitted in writing for the approval in writing of the Local Planning Authority. Those approved actions shall be retained thereafter.
- 4) There shall be no more than one dwelling occupied within the appeal site until such time as a certified statement describing the actions that have been taken to meet in full the flood mitigation and protection measures as contained within the Flood Risk Assessment Rev. A by Stantec, dated July 2023, has been submitted in writing for the approval in writing of the Local Planning Authority. Those approved actions shall be retained and maintained in perpetuity for the lifetime of the development.
- 5) There shall be no more than one dwelling occupied within the appeal site until details of biodiversity enhancements to include the planting of native trees and shrubs, enhancement of lawns using wildflower mixes, installation of bird and bat boxes, creation of log piles and hibernacula and gaps at the bases of fences to allow hedgehogs to traverse through the site, have been submitted in writing for the approval in writing by the Local Planning Authority. The approved biodiversity enhancements shall be installed within the following planting season and a brief letter/report confirming that the enhancements have been installed, including a simple plan showing their location and photographs of the enhancements in situ, shall be submitted in writing for the approval in writing by the Local Planning Authority within one month of the date of installation.
- 6) There shall be no more than one dwelling occupied within the appeal site until covered and secure cycle parking facilities for 4 cycles in the rear gardens of each of the host and proposed dwelling have been provided. These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.
- 7) Notwithstanding the approved drawings no more than one dwelling shall be occupied within the appeal site until details of refuse and recycling storage sufficient for two dwellings have been submitted in writing for the approval in writing by the Local Planning Authority. The approved details shall be fully implemented before more than one dwelling is occupied and the areas of land so provided shall not be used for any purposes other than the storage (prior to disposal) or the collection of refuse and recycling and shall be thereafter retained and maintained as such.
- 8) There shall be no more than one dwelling occupied within the appeal site until one active and one passive electric vehicle charging point has been provided for each dwelling. These facilities shall thereafter be retained and kept available in association with the development at all times.

- 9) There shall be no more than one dwelling occupied within the appeal site until a scheme for sub-dividing the rear garden has been submitted in writing for the approval in writing by the Local Planning Authority. The approved scheme shall be completed before more than one dwelling is occupied.

End of Schedule.