



Appeal Decision

Site visit made on 21 May 2025

by **Mark Philpott BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 June 2025.

Appeal Ref: APP/T0355/W/25/3359052

Private car parking area at southern end of Stafferton Way, Maidenhead SL6 1AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by N & R Investments Limited against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 24/01052.
 - The development proposed is the construction of 25 apartments over 5 & 6 storeys together with outside amenity, parking, bin & cycle stores.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address specified above is taken from the planning application form. However, it is clear from the drawings and street name signs that the site actually fronts onto Stafferton Link to the east of Stafferton Way.
3. The site is used as a car storage yard for a nearby local business. The Council queries whether this is its lawful use but, in the absence of any substantive evidence to the contrary, I have proceeded on the basis that the use is legitimate.
4. Outline planning permission is sought with details of access, appearance, layout and scale provided at this stage, with landscaping matters reserved for future consideration.
5. The revised National Planning Policy Framework (Framework) and the 2023 Housing Delivery Test results were published after the application was determined. Additionally, the Council's Sustainability Supplementary Planning Document (SPD) has superseded the Sustainable Design and Construction SPD and the Interim Sustainability Position Statement. The Framework and the latest SPD are referred to in the Council's appeal statement, so the appellant had an opportunity to comment on these during the appeal process. In addition, the 2023 test results do not have a consequence for decision-making, and this was also the case for the previous results. For these reasons, I have not sought further views from the main parties regarding these matters.
6. The appeal is supported by a Preliminary Ecological Appraisal and Roost Assessment (PEA). The Council and interested parties have had an opportunity to comment on this during the appeal process and so I have taken it into account. A draft legal agreement has also been submitted, which is considered for main issue (iii) identified below.

Main Issues

7. The main issues are:

- (i) whether the site is a satisfactory location for the scheme having regard to flood risk;
- (ii) the effect of the proposal on the character and appearance of the area;
- (iii) whether the proposal would make satisfactory provision for affordable housing;
- (iv) whether the proposal would incorporate satisfactory measures to adapt to and mitigate climate change;
- (v) the effect of the proposal on ecology, including whether it would secure biodiversity net gain;
- (vi) the effect of the proposal on highway safety, with particular regard to whether it would have a satisfactory vehicular access; and
- (vii) whether the proposal would provide a satisfactory standard of accommodation, with particular regard to light receipt, outlook and the quantity of internal and external space.

Reasons

Flood risk

- 8. Section 14 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This is achieved through the application of the sequential test, which aims to steer development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites with a lower risk of flooding. This is reflected in policy NR1 of the Borough Local Plan 2013-2033 (LP).
- 9. A significant proportion of the site is in flood zone 3, with the remainder in flood zone 2, and is thus at a high risk of fluvial flooding. The scheme is supported by a Preliminary Flood Risk Assessment (FRA) which undertakes a search for sequentially preferable sites using the Council's Housing and Economic Land Availability Assessment 2019 (HELAA). However, the FRA explains that 9 sites identified as deliverable in the HELAA were discounted for being in flood zone 2 'and/or' flood zone 3. Further details regarding those have not been provided. It is therefore unclear if any are reasonably available and in flood zone 2 only or less constrained by flood zone 3 than the site. Any such alternatives would be sequentially preferable.
- 10. Furthermore, in terms of the potential alternatives that are specified in the FRA, the Nicholsons Centre has been discounted due to its larger size and potential capacity than the site. Conversely, several others have been discounted for being too small. The Planning Practice Guidance¹ sets out that reasonably available sites could include 'a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development.' As such, insufficient justification has been provided for discounting these options.

¹ Reference ID: 7-028-20220825

11. Moreover, details regarding sources of flooding other than from rivers and the impacts of climate change have not been considered for the sequential testing, as required by LP policy NR1 and paragraph 172 of the Framework, despite having been assessed for other purposes in the FRA. Notably, the site is susceptible to groundwater flooding, which should have factored into the assessment.
12. Consequently, it has not been demonstrated that there are no suitable alternative sites for the development with a lower risk of flooding. The proposal therefore cannot pass the sequential test and there is no need to consider flood risk any further. The FRA alleges that the scheme can acceptably mitigate the risks and impacts of flooding at the site, but this does not address the need for the sequential test to be passed in the first instance.
13. The proposal therefore fails to demonstrate that the site is a satisfactory location for development having regard to flood risk. It does not comply with LP policy NR1 or section 14 of the Framework, which require that development is steered towards areas with the lowest risk of flooding.

