



Appeal Decision

Site visit made on 4 February 2025

by **Laura Cuthbert BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th February 2025

Appeal Ref: APP/T0355/W/24/3351742

Land to the rear of 248 to 250, Windsor Road, Bray, Berkshire SL6 2DT

- 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 Humble Holdings Ltd against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 22/03191.
 - The development proposed is Application for the erection of a pair of 3 bed semi-detached dwellings on land to the rear of 250 Windsor Road with access from Oakley Gardens.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address has been taken from the decision notice and appeal form as it more accurately describes the location of the proposal.
3. Since the appeal was made, a revised National Planning Policy Framework (the Framework) was published on 12 December 2024. I have taken the revised Framework into account as part of the determination of this appeal.
4. An engrossed Unilateral Undertaking (UU), dated 26 November 2024, has been submitted with the appellant's final comments to secure a net gain in biodiversity and a financial contribution towards the Council's carbon off-set fund. The Council has had the opportunity to comment. I have determined the appeal on this basis.

Main Issues

5. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - whether the proposal would secure a net gain in biodiversity; and
 - whether the proposal would adequately minimise carbon dioxide emissions.

Reasons

Character and Appearance

6. The appeal site comprises land to the rear of 248 and 250 Windsor Road. It would have historically formed part of the private garden areas associated with Nos 248 and 250. Windsor Road consists of a linear form of development, which largely

comprises of two storey detached and semi-detached dwellings of various styles and design.

7. However, whilst it would be sited to the rear of the Windsor Road properties, due to its positioning and the access arrangements, the proposal would form a close relationship with Oakley Gardens. This is a backland residential development of twelve properties, which were constructed in the late-2000s. These properties are of a consistent height and scale, over 2.5 storeys, and are either detached, link-attached or a short row of terraced dwellings. They are of a simple and cohesive design. This is particularly seen in their roof form with a consistency in the size and position of projecting gables, bay window and door canopies, as well as dormer windows and roof lights. Consequently, this uniformity contributes positively to the character and appearance of the area.
8. The proposed development, by virtue of its form and design, would appear as an awkward addition to the simple and cohesively designed cul-de-sac of Oakley Gardens. It is noted that the design of the proposal evolved throughout the application in order to overcome concerns in relation to potential harm to the living conditions of neighbouring occupants, in particular potential overlooking. However, as a result of these amendments, this would introduce a staggered set back to the pair of dwellings, which would complicate the roof form of the proposal.
9. Whilst it is appreciated that dormer windows and gables are features on other houses in the area, the gables in the proposal would be of different scales on the 2 properties. Furthermore, the dormer serving plot 1 of the proposal would be to the front whilst the dormer serving plot 2 would be to the rear. Rather than add visual interest as alleged by the appellant, this would result in an unbalanced façade, introducing an element of irregularity to the cul-de-sac. Consequently, the site constraints have resulted in a contrived form and design which would harm the character and appearance of the area.
10. Whilst the 'Tudor' style gable roof has been inspired by the existing houses on Windsor Road, this would conflict awkwardly with the other design influences, such as the dormer windows and bay window door canopies, that have been taken from Oakley Gardens. The use of a gambrel roof would also be out of character to the cul-de-sac. This would result in an awkward juxtaposition between the 2 styles, contrary to the prevailing character of the immediate area.
11. It is acknowledged that the use of a set-back would not be unusual in a housing development, as alleged by the appellant, and I note the examples, including those of nearby Westbrook Gardens or that on 12 Oakley Gardens. However, from what I observed on site, the setback incorporated on Westbrook Gardens was part of a repetitive, cohesive design feature used on the estate. The same could be said for No 12 Oakley Gardens, which has a gable set-back incorporated into the design of the detached/link-attached dwelling, similar to Nos 7 to 11 Oakley Gardens, rather than a set back from an attached property. Nevertheless, the fact that apparently similar development exists is not a reason, on its own, to allow unacceptable development. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.
12. The use of materials to match those used in the Oakley Gardens development is noted, and the 2 ½ storey building height of the proposal would be a similar height to the other properties in the cul-de-sac. However, these design matters would not

be sufficient to mitigate the harm caused by the design and form of the proposal identified above.

