



Appeal Decisions

Site visit made on 27 February 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal A Ref: APP/K0425/W/24/3349125

209-211 West Wycombe Road, High Wycombe, Buckinghamshire HP12 3AW

- 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 I H Investmants Ltd against the decision of Buckinghamshire Council - West Area (Wycombe).
 - The application ref is 22/08222/FUL.
 - The development proposed was described as 'construction of 3x dwellings to the rear of the site with associated parking, landscaping and amenity space, and cycle and refuse storage, alongside amendments to the existing parking and landscaping for the apartment building to the front of the site'.
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Appeal B Ref: APP/K0425/W/24/3349847

209-211 West Wycombe Road, High Wycombe, Buckinghamshire HP12 3AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by I H Investmants Ltd against Buckinghamshire Council - West Area (Wycombe).
 - The application ref is 23/0522/VCDN.
 - The application sought planning permission for demolition of existing buildings and erection of a single block comprising 10 x 2 and 2 x 1 bed apartments with cycle and bin stores, with associated landscaping, car parking and widening of existing access, without complying with conditions attached to planning permission ref 16/07637/FUL dated 9 March 2018.
 - The conditions in dispute are Nos 2, 3, 4, 7, 8, 9, 12, 17 and 21 which relate to the approved drawings (2); approval of materials (3); approval of soft landscaping (4); approval of a tree report (7); approval of cycle parking (8); provision of bin storage (9); approval of site and floor levels (12), laying of parking areas (17) and approval of ecological enhancements adjacent to the River Wye (21).
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed since it cannot proceed.

Application for Costs

3. An application for costs has been submitted by Buckinghamshire Council against I H Investmants Ltd. That application is the subject of a separate decision.

Background

4. On 9 March 2018 planning permission was granted by the Council for development described as 'demolition of existing buildings and erection of a single

block comprising 10 x 2 and 2 x 1 bed apartments with cycle and bin stores, with associated landscaping, car parking and widening of existing access' (the original permission)¹. That permission was granted subject to a number of planning conditions. I observed during my site visit that that development, including a rear parking area, was largely complete and the building is named Parkside Court.

5. A subsequent planning application was made for development at the back of the site in December 2022, behind the original development². Planning permission was refused by the Council on 23 February 2024 and is the subject of Appeal A.
6. In February 2023 an application was made to amend some of the conditions of the original permission relating to the front of the site. Together the amendments sought to facilitate the proposed development at the back of the site, through amending the approved parking layout, location of cycle and refuse stores and the approved landscaping scheme. The Council did not determine that application, and that is the subject of Appeal B.

Preliminary Matters for Appeal A

7. Amended drawings have been submitted with the appeal, which make changes to the proposed works at the southern side of the site to include the restoration of a Mill Race. In turn this amendment has necessitated the submission of additional supporting information with the appeal. The relevant appeals guidance makes clear that if an appeal is made, the appeal process should not be used to evolve a scheme³. Nonetheless, I consider that the amendment to add the water course to the undeveloped area to the south of the site does not amount to a fundamental change to the proposal overall. Given the scale of the change I am satisfied that to accept this amendment would not cause procedural unfairness to those parties involved in the appeal. Therefore, and having regard to the relevant case law⁴, I have accepted the amended drawings and documents, and included them in my consideration of Appeal A.
8. Other new documents have been submitted with the appeal. However, other than insofar as they relate to the Mill Race, I am satisfied that they do not amend the proposal, but seek to respond to the reasons for refusal.
9. Appeal A is accompanied by a Unilateral Undertaking (UU) dated 23 December 2024 and which relates to a financial contribution for biodiversity net gain. This has been taken into account in the determination of the appeal.
10. During the course of the appeal a new National Planning Policy Framework has been published (the Framework). Since the policies that are most relevant to the determination of the appeal have not been subject to substantive changes I am satisfied that no party would be prejudiced by my taking it into account.

Preliminary Matters for Appeal B

11. Appeal B seeks to amend conditions of the original 2018 permission relating to the front of the site. Case law⁵ has established that an application under S73 may not

¹ Council reference 16/07637/FUL

² Council reference 22/08222/FUL

³ Para 16.1, Procedural Guide: Planning Appeals: England

⁴ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

⁵ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited, and Fiske v Test Valley BC & Woodington Solar Limited

be used to obtain a permission that would require a variation to the terms of the operative part of the planning permission, which would include the description of development for which the original permission was granted. Planning Practice Guidance (PPG) states that Section 73 cannot be used to change the description of the development.