Character and appearance

14. The site comprises a narrow area of hardstanding enclosed by metal fencing that is located between Stafferton Link and a river known as The Cut or York Stream. The river features a footpath opposite the site that connects to Stafferton Link and Green Lane to the east and Stafferton Way to the west. There are grassed areas and vegetation to either side of the footpath. There is also vegetation along the riverbanks and adjacent to the site's southern and western boundaries. Allotment gardens are evident south of the river.
15. Stafferton Link is described in the appellant's Transport Assessment as a southern bypass to Maidenhead town centre. It connects Stafferton Way to the B3028 via a bridge over the river. The northern side of Stafferton Link and Stafferton Way are characterised by large, low and utilitarian sheds in various uses. However, to the west of the site Stafferton Way features a comparatively tall supermarket and self-storage building and a multistorey car park. Behind those are recently constructed apartment buildings up to 7 storeys in height, albeit these are set back from the riverside and screened from it to a significant extent by trees. Tall buildings can also be seen in longer distance views towards the town centre.
16. Conversely, the area to the east of the site, which includes Green Lane and centres around a roundabout that joins Stafferton Link with the B3028, features generally spacious residential properties that mainly comprise detached two storey dwellings and bungalows. As such, it has prevalently suburban attributes.
17. The site is therefore located in an area with complex, varied and delicately balanced characteristics. On the whole, despite being proximate to large buildings, the riverside feels open, spacious, verdant and relaxed. This is reinforced by the absence of buildings at the site, the vegetation to its west, the allotments and to a lesser extent the housing to the east, particularly when viewed from the riverside footpaths and on approach to the site from the west. However, in other views the buildings to the north and west provide a suitable context for development at the site, particularly in winter months when vegetation screening is less effective. Overall, while the site has limited intrinsic value, it is in a highly prominent and sensitive location such that any development there would need to consider the area's varied characteristics carefully.

18. There is little narrative in the evidence as to how the scale, form, detailing and materiality of the proposed apartment building has been arrived at. It is put forward that the site is standalone and able to define its own character, but I disagree given my above assessment. The proposal draws no obvious inspiration from its surroundings other than perhaps some broad elements of the aforementioned recently constructed apartment buildings. I therefore consider that it fails to respond suitably positively to any aspects of the area's character.
19. Importantly, the proposed building would be considerably taller than and thus poorly juxtaposed with the sheds to the north and the housing to the east. In addition, the building would be immediately next to and appear cramped between the highway and the river due to its large size and as there would be little space for landscaping around it. In these ways it would contrast negatively with the existing tall buildings, which are set back from the river and benefit from surrounding landscaping and open spaces. It would also adversely affect the riverside's spacious and verdant character.
20. Further, the vegetation adjacent to the site's western and southern boundaries, including some small trees, may be adversely affected or partly removed by the construction of the development. While the trees would fall below the size requirements for assessment for the purposes of British Standard 5837:2012, the loss of the trees as part of the wider landscaping would nevertheless create further harm to the quality of the riverside environment. As such, it has not been demonstrated that the proposal would be acceptable in this respect.
21. I conclude that the development would be an incongruous and uninspired addition to the area as a result of its scale, form and design. It is highlighted that the site is adjacent to an area potentially supported for buildings up to 18 metres or 5 storeys high by table 3.1 of the Building Height and Tall Buildings SPD. However, this does not justify the scheme, which would sit outside it and contrast poorly with the surroundings as identified above. The increased riverside surveillance that the scheme would provide would also not address the harm identified.
22. The proposal would harm the character and appearance of the area. It conflicts with LP policies QP3 and QP3a, which require development to respect and enhance local character and set out that tall buildings should be of the highest design quality and distinctiveness. It has also not been demonstrated that the proposal accords with LP policy NR3, which states that schemes should carefully consider tree impacts, particularly where they contribute to local character.

Affordable housing

23. LP policy HO3 requires 30 percent of the proposed apartments to constitute affordable housing. The draft legal agreement intends to secure 8 apartments for social rent. However, I cannot be certain that these would be delivered in the absence of a completed agreement. Hence, the proposal fails to make satisfactory provision for affordable housing and conflicts with the policy.

Climate change

24. LP policies EP1 and SP2 specify that development should not have an unacceptable effect on environmental quality and demonstrate how it has been designed to incorporate measures to adapt to and mitigate climate change. The Sustainability SPD provides guidance to support these policies, with the latter

referring specifically to successor documents to the Sustainable Design and Construction SPD. Among other things, the extant SPD specifies that schemes should be 'net zero' in terms of carbon emissions to comply with the policies.