13. I recognise the design details that have been incorporated into the western elevation of plot 2 in order to break up this façade. This includes the use of the gambrel roof to reduce the amount of brickwork, the three windows that would be in this elevation, as well as the incorporation of a projecting brick plinth detail, and a darker red brick band above the ground floor windows. I also observed that Nos 250 and 254 Windsor Road have predominantly solid side elevations as you enter Oakley Gardens. Consequently, the 'mostly blank façade' of the western elevation, as alleged by the Council, would not be harmful in itself as it would not be uncharacteristic to the area. The proposed landscaping would also assist in 'softening' this elevation so that it would not dominate the street scene. Whilst the visibility from public vantage points is noted, both Nos 250 and 254 are currently visible from public vantage points. Therefore, the proposed western elevation would be appreciated in the same way.
14. In regard to the amount of hardstanding, the majority of the Oakley Gardens properties have areas of hardstanding to the front, broken up by small areas of landscaping. The proposal would involve new vehicular accesses, as well as areas of hardstanding to provide for the associated vehicular parking to serve the proposal, as well as parking and an associated access point for No 250. The loss of the Silver Birch trees on the western edge of the appeal site is noted and I recognise that the officer report in relation to the Oakley Gardens development 'noted the importance of these trees, being a feature of visual interest in views from Windsor Road'. However, similar to that already seen in Oakley Gardens, there would be small areas of landscaping introduced to break up the amount of hardstanding. Consequently, I am satisfied that the amount of hard standing and soft landscaping represents a similar level to that within the existing cul-de-sac and thus would not be out of character to the area.
15. The Council allege that the proposal would be a cramped form of development, with the Council stating that within Oakley Gardens, 'there is a consistency...in terms of the siting of the properties within their plots'. In response, as part of the appeal submission, the appellant has provided a plot ratio comparison plan¹, which demonstrates that the density of the proposal would be compatible with surrounding residential densities. The appellant has also provided a plan² which compares the garden depths of the proposal and those of the Oakley Garden properties. This demonstrates that the depth of the proposed gardens would be similar to, and in some cases exceed, the depth of the surrounding development. I am therefore satisfied that the proposal would not be cramped in particular regard to its plot size/density nor in regard to its garden depth.
16. Nevertheless, whilst these matters would in themselves be acceptable, due to the site constraints and being surrounded by residential properties, in order to ensure that the living conditions of neighbouring properties would not be materially harmed, the design and form of the proposal would be jeopardised.
17. Therefore, in conclusion, for the reasons given above, I have found that the amount of hardstanding would be suitable, as well as the plot size and garden depth. However, overall, by virtue of its design and form, the appeal scheme would cause

¹ Drawing No WROGB_PLN_009

² Drawing No WROGB_PLN_007_A

harm to the character and appearance of the area. It would conflict with the overriding objective of Policy QP3 of the Borough Local Plan 2013-2023 (Local Plan), which is to achieve high quality design, including respecting the local character of the environment, paying particular regard to, amongst others, urban grain, rhythm, height, scale, bulk, massing and proportions.

18. It would also conflict with Principle 7.6 of the Borough Wide Design Guide Supplementary Planning Document (June 2020) (the Design Guide SPD) which requires all new development to reflect and integrate well with the spacing, height, bulk, massing and building footprints of existing buildings. Principle 7.7 of the Design SPD states that proposals to introduce roof forms on development that diverges from the prevailing character will be resisted unless it can be demonstrated that the proposals would make a positive contribution to the streetscape. The proposal would also be contrary to the principles within Chapter 12 of the Framework, which seek good design sympathetic to the local area.

Biodiversity

19. During the course of the application, an Ecological Impact Assessment (EIA), together with a soft landscaping proposal and a biodiversity net gain (BNG) metric, was submitted by the appellant. The BNG metric demonstrated that a net gain in biodiversity could not be achieved on site. Consequently, an off-site compensation would be required, equating to 0.3674 units.
20. The appellant has engaged with the Council who have set up a BNG pilot scheme where offset units can be purchased directly from them. As a result of these negotiations the Council have agreed to supply the offsite BNG credit requirement for a contribution of £19,696.
21. The engrossed UU would adequately secure the necessary financial contribution to purchase the offset units within the pilot scheme. I am satisfied that the provisions of the submitted agreement that relate to the BNG contribution would meet the tests set out in Regulation 122 of the CIL Regulations 2010.
22. The proposal would therefore comply with Policy NR2 of the Local Plan, which requires the biodiversity of application sites to be protected and enhanced by measures to restore and recreate habitats lost as a result of development. Development proposals will demonstrate a net gain in biodiversity by quantifiable methods such as the use of a biodiversity metric. It would also comply with the principles set out in Chapter 15 of the Framework which encourages planning decisions to enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Carbon Off Set Fund

23. Policy SP2 of the Local Plan requires all developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. Criterion 3 of Policy SP2 refers applicants to various existing and future supplementary planning documents and guidance. At the time the application was determined, the Council's 'Interim Sustainability Position Statement' (ISPS) (March 2021) stated that proposed residential developments are required to be net-carbon zero, unless demonstrated that this would not be feasible. The net-zero carbon outcome should be achieved on-site where feasible. Where it is demonstrated that this outcome cannot be fully achieved on-site, any shortfall may be provided

through a financial contribution to the Council's Carbon Offset Fund which will be ring fenced to secure delivery of greenhouse gas reduction elsewhere in the borough.

