

---

## Appeal Decision

Site visit made on 4 February 2025

**by E Catcheside BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 26 February 2025**

---

**Appeal Ref: APP/T0355/W/24/3347128**

**Garage Block adjacent to The Glen, London Road, Ascot, SL5 7DF**

- 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 Serhiy Serdyuk (Sky S Developments) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
  - The application Ref is 23/01680.
  - The development proposed is demolition of existing garages and erection of new dwelling.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Serhiy Serdyuk (Sky S Developments) against the Council of the Royal Borough of Windsor and Maidenhead. The application for costs is the subject of a separate decision.

### Preliminary Matters

3. I have been provided with plans showing two alternative proposals to the appeal scheme. The first alternative proposes an adjustment to the siting of the dwelling, and it is accompanied by an Arboricultural Assessment and a Daylight and Sunlight Analysis report. The second alternative alters the appeal proposal by removing the proposed access gates.
4. The Procedural Guide: Planning Appeals – England makes it clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage.
5. Whilst the proposed revisions could be seen as minor in nature, they nonetheless have direct implications for the main issues in this appeal and they have not been subject to public consultation. Therefore, the revisions and accompanying technical information may not have been seen by interested third parties. In the interests of fairness, I have therefore considered the appeal based on the scheme submitted at the application stage, rather than the alternative proposals submitted with the appeal. To proceed otherwise could unacceptably prejudice the interests of other parties. Consequently, I have not had regard to the amended plans and the associated technical documents provided.
6. A signed and dated legal agreement accompanies the appeal. The agreement provides for financial contributions to mitigate the effects of the proposal on the

Thames Basin Heaths Special Protection Area (SPA) and to meet the Council's expectations in respect of climate change. The Council has stated that the planning obligations, when taken together with the sustainability report and carbon calculations submitted with the appeal, are satisfactory in respect of the 4<sup>th</sup> and 5<sup>th</sup> reasons for refusal listed on the decision notice. I have therefore had regard to these documents and have determined the appeal on the basis that the Council's concerns regarding climate change and the SPA have been overcome.

7. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that, before deciding to give permission for a plan or project which is likely to have a significant effect on a European site, the competent authority must make an appropriate assessment of the implications of the plan or project on its conservation objectives. I have had regard to this duty and will return to this matter later in my decision.

### **Main Issues**

8. The main issues are:

- the effect of the proposal on the character and appearance of the area, including its effect on trees; and
- whether the proposal would provide an adequate standard of accommodation for future occupiers, with particular regard to outlook, sunlight and daylight.

### **Reasons**

#### *Character and appearance*

9. The appeal site comprises a garage block and hardstanding. It lies to the rear of The Glen, which is a cul-de-sac comprising a four-storey block of flats, a parking area, and two detached dwellings. The existing buildings on The Glen do not share commonality in their character and appearance, owing to their mix of heights and architectural features.
10. The site is well-enclosed by tall, mature trees. Given their height and size, the trees are attractive and prominent specimens, which collectively contribute positively to the wooded character and visual amenity of The Glen and the surrounding area. In respect of the trees to the south and east of the site, this is recognised by their inclusion within Tree Preservation Orders (TPO).
11. No trees are proposed for removal to facilitate the development. However, in addition to works in the root protection areas (RPA) of the trees near to the proposed gate post, the Arboricultural Impact Assessment and Method Statement (AIA) that accompanied the application shows the proposal would encroach significantly into the RPA of the large tree near to the southern boundary of the site. Whilst the root growth of this tree could have been affected by physical constraints, the evidence is not definitive as to the direction and extent of its root growth. Therefore, the development could lead to root damage which, in turn, could threaten the health and longevity of the tree.
12. The evidence is inconsistent as to whether the tree near to the southern boundary is covered by a TPO. However, the Tree Survey and Protection Plan shows it to be located outside of the appeal site, where the TPO applies. I have therefore

considered it to be a protected tree. Even if this were not the case, the tree has strong amenity value due to its size and wide crown spread, and it should therefore be protected in accordance with the Framework.

13. It is proposed that works within the RPAs could be carried out using specialist construction methods to protect the health of the trees during the construction period. However, these methods would not guarantee the avoidance of harm and therefore the trees could be lost or damaged. For this reason, such methods would normally only be considered where development within the RPA is unavoidable. In that regard, I am not convinced it is necessary to build over the RPAs, particularly to the extent proposed, in order to deliver a dwelling on this site. Therefore, the harm that could be caused to the trees due to the siting and large footprint of the proposed dwelling would not be justified.
14. The submitted plans indicate that the crowns of some protected trees to the south and east of the site would extend over the dwelling and its grounds. However, the AIA does not provide substantive information about the effect of the proposal on the crown spread of these trees. Given the proximity of the dwelling to the trees, it is reasonably likely that branches and leaves would extend close to the roof of the property thus requiring regular intervention to prevent damage to the dwelling. Whilst the Council would have some control over works to these protected trees, proposals to fell or prune them could be difficult to resist where there are implications for property damage and safety. Consequently, in the absence of persuasive evidence to the contrary, the protected trees could be removed or harmed in the longer term, leading to a deterioration in their amenity value.
15. The proposed dwelling would be sited close to the north and east boundaries of its plot. However, it would be set well back within the site behind a driveway and garden area, and a reasonable amount of side space would be retained along its southern edge. Consequently, whilst the footprint of the building would cover a large area of the plot, it would not have the appearance of being over-sized in comparison to the width and depth of the site, particularly given the large size of nearby buildings, some of which are on similar sized plots. In that regard, the proposal would accord with the Borough Wide Design Guide (25 June 2020) (BWDG) insofar as it expects development to integrate well with existing buildings.
16. Owing to the alignment of the cul-de-sac, the proposed dwelling would be tucked behind the building line of the existing four-storey block of flats. Therefore, longer views of it from the street would be largely obscured. It follows that the dwelling would have a discrete presence on The Glen. Moreover, given the low-profile design of the dwelling, some views over and around it towards the treed surroundings from the neighbouring block of flats would be retained.
17. The proposed access gates would be an imposing structure, due to their height and solid materiality, and they would have an enclosing effect on the cul-de-sac frontage by preventing views through to the dwelling behind. Whilst there are other, similar, gates elsewhere in the local area, the proposed gates would be at odds with the relatively open aspect of other developments on The Glen. Consequently, they would fail to integrate sympathetically with the character of the street. Nonetheless, the design and materials of the gates would be a minor matter that could be dealt with through a condition if the appeal were to be allowed, thus ensuring they would be appropriate to the site and its immediate setting.

