



Appeal Decision

Site visit made on 28 May 2025

by **D J Barnes MBA BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 June 2025

Appeal Ref: APP/T0355/W/25/3360500

Fairview, Shoppenhangers Road, Maidenhead SL6 2PZ

- 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 Mani Gill (Gill Capital Homes Limited) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 24/01914.
 - The development proposed is the demolition of an existing dwelling and construction of 8 new apartment units comprising 6 two bedroom units and 2 one bedroom units.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Mani Gill against the Council of the Royal Borough of Windsor and Maidenhead and this is the subject of a separate Decision.

Procedural Matter

3. The appellant has submitted updated information as part of this appeal which seeks to address some of the council's concerns raised in the reasons for refusal. Although some of the information is supplementing the originally submitted reports and assessments, other information is new. As part of this new information is an amended layout identifying additional parking spaces. This amended layout does not alter either the siting of the proposed apartment building or the location of the vehicular access. For this reason, this amended drawing has been taken into account in the determination of this appeal.

Main Issues

4. It is considered that the main issues are the effects of the proposed development on (a) protected trees; (b) the safety of other highway users; (c) climate change and (d) biodiversity.

Reasons

Protected Trees

5. The appeal site comprises an existing dwelling sited on a large plot of land within the urban area of Maidenhead. The proposed development includes the demolition of the dwelling and the erection of a building containing 8 apartments together with associated parking within the front garden.

6. Within (tree T1) and adjacent to the northern boundary (trees T2 and T3) of the site are trees subject of a Tree Preservation Order (TPO). Trees T2 and T3 are part of a group of trees (G1) which are included on the Ancient Woodland Inventory. The status of the trees is not referenced in the appellant's *Arboricultural Report* albeit there is an assessment of the potential impact on trees including tree T1 and group G1 from the construction of the proposed development but not individually for trees T2 and T3. When travelling along Shoppenhangers Road the trees within and adjacent to the site make a positive contribution to the verdant character and appearance of the streetscene associated with the neighbouring front gardens and the grounds of the school.
7. The root system of tree T1 is already affected by extensive areas of hardstanding associated with the drive/parking area of the existing dwelling and the footway/carriageway of Shoppenhangers Road. The *Arboricultural Report* identifies that part of this tree's root protection area (RPA) extends into an area of lawn within the current front garden. The council claim that the RPA should be adjusted to take into account known influences on tree morphology, including the footway/carriageway of Shoppenhangers Road. In the absence of an adjusted RPA, the information provided by the appellant has been adopted to undertake the assessment in the determination of this appeal.
8. The proposed development would result in the lawn being replaced by an area for the parking and manoeuvring of vehicles and the erection of a storage facility for refuse/recycling containers. The appellant has indicated that a cellular confinement system would be used to construct the parking and manoeuvring area thereby claiming that soil compaction would be prevented and tree T1 would continue utilising this area to perform gaseous exchange and absorb moisture.
9. Even using a cellular confinement system the removal of the existing tarmac surface and lawn, together with the construction of the new surface, would involve some form of excavation work occurring within the RPA which could adversely affect the roots of tree T1. Further, no details concerning whether any trenches would be required for services and utilities have been provided and if any excavations would fall within the RPA of tree T1.
10. Although the *Arboricultural Report* references hand digging and other methods of construction to minimise root damage and as claimed by the council, there is still a lack of detailed information to adequately demonstrate the feasibility of using a cellular confinement system. Accordingly, it is not possible to enable judgement to be reached that the construction works associated with the proposed vehicular parking and manoeuvring area would not cause unacceptable harm to the root system of tree T1 and thereby prejudice its future health and viability. As already identified, this protected tree makes a positive contribution to the streetscene along Shoppenhangers Road.
11. From what was observed during the site visit, the distance between the majority of the trees within G1, together with the change in the ground level, is such that there is unlikely to be an adverse effect on the root systems of the majority of the trees during construction of the appeal scheme.
12. However, and noting the comments in the *Arboricultural Report* about the approach to assessment, there are individual trees, which appear to include trees T2 and T3 subject of the TPO, that are both located close to the site and at a similar ground

level as the site. The appellant has indicated that construction works would occur outside the RPA of the group G1 but there is no specific assessment of the effect of these works on the individual protected trees T2 and T3 which are also part of the Ancient Woodland. This matter would not alone be a reason for this appeal failing but it does add to the unacceptable harm which has been identified.

13. On this issue it is concluded that the proposed development would cause unacceptable harm to protected trees and, as such, it would conflict with Policies QP3 and NR3 of the Borough Local Plan 2013-2033 (LP) which seek to protect trees and vegetation worthy of retention, including Ancient Woodland.

