



Appeal Decision

Site visit made on 12 March 2025

by B Astley-Serougi BA(Hons) LL.M MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2025

Appeal Ref: APP/E0345/W/24/3352227

21 Western Elms Avenue, Reading RG30 2AL

- 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 David Graves of Infill Land Consultants against the decision of Reading Borough Council.
 - The application Ref is 231491.
 - The development proposed is construction of three town houses.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Reading Borough Council against Mr David Graves of Infill Land Consultants. This is subject to a separate decision.

Preliminary Matters

3. The appellant provided during the appeal process a Biodiversity Net Gain Assessment dated 28 September 2023, a Preliminary Ecological Appraisal dated October 2022, a Preliminary Ecological Appraisal dated 25 July 2024 and a Statutory Biodiversity Metric Calculations document dated 27 August 2024. I am not satisfied that were I to accept this information, that interested parties would not be prejudiced. I have therefore not taken the aforementioned documents into consideration in the determination of this appeal.
4. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. Whilst some paragraph numbers have changed, the relevant paragraphs and parts of paragraphs identified as directly affecting this case have not been amended. Therefore, in this case it has not been necessary to consult the parties on the revised Framework.

Main Issues

5. The main issues are:
 - the effect of the development on the ecological value of the site; and
 - whether the proposal makes an adequate contribution towards the provision of affordable housing.

Reasons

Ecological value and biodiversity

6. The appeal site is currently vacant and overgrown. It comprises the rear gardens of 19-21 Western Elms Avenue adjacent to Ivanhoe Close. The site is adjacent to railway tracks and the surrounding area is predominantly residential. The east section of the site is located within an identified Green Link Network.
7. The site has been subject to clearances in February and September 2019, July 2020 and levelling in February 2022. The appellant has not adequately demonstrated the clearances were lawful. Consequently, I have considered the clearances to be unauthorised. The latter clearance and levelling are pertinent to Schedule 7A, paragraph 6 of the Town and Country Planning Act. It states that if activities on land on or after 30 January 2020 has taken place other than in accordance with a planning permission and as a result the biodiversity value of the onsite habitat is lower than it would otherwise have been, the pre-development biodiversity value of the onsite habitat is to be taken to be its biodiversity value immediately before the carrying on of the activities.
8. The appellant states that the trees were removed due to safety concerns because they were leaning against houses. Nevertheless, it was unauthorised and consequently the baseline value must be calculated using the value prior to the clearance in July 2020 and levelling in February 2022. The ecological assessment dated October 2023 submitted by the appellant refers to biodiversity enhancements. However, it does not provide any values. Furthermore, it requests to off-set the loss through off-site compensation.
9. The appellant refers to site clearances which took place prior to November 2019 and the adoption of the current local plan. They state that the requirement to avoid biodiversity loss and the use of accepted methods of metrics were not adopted policy at the time. Nevertheless, the appellant has not adequately demonstrated the baseline biodiversity value of the site prior to the clearance and levelling that took place in July 2020 and February 2022 respectively.
10. Policy EN12 of the Reading Borough Local Plan 2019 (RBLP) outlines the avoid, mitigate, on-site compensation and finally off-site compensation hierarchy of biodiversity intervention. It is unclear what the pre and post development values are of the appeal site and consequently the level of apparent biodiversity loss. Accordingly, the appellant has failed to adequately demonstrate that the likely harm would not be addressed on-site. Therefore, it follows, that it has not been demonstrated the appeal scheme would qualify for off-site compensation and consequently a condition to off set the apparent loss would not meet the tests outlined in paragraph 57 of the Framework.
11. The appellant considers that the Council in its determination of the application relied upon an unadopted widened zone around the railway Green Link which included approximately a third of the site. The reasoning text of Policy EN12 of the RBLP states that the routes identified as Green Links on the Proposals Map should not necessarily be interpreted as a precise line, rather that it may indicate a potential connection between areas. The Council have clarified that the internal

GIS map it has referred to is also largely indicative and should not be taken as scalable. Consequently, whilst there is a difference between the Proposals Map and the internal GIS map, the reasoning text is clear it is indicative. Therefore, I am satisfied that the Council did not rely upon an unadopted widened zone in its determination of the application.

12. Given the above, the appeal scheme would conflict with Policies H11, EN12 and EN14 of the RBLP insofar as they seek to ensure developments provide biodiversity net gain where possible and consequently prevent an adverse impact on the Green Link Network and the overall biodiversity including the loss of trees.

Affordable housing

13. Policy H3 of the RBLP establishes that residential development will make an appropriate contribution towards affordable housing. This is supported by Policy CC9 of the RBLP which establishes that proposals for development will not be permitted unless infrastructure, services, resources, amenities or other assets lost or impacted upon as a result of the development or made necessary by the development will be provided through direct provision or financial contributions at the appropriate time.
14. The appellant has not provided a complete Section 106 agreement however they did provide a Heads of Terms within a supporting Affordable Housing Statement. Nevertheless, the value of the affordable housing off-site contribution was unable to be verified by the Council given that it did not receive two independent valuations of the proposed dwellings.
15. Planning Practice Guidance states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk¹. It must also meet the six tests outlined in paragraph 57 of the Framework. However, given that the Heads of Terms remains unverified, any condition would not meet the tests of precision and enforceability.
16. Given the above, the appellant has not adequately demonstrated that the proposal would make an adequate contribution towards the provision of affordable housing. Consequently, the appeal scheme would be in conflict with Policies H3 and CC9 of the RBLP insofar as they seek to secure financial contributions for residential housing developments as well as in circumstances where there is a loss or impact upon infrastructure, services, resources, amenities or other assets.

Other Matters

17. The appellant considers that there are elements of the appeal scheme which would comply with parts of Policy H11 of the RBLP including aspects of design, layout, living conditions of neighbouring residents, relationship with the wider area as well as compliance with the appropriate highway standards. However, the Council have not refused the development on these grounds. Nevertheless, these are neutral factors in my determination of this appeal.

¹ Planning Practice Guidance Paragraph: 010 Reference ID: 21a-010-20190723

Planning Balance

18. The appeal scheme would provide three town houses all of which would be appropriate for families. The proposed development would be classified as windfall development and therefore contribute to the overall housing stock within the Borough. Nevertheless, these benefits do not outweigh the harm I have identified above.

Conclusion

19. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

B Astley-Serougi

INSPECTOR