12. The drawings which are provided under Appeal B, which the application seeks to provide the new approved drawings for the original permission, clearly include development at the back of the site within the red line boundary, including three new homes and associated development. To accept those drawings would therefore conflict with the original description of development set out above, which related to 'a single block' and specified number of units. In addition, the supporting documents which I am asked to consider as part of Appeal B, for example relating to arboriculture and ecology enhancements, refer to development which does not fall under the scope of the original permission. Based on the evidence, the two parts of the development are not clearly severable for these purposes.
13. As such, amending the conditions in the manner proposed would result in a conflict between the conditions and the description of development, and the amendments are beyond the powers under Section 73. The Council have commented on this matter within their case and there is not substantive evidence which would lead me to a different conclusion.
14. It therefore follows that Appeal B cannot succeed and I have not considered that appeal further. The rest of this appeal decision therefore considers only Appeal A.

Main Issues

15. The Council have confirmed during the course of the appeal that it would no longer pursue its fifth reason for refusal relating to Appeal A, which related to provision of affordable housing. As this matter is no longer in dispute I have not dealt with it as a main issue.
16. The main issues in respect of Appeal A are:
 - Whether the proposal would be suitably located, having regard to flood risk;
 - Effects on biodiversity, with particular regard to the habitats adjacent to the River Wye and whether the proposal would achieve appropriate biodiversity net gain, and;
 - The effects of the proposal on the character and appearance of the area.

Reasons

Flood Risk

17. In terms of risk from fluvial flooding, the southern part of the appeal site is located predominantly within flood risk zone 2, but with its most southern extremity expanding into zone 3 and the River Wye. The higher ground of the site to its northern end is in flood risk zone 1. The Framework makes clear that a sequential risk-based approach should be taken to applications in areas known to be at risk now or in the future from any form of flooding, and the PPG clarifies that this is principally land within zones 2 and 3. Policy DM39 of the Wycombe District Local Plan (the WDLP) similarly includes that all development will be directed to areas at

least risk of flooding and that development in any area at risk of flooding will be required to evidence compliance with sequential and exception tests as set out in national policy, subject to exceptions. Buildings used for dwelling houses fall under the 'more vulnerable' class for flood risk. The southern side of the site is also identified as an area at high risk of surface water flooding and I return to this matter below.

18. The appellant asserts that the proposed built form would be solely located within flood zone 1, and references appendix 5 of the FRA 2023⁶. However, to the contrary, that map shows part of the footprint of the development, as well as private garden areas, would be positioned within flood risk zone 2. The FRA 2023 acknowledges a sequential and exception test would therefore be necessary.
19. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, and sets out steps which should be followed. The appellant's sequential test considers a test area encompassing High Wycombe, rather than the wider District area. No particular justification is given for this search area. The PPG states the search areas will be defined by local circumstances relating to the catchment area for the type of development proposed. Based on the information before me I am not satisfied that the catchment area for housing needs to be limited to High Wycombe itself or that the sequential test needs to be applied at such a localised level.
20. The PPG defines what may be considered a reasonably available site. The appellant has reviewed those sites in the county and district level land availability assessments⁷, as well as the Site Allocation Plan 2013, but acknowledges that those assessments only focus on land with a capacity to accommodate a greater quantum of housing than proposed. Sites identified in the Buckinghamshire Call for Sites process have been considered, and this includes sites under 2ha in area, within flood zone 1, and within the High Wycombe area. However, many have been discounted for the site area being too large. There is not substantive evidence to suggest why part of a larger site could not reasonably accommodate the proposed development. This is at odds with the PPG, which states that a reasonably available site could include part of a larger site.
21. Reasons for discounting other sites include the need for further testing relating to environmental issues, and differing purposes and demographics for intended development. Those matters are not further substantiated, and it is not apparent that they would amount to reasons to discount those sites as reasonably available alternatives.
22. For the reasons given, even if the search area of only High Wycombe were accepted, it cannot be established that reasonably available sites appropriate for the proposed development do not exist in areas with a lower risk of flooding. Accordingly, the sequential test is not passed. The PPG states that the Exception Test need only be applied if required and after the Sequential Test, and that both elements need to be satisfied in order to grant planning permission. As such, it is not necessary to consider the Exception Test.