25. The proposal is supported by a Sustainability Assessment. However, its disclaimer states that it 'does not represent an accurate reflection of the proposed development' with no modelling calculations for energy consumption and carbon dioxide emissions undertaken to support it. While it sets out a range of potential sustainable construction options, such as for solar shading and ventilation, it also makes clear that these are only suggestions which cannot be relied upon. Few site specific details of measures for achieving net zero carbon emissions or which indicate that the proposal would otherwise adapt to and mitigate climate change have therefore been provided. While the appellant has indicated that a carbon offset contribution would be made, this has not been secured.
26. It has been put forward that the submission of further sustainability information could be secured by conditions. However, given the limitations of the Sustainability Assessment and the lack of site specific detail, I do not have sufficient certainty that an acceptable scheme could be achieved. Consequently, it would not be appropriate to reserve considerations of such matters using conditions.
27. I therefore find that the proposal would not incorporate satisfactory measures to adapt to and mitigate climate change. In this way it conflicts with LP policies EP1 and SP2 and the Sustainability SPD.

Ecology

28. The Cut is a main river and habitat of principle importance for the purpose of conserving biodiversity². Additionally, the Environment Agency identifies that the river and the bank adjacent to the site is part of a Local Wildlife Site (LWS) named 'Greenway Corridor and York Stream.' Accordingly, there is a likelihood that valuable habitats and species are present along this wildlife corridor.
29. LP policy NR1 states that proposals should retain or provide an undeveloped 8 metre buffer zone alongside main rivers, measured from the top of the riverbank at the point at which the bank meets the level of the surrounding land. The proposed ground floor and several balconies would be within The Cut's buffer zone. The appellant alleges that the riverbank is irregular and the buffer should be measured from the channel itself, but the policy makes no allowances for this, nor has compelling justification been presented for doing so.
30. The PEA anticipates that there would not be any direct impacts on off-site habitats during construction or operation of the scheme. However, this is questionable given the proximity of the proposed development to the riverbank. Moreover, the PEA does not expressly acknowledge the LWS and a detailed assessment of the watercourse has not been undertaken. Furthermore, though the PEA states that bats are very likely to commute and forage near the site, no surveying has been undertaken to establish the magnitude of any impacts. In that regard, it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before permission is granted.

² Section 41 of the Natural Environment and Rural Communities Act 2006

31. The appellant alleges that the development impacts less than 25 square metres of on-site habitat that has biodiversity value greater than zero and is therefore exempt from statutory biodiversity net gain requirements³. However, the Environment Agency has highlighted that The Statutory Biodiversity Metric User Guide requires land within 10 metres of riverbanks to be factored into biodiversity net gain calculations. Since this has not been done, and having regard to the limited space around the proposed building and its proximity to and potential effects on the riverbank, I do not have sufficiently certainty that biodiversity net gain would be achievable.
32. For the above reasons, it has not been demonstrated that the site would have an acceptable effect on ecology. The proposal conflicts with LP policies NR1 and NR2 and paragraph 192 of the Framework. The requirements for the former are set out above, whereas the others expect proposals to demonstrate how they will protect and enhance ecology and provide net gains in biodiversity.

Highway safety

33. The highway in the vicinity of the site has a relatively straight alignment and is subject to a 30 miles per hour speed limit. It features a footway along the site's front boundary. The existing site access is gated and around 25 metres from a mini roundabout at the junction of Stafferton Way and Stafferton Link. No safety implications were identified regarding this when Stafferton Link was constructed; however, in 2019 a slight collision was reported between vehicles on approach to the roundabout near the access.
34. The proposed vehicular access would be in the same location as the existing one but it would be wider to allow for cars to pass side-by-side. Tracking drawings show that cars and light goods vehicles would be able to turn at one end of the building and emerge from the site in a forward gear. It appears that suitable vehicular visibility splays could be provided, and the front of the building would be set back from the footway to give sufficient intervisibility for vehicles emerging from the access and pedestrians. Furthermore, the building would feature separate entrances for pedestrians and cyclists such that conflicts in the vicinity of the vehicular access would be unlikely. Appropriate automation of proposed gates to the access could be secured by condition to minimise waiting on the highway.
35. Larger vehicles would be unable to enter the site. However, it is undisputed that other development requires waste collections to be carried out from Stafferton Way and no evidence has been submitted which indicates that such arrangements are inappropriate. I therefore have no reason to conclude that the impacts of large vehicle trips associated with the proposal would be unacceptable.
36. Visibility of the roundabout from the access would be adequate. While the Council is concerned that the distance between them would be insufficient, the arrangement was accepted at the time of the creation of Stafferton Link. Moreover, having regard to the characteristics of the highway, and despite taking the accident into account, I do not see how the proposal would give rise to materially greater safety risks when compared with the current use of the site, which can purportedly accommodate up to 40 vehicles, particularly when only 16 car parking spaces are proposed and 32 two way daily trips are anticipated.