Highway Safety

14. The appeal scheme identified 4 parking spaces albeit the amended layout identifies 6 spaces. The level of parking now proposed would be 1 space less than the requirement sought by the council.
15. LP Policy IF2 identifies that the parking standards in the council's *2004 Parking Strategy* will be used as a guide for determining the appropriate level of on-site parking provision until they are superseded by a *Parking Supplementary Planning Document*. However, the *Parking Strategy* is not being used to apply maximum standards because consideration is being given to the accessibility of a site and any potential impacts associated with overspill parking in the local area. The appellant has identified that the council is preparing the referenced *Supplementary Planning Document* but it has not been adopted.
16. Although there is a shortfall of 1 space when compared to the extant maximum parking standard, the site is in a location which is accessible on foot, cycle and public transport to a range of facilities, including the railway station and Maidenhead town centre. Future occupiers would not be reliant upon a vehicle to access these facilities and the maximum number of parking spaces would be unlikely to be required. Accordingly, an unacceptable safety risk for other highway users associated with potential on-street parking arising from the proposed development would be unlikely.
17. The appellant has now demonstrated that the proposed access would have suitable visibility splays in either direction and that a typical delivery van could enter and exit the site in forward gear. A refuse vehicle would not be able to enter into the site and it would be necessary for the vehicle to park on-street to collect waste and recycling. However, this is not an uncommon occurrence within urban areas and any refuse vehicle would only be parked for a short period of time and this would not result in an unacceptable risk to the safety of other highway users. Accordingly, concerns about the adequacy of the visibility splays and deliveries would not be reasons for this appeal to fail.
18. For the reasons given, it is concluded that the proposed development would not cause unacceptable danger for other highway users and, as such, it would not conflict with LP Policy IF2.

Climate Change

19. LP Policy SP2 refers to developments demonstrating how they have been designed to incorporate measures to adapt to and mitigate climate change. It does not specify environmental standards for new developments to achieve. Reference is

made in the policy to the guidance contained in the council's *Sustainable Design and Construction Supplementary Planning Document* (SPD) which seeks new dwellings to achieve a net zero carbon rating. As mitigation if there is a shortfall, the SPD seeks a financial contribution to the council's carbon off-setting fund. There is no legal agreement signed by the appellant in place to make a financial contribution to the fund if there could be a shortfall.

20. Whilst the SPD provides guidance, it does not have the same status as LP Policy SP2 which has been fully consulted on and adopted. The wording of LP Policy SP2 does not reference the requirement to achieve net zero carbon emissions. This limits the weight which can be attributed to the SPD to require net zero carbon emissions to be demonstrated.
21. The Planning Practice Guidance (PPG) sets out that policies for planning obligations should be set out in plans and examined in public, and that local requirements for a building's sustainability should form part of a local plan. Consequently, I am not satisfied that a potential requirement for a financial contribution towards the council's carbon off-set fund would meet the tests set out in the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
22. From the evidence available, the appeal scheme would include renewable energy technologies, and although there would be some limited conflict with the SPD, it would align with the aims of LP Policy SP2 and the Framework insofar as they expect development to incorporate measures to adapt to, and mitigate, climate change. Accordingly, it is concluded that the proposed development would incorporate suitable measures to adapt to and mitigate climate change securing acceptable levels of carbon emissions and, as such, it would not cause unacceptable harm to climate change and would accord with LP Policies SP2 and also LP Policy EP1 which reference environmental protection.

Biodiversity Net Gain

23. A *Biodiversity Net Gain Assessment* has been prepared by the appellant for the proposed development which identifies that there would be a net gain (BNG) to meet the statutory requirement of 10%. Although only the BNG summary table has been provided, the *Assessment* was undertaken by a competent and suitably qualified person. The *Assessment* also identifies how the BNG could be achieved on-site through habitat creation rather than through off-site provision which might require securing by a legal agreement. Accordingly, under the statutory framework, it can reasonably be assumed that if this appeal was allowed then at least a 10% increase in biodiversity value would be achieved and the Biodiversity Gain Condition attached to the planning permission would be capable of being satisfied.
24. Accordingly, it is concluded that the proposed development would not have an adverse effect on biodiversity and, as such, it would not conflict with LP Policy NR2 concerning development proposals being expected to identify areas where there is opportunity for biodiversity to be improved.

Other Matters

25. The council cannot demonstrate a 5-year supply of deliverable housing land, as such, paragraph 11 of the Framework refers to this being a material consideration in granting planning permission unless the application of policies in the Framework

that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. One of the assets which could be a reason for not granting planning permission is identified as being irreplaceable habitats which, in this case, includes the Ancient Woodland and also the protected trees.

26. In this the provision of 8 apartments would make a modest contribution to meeting part of the housing land shortfall. There would be jobs created during the construction of the appeal scheme albeit these would only be for a temporary period. Accordingly, limited weight is given to job creation. When taken together, these matters are significantly outweighed by the identified unacceptable harm to the irreplaceable habitats and this provides a strong reason for this appeal failing.

Conclusion

27. Although the proposed development would not cause unacceptable harm to highway safety, climate change and biodiversity, these matters are significantly and demonstrably outweighed by the unacceptable harm caused to protected trees. Accordingly, it is concluded that this appeal should be dismissed.

D J Barnes

INSPECTOR