⁶ Flood Risk Assessment by STM Environmental dated 01.06.2023

⁷ Buckinghamshire Housing and Economic Land Availability Assessment Methodology, June 2022, and Wycombe District Council Housing and Economic Land Availability Assessment, September 2017

23. Given the flood risk areas affecting the site and the nature and location of the proposed development, the need for sequential and exception testing existed prior to the publication of the latest Framework, as set out in the FRA 2023. For this reason, and as the requirement of the development plan policy and PPG have not been subject to substantive change on this matter, I am satisfied that the appellant has not been prejudiced by the changes to the Framework regarding those tests.
24. There remains dispute regarding the risk of surface water flooding on the site, particularly given its gradient and proximity to the river. The site levels at the back of the site have clearly been altered in connection with the infilling of part of the water course, and it is not clear when this occurred. However, the submitted information including drawings, suggest the back of the site does not entirely slope into the river and I observed the rear part of the site to be predominantly flat. I also note the concerns regarding the location of the proposed reinstated Mill Race comparative to its former position and potential implications on flooding.
25. Given the uncertainty on this matter and adopting a precautionary approach, I am not satisfied that the site should be considered as being at low risk from surface water flooding, contrary to the high risk designation for the back of the site given by EA flood maps. Accordingly, and in combination with the uncertainty surrounding effects of reinstating the Mill Race, it cannot be established that the displacement of runoff arising from the development would not cause flooding elsewhere, or the extent to which the scheme could deliver an appropriate means of surface water drainage. However, even if there were clarity on these issues or if they could be dealt with by condition, this would not negate the need for a sequential test given the remaining fluvial flood risk.
26. I note the findings of the appellant's FRA 2022⁸, which includes a finding of low risk of flooding from fluvial sources. However this relates to a different scheme with a different footprint and position on the site. As such, and given its conclusions conflict with the appellant's other documents, I cannot be certain that it provides assurances on the above concerns. An appeal decision at 7A Brook Lodge has been brought to my attention⁹, however the circumstances of that appeal appear to differ as that Inspector notes site-specific circumstances and that the dwellings themselves would be located within Flood Zone 1, with low probability of flooding. Based on the information before me, that would not be the case here.
27. For the reasons given, the proposal would not be suitably located for the proposed new housing, having regard to flood risk. It would conflict with policy DM39 of the WDLP and the Framework insofar as they require development to be directed to areas at least risk of flooding.

Biodiversity- River Wye Buffer

28. The habitat surrounding the River Wye is identified as being of principal importance under S41 of the Natural Environment and Rural Communities Act 2006 as a Priority Habitat, and is identified by the local plan as a Biodiversity Opportunity Area (BOA) forming part of the Central Chilterns Chalk Rivers. Policy DM15 of the Delivery and Site Allocations Plan 2013 (the DSAP) states, among other things, that development proposals adjacent to a watercourse should provide a 10m buffer between the top of the river bank and the development, as well as associated

⁸ Flood Risk Assessment by Ashfield ref 150622-F01 dated 01.06.2022

⁹ Appeal ref APP/N5090/W/21/3269567 (23 August 2021)

landscaping and management. The supporting text to the policy adds that the buffer should be maintained as a natural or semi-natural habitat free from built development, parking areas, private gardens and formal landscaping, in order to provide for the functioning of wildlife habitats and provide a buffer from land-based activities.

