



Appeal Decision

Site visit made on 10 June 2025

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2025

Appeal Ref: APP/T0355/W/24/3354905

Tiverton, The Spinney, Sunningdale, Ascot SL5 0AS

- 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 Ms Sophia Debray against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 24/01068.
 - The development proposed is construction of 6 no. apartments and car barn following demolition of the existing dwelling and outbuildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal the appellant has submitted a revised Bat Survey Report¹ and a Biodiversity Net Gain Assessment² which, in summary, provide updated ecology surveys and information.
3. The appellant has also submitted amended plans, drawings 20-J3227-201A (proposed floor plans) and 20-J3227-202A (proposed elevations), which remove the dormer window from the proposed rear elevation, and an amended layout plan, drawing 20-J3227-200A repositioning two of the parking spaces.
4. Annexe M of the Procedural Guide – Planning Appeals – England advises that if an applicant thinks that amending their application proposals would overcome the Council's reasons for refusal, they should normally make a fresh planning application. The appeal process should not be used to evolve a scheme. In considering whether to accept the additional information, I have had regard to Holborn Studios Ltd³.
5. The additional ecology information represents a change to what was considered by the Council at the application stage. However, the additional information is not a substantial or fundamental change to result in a different application. Moreover, as the additional ecology information was submitted with the appeal documents the Council has had an opportunity to comment. As such, neither main party would be unfairly prejudiced and I, therefore, have had consideration to the additional ecology information in determining this appeal.
6. Nevertheless, the amended plans, including the amended layout plan, result in a fundamental change to the application over what was considered at the planning

¹ Deepdene Bat Survey Report dated August 2024

² Deepdene Biodiversity Net Gain Assessment dated August 2024

³ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

application stage and result in a materially different proposal. Moreover, the Council and the statutory consultees have not had an opportunity to comment on all of the proposed amended plans. The interested parties are not aware that this appeal includes amendments and would, therefore, be prejudiced. Consequently, I have not accepted the amended plans. In the interests of natural justice, I have determined the appeal on the basis of the plans submitted to the Council.

Main Issues

7. The main issues are:

- the effect of the development on the character and appearance of the area;
- the effect on trees;
- the effect on biodiversity, particularly bats, and whether the appeal proposal provides Biodiversity Net Gain;
- the effect of the proposal on the integrity of the Thames Basin Heaths Special Protection Area; and
- whether the proposal complies with the adopted policies relating to climate change and carbon emissions.

Reasons

Character and appearance

8. The appeal site comprises a detached, single storey, dwelling set within a large garden. It is one of a number of detached houses set around the cul-de-sac of The Spinney. The road is characterised by its curving layout, narrow footpaths, roadside hedge boundaries and the two turning heads, one of which the appeal site lies off. It comprises a small group of large, detached houses.
9. The Spinney lies within Sunningdale, and the 'Villas and Woodland Setting' character area as defined in the Townscape Assessment (2010). The area is described as a low-density residential suburb comprising large villas set in large, irregular, plots and set within a sylvan character. The Spinney and the appeal site currently contribute positively to this area and follow the character of large houses in large plots.
10. The wider area includes semi-detached houses and blocks of flats. However, the blocks of flats were on the larger estate roads where they contribute to the character of those roads. Although the area, as a whole, includes flats, these are not part of the character of The Spinney. The cul-de-sac of The Spinney has its own character and is defined by single dwellings in large plots with mature screening. Moreover, although there are flats in the area this would not mean that all development sites are suitable for flats.
11. Both main parties agree that there is an extant planning permission for replacement of the existing bungalow with a two storey dwelling⁴. With the exception of the dormer window to the rear of the current proposal, the building as approved has the same height, mass, footprint, and position on the site. There are also other minor changes to rooflights, and the provision of balconies. The current

⁴ Council reference 22/00918/FULL, dated 22 September 2023

appeal also proposes six flats rather than a single dwelling and a car park for 12 vehicles, three within a car barn, and a separate bin/cycle store. The previous permission represents a realistic fallback position, and I have no compelling evidence to indicate that the appellant would not pursue that permission if the appeal before me failed.