18. Overall, owing to my concerns about the effects of the proposal on trees with high amenity value, I conclude that there would be harm caused to the character and appearance of the area. It follows that there would be conflict with Policy QP3 of the Borough Local Plan 2013-2033 (LP) insofar as it expects proposals to respect and enhance local character and to protect trees worthy of retention. There would also be conflict with Policy NR3 of the LP and Policy NP/EN2 of the Ascot, Sunninghill and Sunningdale Neighbourhood Plan 2011-2026, which seek to protect and retain trees

*Standard of accommodation*

19. The Daylight and Sunlight Assessment report (DSA) submitted with the application considers the effect of shadowing from surrounding trees on the proposed internal living space and outdoor amenity areas. It shows that most of the habitable rooms within the dwelling, and the garden area, would meet or exceed the recommended standards for daylight and sunlight, even when the nearby trees are in full leaf. This assessment takes account of the extensive areas of glazing proposed, and the fact that most habitable rooms would be dual or triple aspect.
20. However, whilst the DSA concludes that sunlight levels within the proposed dwelling would exceed recommended standards, Figure 4 of the DSA shows that one of the bedrooms would receive only 0.5 hours of sunlight hours, which is well below the minimum 1.5-hour standard referred to in the report. Moreover, even if there would be adequate levels of sunlight in the property overall, views of open space and the sky would be severely limited from the rear corner bedroom window due to its proximity to the trees and the steep slope behind. Save for a skylight in the ensuite, there are no other windows in this bedroom to provide compensatory views. Consequently, the outlook from this bedroom would be dominated by the nearby trunks and canopies of the tall trees. When combined with the low levels of sunlight penetration, this would create a gloomy and unpleasant environment for future occupants, contrary to the BDWG which expects development to create satisfactory living conditions for future occupants.
21. Overall, given the poor-quality environment in the rear corner bedroom, I conclude that the dwelling overall would provide an inadequate standard of accommodation for future occupiers, with particular regard to outlook and sunlight, notwithstanding that acceptable levels of daylight would be provided. Therefore, the proposal would conflict with Policy QP3 of the LP insofar as it expects developments to be of a high-quality design. There would also be conflict with the Framework, which expects proposals to provide a high standard of amenity for future users.

**Other Matters**

22. The appeal site lies within the zone of influence of the Thames Basin Heaths SPA, which is a European site as defined by the Habitats Regulations. The legal agreement accompanying the appeal provides for financial contributions to mitigate the effects of the development on the SPA. However, as I am dismissing the appeal for other reasons, it is not necessary for me to undertake an appropriate assessment or to consider this matter further.
23. Whilst I have had regard to the legal agreement submitted with the appeal, it is not necessary for me to consider the obligations in detail because the appeal is being dismissed for other reasons.

24. The appeal scheme has evolved in response to the Council's refusal of a previous iteration of the development. However, I have necessarily considered the proposal on its own merits. Therefore, whether or not it represents an improvement over the former design does not alter my assessment of the proposal.

### **Planning Balance**

25. The proposal would conflict with the aforementioned development plan policies, which brings it into conflict with the development plan when read as a whole. Developments that conflict with the development plan should normally be refused unless material considerations indicate otherwise. In this instance, the Council concedes that it is unable to demonstrate a five-year supply of deliverable housing sites as is required by the Framework. Consequently, paragraph 11 d) ii. of the Framework is engaged.
26. The appellant contends that the housing land supply is 4.83 years, and this has not been disputed by the Council. Whilst this is a modest shortfall, it nonetheless indicates there is a need for further housing in the area. The proposal would deliver an additional home on previously developed land within an established residential area. As a small-site, it could be built-out reasonably quickly. I attach substantial positive weight to the principle of redeveloping this site for housing in accordance with the Framework, albeit that the contribution to housing supply would be small.
27. No harm has been advanced in the reasons for refusal in respect of parking and highways matters or rights of way. Based on the evidence, I see no reason to take a different view. The absence of harm weighs neither for nor against the proposal.
28. Notwithstanding the substantial weight that is afforded to the delivery of housing on this brownfield site, the benefits of the scheme would not be sufficient to outweigh the substantial harm I have identified, in respect of safeguarding trees and the standard of accommodation proposed. These harms would be contrary to the Framework, which expects existing trees to be retained and for a high standard of amenity to be achieved for future users.
29. Therefore, in the specific circumstances of this case, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. Therefore, the presumption in favour of sustainable development does not apply.

### **Conclusion**

30. The proposal conflicts with the development plan when read as a whole and the material considerations, including the provisions of the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

*E Catchside*

INSPECTOR