29. Once the Mill Race watercourse were reinstated there would be just a 4m buffer between the watercourse and the development. The approved drawings of the original permission showed works to this part of the site, and this area may historically have formed part of a residential garden. However, the effects of the appeal scheme on the purposes of the buffer, through the proximity of the buildings and their private terraces to the river, would be substantially different and have very different effects on the ability of this land to support wildlife habitats. The southern part of the site would be maintained in accordance with a management plan which could reasonably be secured by condition. However, it is not apparent that this would negate the need for the buffer.
30. The DSAP acknowledges there will be situations where a 10m buffer may not be achievable, and gives the example of town centre sites where there is already significant built development and infringement of the river corridor. However, this is not the case for the appeal site. While there is development close to the river on some nearby sites, there is not substantial evidence to suggest these have amounted to a significant infringement or undermine the purposes of the buffer.
31. The Environment Agency (EA) have reaffirmed that there may be flexibility in the extent of the required buffer, depending on the details of restoration works. The Council together with the EA have raised a number of concerns for the proposed restoration works presented across a number of documents. In addition to concerns for the positioning of the Mill Race, these include the use of non-native planting, the appropriateness of the demarcation of the land including use of haras fencing, absence of details of land profiling, and issues associated with the responsibility for long term maintenance of this part of the site. Based on the information before me I have no strong reason to reach a different view, and these factors together give significant uncertainty surrounding the appropriateness and effectiveness of the proposed restoration works.
32. The appellant suggests that further details to address those concerns could be submitted by condition. However, given the importance of those details to the acceptability of the site layout and reduced watercourse buffer, I do not consider it would be reasonable to delay the submission of those details until after the grant of planning permission. Submission of further details would also not address other concerns, for example, relating to the effects of internal lighting from the new houses on those new habitats, particularly given the scale of the windows and doors proposed facing towards the river.
33. For the reasons given, the proximity of the proposed development to the River Wye and the restored Mill Race would not be adequate for the purposes of protecting and enhancing the river corridor and the priority habitat. Accordingly, the proposal would conflict with policies DM11, DM13, and DM15 of the DSAP and DM34 of the WDLP which together relate to the conservation and enhancement of habitats, including river corridors.

Biodiversity- Enhancements

34. Turning to the matter of enhancements, as above, the site lies within the Central Chiltern Chalk Rivers BOA, which is one of a number of landscape-scale areas which have been identified as the areas of greatest opportunity for strategic gains for biodiversity. The application which is the subject of Appeal A pre-dated the mandatory biodiversity net gain (BNG) requirement. Policy DM34 of the WDLP, as well as DM14 in the DSAP nonetheless require all development to enhance or maximise biodiversity. Policy DM11 of the DSAP also requires development to contribute towards the improvement of BOAs.
35. The southern part of the site has been largely cleared of vegetation and the appellant acknowledges that the former Mill Race has been removed, contributing to the degradation of the riparian zone of the River Wye. For the purposes of BNG, however, the appellant has assumed a baseline of the original permission and its associated scheme of landscaping for the southern part of the site. The updated BNG information suggests the scheme would result in a net loss of habitat units (-69.83%), hedgerow units (-100%) and watercourse units (at -33.22%).
36. Accordingly, in order to provide a 10% BNG from the development, the appellant proposes a financial contribution. The submitted UU would secure a contribution of £95,191.63 towards biodiversity net gain, for funding of long-term conservation projects in the Council's administrative area. This would be payable prior to the commencement of development associated with Appeal A. The Council have found the UU would be effective in securing the contribution and I have no reason to find otherwise.
37. The figure was derived using the Council's Biodiversity Financial Calculator, which provides a cost calculator for different habitat sites informed by details of running costs per unit and average creation and management costs. The extent of watercourse units inputted into the calculator would appear to be less than identified as necessary by the appellant's updated BNG report. However, even if the extent of the contribution were demonstrated to be fairly and reasonably related in scale and kind to the development, there is little detail before me as to how or where that contribution would be spent. This casts significant doubt on how the contribution would be used in practice to secure BNG. Notwithstanding the Council's concerns, neither is it apparent that the proposal has had regard to the mitigation hierarchy set out in Policy DM34(2b), which sets out that compensation (on then off-site) is the final part of a sequential approach. This is particularly pertinent here, given the site forms part of a designated BOA which the DSAP states to be one with the greatest opportunity for strategic gains for biodiversity.
38. For the reasons given I cannot be satisfied that the proposal would deliver appropriate biodiversity net gain. The proposal would conflict with WDLP policies CP10 and DM34, and DSAP Policy DM14 together with the Framework insofar as they relate to providing biodiversity net gain.