³ Schedule 7A of the Town and Country Planning Act 1990 and Regulation 4 of The Biodiversity Gain Requirements (Exemptions) Regulations 2024

37. The proposal would not have an unacceptable adverse impact on highway safety. It accords with LP policy IF2 and paragraph 116 of the Framework. The former supports proposals that help create safe and comfortable environments for pedestrians, while the latter states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

Standard of accommodation

38. LP policy QP3 sets out that development is expected to contribute towards achieving sustainable high quality design in the borough and provide sufficient levels of high quality private and public amenity space. Additionally, the Borough Wide Design Guide SPD provides several design standards for proposals, albeit it is not referenced in the policy. Among other things, it sets out minimum standards for communal outdoor amenity space, encourages dual aspect dwellings and adequate outlook to external spaces, expects schemes to accord with the Space Standards⁴ and specifies that balconies that are more than 2 metres deep should be provided for all flatted development. The Council's objections relate to these aspects of the SPD.
39. There would be a 116 square metre deficit in communal open space provision against the relevant SPD standard. However, the site benefits from being near the town centre and green spaces would provide for the amenity and recreation needs of the occupiers of the development. In that context, the shortfall in provision would not be unacceptable.
40. A few of the proposed apartments would feature rooms with internal windows onto corridors. However, the windows would all serve parts of rooms intended to be used as kitchens and also be served by south facing windows or balconies with unfettered outlook across The Cut. As such, the apartments would receive appropriate levels of daylight, sunlight and outlook.
41. The drawings show that apartments 5 and 8 would fall short of the minimum internal floor areas set out by the Space Standards for 1 bed 2 person dwellings. However, these could be delivered as single person dwellings using conditions. In such a scenario, apartment 8 would be 0.78 square metres smaller than the relevant standard. However, footnote 51 of the Framework indicates that the Space Standards should be reflected in planning policy, which is not the case for the ones provided. Consequently, the Space Standards should be treated as guidance and, given the marginal shortfall, the size of apartment 8 would not be unacceptable. Furthermore, the lack of balcony provision for apartment 8 does not warrant an objection due to the site's accessibility to open spaces. Additionally, though several balconies would be less than the SPD's depth guideline, these would be sufficiently large to be practicably useable.
42. Overall, though there would be shortfalls against the standards in the Borough Wide Design Guide SPD, the proposal would offer a satisfactory standard of accommodation in terms of light receipt, outlook and internal and external space. In those respects, the proposal accords with LP policy QP3.

⁴ Technical housing standards – nationally described space standard

Other Matters

43. The Council alleges it can currently demonstrate 4.47 years of deliverable housing sites. Consequently, the presumption in favour of sustainable development, as set out by paragraph 11(d) of the Framework, is applicable. In that context, the scheme would make a significant contribution to addressing the Council's housing supply deficiency through the use of previously developed land in a highly accessible location. Furthermore, the area is supported for growth in the LP such as through policies SP1 and QP1a. There would also be benefits from the construction process and the occupiers of the development spending on and engaging with local amenities. Noting paragraphs 73, 124 and 125 of the Framework in particular, these matters weigh substantially in favour of the scheme when aggregated.
44. However, the proposal fails to demonstrate that it is not possible for development to be located in areas with a lower risk of flooding. In this way the Framework's policies provide a strong reason for refusing the scheme. Moreover, even if that was not the case and affordable housing delivery had been secured, the effects on the character and appearance of the area, the failure to incorporate satisfactory climate change adaptation and mitigation measures and the ecological implications of the scheme amount to substantial harm and thus adverse impacts that significantly and demonstrably outweighs the scheme's benefits. The Framework does not therefore indicate in favour of the scheme.

Conclusion

45. For the reasons given above, I find that the proposal conflicts with the development plan as a whole. Material considerations do not outweigh the conflict with the development plan. Consequently, the appeal should be dismissed.

Mark Philpott

INSPECTOR