



Appeal Decision

Site visit made on 12 February 2025

By G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 March 2025

Appeal Ref: APP/V3120/W/24/3350373

Land adjacent to 82 Westminster Way, Oxford, OX2 0LP

- 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 Mohsin Malik of Amberberry Investments Ltd against the decision of the Vale of White Horse District Council.
 - The application Ref is P23/V2806/FUL.
 - The development proposed is described as the creation of 4 bedroomed dwelling on land adjacent to 82 Westminster Way.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The planning application was refused permission for three reasons. The third reason related to highway and pedestrian safety. The appellant addressed these matters as part of the appeal process. As a result, the Council has confirmed that, subject to the imposition of certain conditions in the event of the appeal being allowed, it does not wish to defend the third reason for refusal. I consider the appellant to have acceptably addressed the highway and safety issues raised by the Council and some local residents, and I shall not therefore consider the matter further.

Main Issues

3. Having regard to the foregoing the main issues are: (a) the effect of the proposal on the character and appearance of the surroundings area, and (b) whether groundwater flood risk has been adequately assessed.

Reasons

Character and Appearance

4. The appeal site is located in the Botley area of Oxford, on the western side of Westminster Way, which at this point runs parallel with the A34 dual carriageway (Southern By-Pass). Westminster Way is separated from the by-pass by an acoustic fence. No 82 occupies a corner plot at the end of Montagu Road, which is now a cul-de-sac. The former road junction with Westminster Way was stopped off to traffic when a pedestrian underpass beneath the by-pass was built.

5. The appeal site comprises a strip of land alongside No 82 which formerly acted as part of No 82's garden. It now acts as something of a dumping ground, although thankfully that is not evident from outside because of the high solid fence surrounding it.
6. All nearby properties located either side of the appeal site fronting onto Westminster Way are semi-detached two-storey dwellings. All display a similar appearance with distinct suburban characteristics. The exception along this part of Westminster Way is No 82, which is a detached dwelling. The appellant proposes that it becomes a semi-detached dwelling in a matching design to the existing, front and back.
7. The Council raises no objection to the design, per se. Its principal concerns are that the development if built would have a cramped appearance, given its closeness to the underpass structure; that the current openness in evidence at the end of Montagu Road would be harmfully eroded given that the space between No 82 and No 80, sited on the other side of the underpass would be reduced; additionally, the Council points to the common building line shared by the Montagu Road dwellings and the side elevations of Nos 80 & 82 Westminster Way. The proposal would breach the building line rendering the development at odds with local character.
8. The gap between Nos 80 and 82 to my mind is significant one, offering views across the by-pass from Montagu Road towards distant trees beyond. The sense of spaciousness at this point is heightened by the fact that No 80 is set at a lower level than No 82. The space in-between is largely taken up by the footpath, ramps and steps of the underpass, a structure which, when built, appears to have been subject of a landscaping scheme. That scheme has long matured, and although in current need of maintenance, it offers a significant degree of softness to the local scene. The proposed dwelling will reduce the existing gap but given that greenery occupies much of the space alongside, I do not consider the Council's concerns on overdevelopment to be justified.
9. Most of Montagu Road is slightly curved, and the building line is therefore varied along its length. However, the dwellings at the end of the road do enjoy a common building line with the side elevations of Nos 80 and 82, and this would be breached. I do not however consider this would impinge unacceptably on local character. In this regard, Montagu Road joins with Arthray Road to form a horseshoe shape. At the end of Arthray Road, on either side of its junction with Westminster Way, a short distance to the north of the appeal site, comparatively new development has been built virtually to the back of footway – thus breaching the building lines of the more established dwellings on Arthray Road. That arrangement and the gap at the end of Arthray Road looked perfectly acceptable to me, and I have no justifiable reason to conclude that the breach of building line in the appeal case would cause harm.
10. I therefore conclude that the proposed development would not harm the character and appearance of its surroundings. Accordingly, no material conflict would arise with those provisions of policy CP37 of the Council's Local Plan (LP) - Part 1 or policies HS1 & HS2 of the North Hinksey Parish Neighbourhood Plan (NP) in that the development's design responds positively to the site and its surroundings; integrates visually to its surroundings and, being low-rise, reflects local character.

Flood Risk

11. A flood risk assessment accompanied the original application, and another assessment was conducted by a different set of consultants for the appeal. Both documents refer to policy, national and local, but neither refers to or addresses the specific policies referred to in the Council's reason for refusal relating to potential flooding. I should add that the Council's specific concerns relate to the risk arising from groundwater.
12. The explanatory reasons for the adoption of NP policy UT1 provide background to the Council's concerns on groundwater. It appears that the Parish Council commissioned a Groundwater Assessment study in 2017 in the light of past issues encountered with groundwater on development sites in the locality. The outcome and recommendations of the study informed the wording adopted in policy UT1 (3).
13. Turning to the policy itself, the Council acknowledges that the site lies outside the defined zone of potential groundwater flood risk, but close to it. Given the closeness of the site to the zone, I do not consider the Council's concerns to be unreasonable, particularly taking account of local residents' representations on the issue. The appellant has referred to the result of historical borehole tests carried out in the locality, but the closest referred to is some distance from the appeal site, and there is no certainty, to my mind, given local geological conditions and level differences, that such extrapolation would provide an accurate indicator of specific conditions at the site.
14. Moreover, in the final comments, the appellant's engineering consultants appear to suggest that borehole testing should be carried out in accordance with policy, but on a scaled down basis, and that this could be 'conditioned'. Both sets of engineering consultants make assumptions about foundation depths, as they may affect groundwater movement, in the absence of any geotechnical information, and without appearing to consider the close presence of a subterranean retaining wall. Neither do they appear to have taken into account the representations made by the Parish Council and local residents, albeit anecdotal, that the appeal site has suffered from subsidence in the past and that local gardens and underpass have suffered flooding¹ in recent times.
15. In conclusion I share the Council's concerns, given the past history of groundwater problems in the locality, that the issue of groundwater risk has not been sufficiently addressed. I do not consider it appropriate that a condition requiring such exploratory tests should be imposed on a permission, since that could reasonably be seen as pre-supposing the outcome of the tests.

Other matters

16. All other matters raised have been considered and taken into account, and I note that the Parish Council objected to the proposal as did several local residents. I have already dealt with what I consider to be the main planning related matters raised.
17. I have also taken into account the references to the *National Planning Policy Framework* and the Council's references to the Joint Design Guide. Reference has

¹ Albeit there is no evidence before me that this may be directly attributable to groundwater

been made to other LP policies, but I consider those to which I have referred to be the most relevant having regard to the facts of the case.

18. No other matter is of such strength or significance as to outweigh those considerations that led to my conclusions on the main issues.

Overall conclusions

19. I have found for the appellant on the first main issue, that relating to the effect of the proposal on the character and appearance of its surroundings. However, I have found against him on the second main issue, that the risk of groundwater flooding risk has not been adequately addressed. This is sufficient reason to dismiss the appeal.
20. Accordingly, the appeal is dismissed.

G Powys Jones

INSPECTOR