Character and Appearance

39. This part of West Wycombe Road is characterised predominantly by linear developments which vary significantly in their scale, design and appearance. It includes some flatted blocks, as well as two storey houses of varying age, and the buildings on the southern side of the road are generally lower in height, reflecting the lowering ground levels to the south. Further to the west of the appeal site, the

properties on the southern side of the road have long, narrow gardens which are largely uninterrupted by built form.

40. The appeal site lies among a smaller stretch of properties between Desborough Park Road and Fryers Lane, where the plot sizes are smaller and where some development has occurred behind the front building line. This is particularly the case on land directly to the west of the appeal site, where there are a number of buildings including a nursery and substation behind the main building line, as well as other commercial buildings and a car park. While some of the properties immediately to the east of the appeal site maintain rear gardens, there is nonetheless a more dense pattern of development among this part of the road. I am mindful of the conclusions of an Inspector regarding a nearby site on Desborough Park Road¹⁰, who found that development behind the building line was established and would sit comfortably within the wider surrounding pattern.
41. The proposed houses would not extend further south than the adjoining buildings. The houses would have two storeys and in combination with the lower ground levels at the back of the site, would be significantly smaller and visually subordinate to Parkside Court at the front of the site. They would also be of a comparable scale to the buildings directly adjacent to the west.
42. Visibility of the development would be limited to glimpses along the access from West Wycombe Road, and from the park to the south. However in those views the proposal would read as part of the existing buildings behind the road frontage, and would not appear incongruous. Similarly, while the parking areas and car lift would give a highly engineered appearance to the centre of the site, they would not be highly visible from the surrounding area given their enclosure.
43. The Council's Supplementary Planning Documents 'Residential Design Guidance' 2017 and 'Housing Intensification' 2011 together state that development should front public areas, and highlight the problems with tandem development, arising from difficult access and disturbance. However, both similarly require that development respects the character of the area, which would be the case here, and issues relating to access and disturbance are not in dispute.
44. For the reasons given, the proposal would not cause harm to the character or appearance of the area and would respond appropriately to its context. The proposal would comply with policies CP9 and DM35 of the WDLP which seek to ensure that new development is compatible with and provides a positive response to the character of the area. I do not find conflict with the SPDs referred to above, when read as a whole. Insofar as this main issue is concerned, I do not find conflict with policy DM34 which relates to matters of biodiversity and green infrastructure features.

Other Matters

45. At the time of writing its statement, the Council reported having a five year housing land supply. I am aware that this statement pre-dated the publication of the new Framework and may have been subject to change. In any event, and even if the provisions of paragraph 11d) of the Framework were relevant to the appeal, the application of policies in the Framework which protect areas at risk of flooding provide a strong reason for refusing the proposed development. Accordingly,

¹⁰ Appeal ref APP/K0425/W/22/3313852

Appeal A would not benefit from the presumption in favour of sustainable development set out in the Framework.

46. There are, however, benefits which would be delivered as part of Appeal A. In particular this would include the provision of three new homes which would contribute to the local supply and to the national objective to boost the supply of homes. The Framework acknowledges the important contribution which small and medium sized sites can make and the value of brownfield land. These homes would be in an existing settlement with good accessibility to existing services and facilities including public transport which would encourage sustainable means of travel. For the purpose of paragraph 125c) of the Framework however, I do not consider the site has been identified as one which can be described as 'suitable', given the nature of the harms arising from the proposal.
47. The grant of planning permission would facilitate the reinstatement of the Mill Race. However there is not substantive evidence to suggest that this would not otherwise occur and I note the concerns of the EA that it would not follow its previous line, potentially causing disconnect. There would also be economic benefits arising from the construction process associated with Appeal A and from ongoing expenditure by future occupants into the local economy. Even if the extent of any local shortfall in housing were significant, taken together I ascribe these benefits moderate weight, given the scale of the proposal. I do not consider that they would amount to material considerations of sufficient weight to outweigh the harms identified, which would be significant and long lasting, and which would be in conflict with the development plan and the Framework.

Conclusion

48. Appeal A would conflict with the development plan and there are not material considerations of sufficient weight, including approaches in the Framework, which indicate that a decision should be made other than in accordance with it. Appeal A is therefore dismissed.
49. Appeal B cannot succeed, for the reasons set out in the Preliminary Matters above.

C Shearing

INSPECTOR