24. A Sustainability and Energy Statement³, with associated SAP calculations, has been submitted. The total reduction in emissions from energy efficiency, low-carbon and renewable technologies has been calculated at 2,075 kg CO₂ per year, which equates to a reduction of 53.21% (% of the baseline emissions). Consequently, the residual emissions would be 1,825 kg CO₂ per year or 1.825 tonnes, which against the rate in the ISPS, required a carbon offset payment of £3,778.
25. However, since the planning application was determined, the Council has adopted the Sustainability Supplementary Planning Document (the SPD). This supersedes the ISPS and sets out a new rate in order to calculate the carbon offset payment. Under the rate in the new SPD, the payment would be £13,797. I note that the appellant has included this figure in the engrossed UU submitted with the appeal.
26. The appellant has queried whether the contribution sought under the SPD could be considered to be unreasonable, as the SPD does not form part of the development plan. To support this claim, the appellant has referred to a number of appeal decisions⁴ where the Inspectors concluded that the ISPS should not be used to secure planning obligations as it does not form part of the adopted development plan, nor has it been independently examined. The appellant submits to me that the same conclusions should be applicable to the SPD.
27. I am required to determine the appeal on the basis of the current development plan and guidance. Whilst the SPD ultimately only forms guidance, it is a material consideration in planning decisions and is intended as supplementary to the Local Plan and, specifically, Policy SP2.
28. I am aware of the advice in the Planning Practice Guidance (PPG), which states that 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 examination⁵. However, unlike the ISPS, the SPD has been subject to a period of public consultation. I also consider that given the wording in Policy SP2 for regard to be had to any SPD's or guidance, due regard should be afforded to the requirements of the SPD. Consequently, I am satisfied that any contribution would be reasonable and that any carbon offset payment should be calculated in accordance with the rate in the new SPD, and not the ISPS.
29. Nevertheless, by virtue of the engrossed UU, the appellant has agreed to the rate in the new SPD. I am satisfied that the provisions of the submitted agreement that relate to the carbon offset payment would meet the tests set out in Regulation 122 of the CIL Regulations 2010. The proposal would therefore adequately minimise carbon dioxide emissions. It would comply with Policy SP2 of the Local Plan and the SPD which require developments to achieve a reduction in carbon dioxide emissions.

³ Prepared by Bluesky Unlimited, dated 15 November 2022

⁴ Appel Refs APP/T0355/W/22/3309308 and APP/T0355/W/23/3333834

⁵ Paragraph: 004 Reference ID: 23b-004-20190901

Planning Balance and Conclusion

30. The Council stated that when the application was determined, it was unable to demonstrate a five year housing land supply. The Council has not advised of its latest position during the appeal process and the appellant has not presented any evidence on this matter. Nevertheless, for the purposes of this appeal, I will adopt the position that the Council is still unable to demonstrate a five year supply of housing.
31. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having particular regard to, amongst other things, key policies for securing well-designed places. Footnote 8 of paragraph 11 confirms that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Footnote 9 sets out the key policies of the Framework which should be given particular regard.
32. I have found that the engrossed UU would secure a net gain in biodiversity and a financial contribution towards the Council's carbon off-set fund. Consequently, it would be in accordance with Policies NR2 and SP2 of the Local Plan. However, the proposal would be contrary to Policy QP3 and the Design Guide SPD by virtue of the harm to the character and appearance of the area. Therefore, it would lead to conflict with elements of the Framework, having particular regard to the key policies for securing well-designed places, ensuring that developments are sympathetic to local character, including the surrounding built environment. The harms would be significant and long lasting. They would accordingly attract substantial weight.
33. The proposal would make a small contribution towards the provision of housing, consistent with the Government's stated aim in the Framework of significantly boosting the supply of homes. It is also acknowledged that the Framework recognises the important contribution that small and medium sized sites can make towards meeting the housing requirement in the area. These benefits would attract moderate weight.
34. There would also be economic benefits contributing to building a stronger, responsive, and competitive economy, supporting growth with construction and post-construction benefits. The proposal would encourage development and associated economic growth with future occupants contributing to the local economy and continued viability of services in the local area. Together these benefits carry moderate weight in favour of the development.
35. Consequently, even if the proposal is considered in the context of paragraph 11 of the Framework, the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having regard to the relevant key policies. Therefore, even if I were to find that the Council has no five-year housing land supply, the appeal scheme would not benefit from the presumption in favour of sustainable development in these circumstances.

36. Therefore, in conclusion, whilst acceptable in some regards, the proposal conflicts with the development plan as a whole and there are no material considerations, including the approach of the Framework, which outweigh that conflict.
37. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal is dismissed.

Laura Cuthbert

INSPECTOR