12. Although the parking area and car barn would be similar in size and shape to the parking area and garage previously approved, the formalisation of 12 parking spaces and the provision of a bin store and cycle store would result in an overly urban appearance to the front of the proposed building. Furthermore, the potential number of vehicle movements associated with the comings and goings of six flats, occupied by six different families, would be in the region of three vehicles per hour in the peak hours. This would be significantly different to the occupation of a single dwelling, even though the single dwelling was approved with six bedrooms. The level of vehicle movements would not be very low in comparison to the existing vehicle movements on the cul-de-sac.
13. I acknowledge that the well-established hedge and trees to all boundaries are to be retained, and supplementary planting is proposed. Nevertheless, the existing landscaping would not screen the parking area as viewed from The Spinney, especially as viewed through the access driveway entrance. Neither would the landscaping reduce the number of vehicle movements associated with the six flats.
14. Even though there are flats and other parking courtyards in the Larch Avenue and Heathfield Area character area, including the ones noted by the appellant which I saw during my visit, the proposal for six flats with associated car parking would be out of keeping with the character and appearance of The Spinney and detrimental to the current quiet and low-density housing on the road.
15. Policy NP/DG/1.2 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan 2011-2026 (the NP) allows for development other than detached houses within the area, providing it can be satisfactorily demonstrated that the development would retain the identified character of the area. The proposed development, by reason of the level of car parking and vehicle movements, would result in the building appearing as a block of flats rather than as a single dwelling. It would make more effective use of the land but would not maintain the character and pattern of development in the area and it is, therefore, not demonstrated that a development of flats in this area would retain the character.
16. The approved scheme, albeit a realistic fallback position, was for a single dwelling which would be likely to have less vehicle movements and vehicle parking. It followed the character and density of development of the other houses on The Spinney. The approved scheme would, therefore, be less harmful than the appeal scheme and, as such, would not justify the proposal and the resultant harm to the character and appearance of the area.
17. The proposed rear dormer would extend the full width of the space between the two projecting gables and provide two glazed openings to each of the two flats it would serve. Principle 10.5 of the Royal Borough of Windsor and Maidenhead Borough Wide Design Guide, 2020, advises that roof alterations should be sympathetic to and subservient to the design of the main building, not undermine the visual amenities of the area when viewed from public spaces, and that all

dormers must be set back from the sides and ridgeline of the roof and not occupy more than half of the width and depth of the roof slope.

18. The proposed dormer would occupy more than half of the width and depth of the roof slope and would, therefore, be contrary to Principle 10.5. Furthermore, it would be larger than, and not aligned with, the windows in the floor below, contrary to the advice at paragraph 10.20 of the Design Guide.
19. Nevertheless, the dormer would be set in from the sides and set below the ridgeline. It would also not be visible from public vantage points or even prominent in views from neighbouring properties. Albeit not aligned with the windows below the design of the glazed openings in the dormer would be similar in shape and form to the windows in the lower floors which all have a similar vertical emphasis. Furthermore, the shape and size of the dormer would be in keeping and sympathetic to the other flat roofed sections on the ground and first floor and follow the design approach of the rear of the building.
20. Although there is technical conflict with the Design Guide, I find that the proposed dormer, albeit large, would not be out of keeping or out of character with the building proposed or with the wider area. Consequently, I find that the proposed dormer would not be unacceptable in terms of its design or scale. Overall, the scale, design and massing of the building proposed in this appeal would be acceptable and would fit in with the character of the other houses on the Spinney and in the wider area. However, the lack of harm from the dormer would not overcome the harm that I have identified from the car parking area and increase in vehicle movements.
21. For the above reasons, the appeal proposal would have a harmful effect on the character and appearance of the area contrary to the requirements of Policy QP3 of the Royal Borough of Windsor and Maidenhead Borough Local Plan, 2013-2033 (LP) which expects all new development to contribute towards achieving sustainable high quality design through, amongst other matters, respecting and enhancing urban grain, layouts and density.
22. For the same reasons, the proposal would fail to comply with Policies NP/H2, NP/DG1, NP/DG2 and NP/DG3 of the NP. Collectively these policies seek to ensure that development responds positively to the local townscape; advises that, in the Village and Woodland Setting zone, development should comprise low or very low density developments of detached houses; that new development should be similar in density to buildings in the surrounding area generally and of neighbouring properties in particular; seek to ensure that development respects the character and appearance of the surrounding area through, amongst other matters, responding to and integrating with local surroundings; and aims for dwellings to be in keeping with the size and type of dwellings already prevalent in the surrounding area.

Effect on trees

23. The proposal includes the provision of two parking spaces within the root protection area of a tree protected by a Tree Preservation Order. Even with a no-dig construction method for these spaces and a cellular confinement system for the surface, the parking of vehicles under the tree and the associated movements of vehicles in and out of these spaces would encroach into the root protection area and place the tree at high risk of damage from vehicle strike and compaction. The

tree is significant in the street scene and the landscaping at the front of the site and its loss would be harmful to the character and appearance of the area.

24. The fallback position would not result in the same level of hardstanding within the root protection area and vehicles would not need to park under the tree. The turning area in the fallback position has less intrusion into the root protection area and would, therefore, have less of an effect on the tree, even if this area is used for manoeuvring, including for larger service and delivery vehicles.
25. I have considered the additional advice from the appellant's Tree Consultant. However, this would not alter my findings on this matter and would not overcome the risk to the tree. As detailed above I have not accepted the amended layout plans, as such, although the Council accept that it would overcome their concerns relating to this tree, I have assessed the proposal as submitted.
26. For the above reasons, the appeal proposal would have the potential to adversely affect the tree, contrary to the requirements of Policy NR3 of the LP which requires development to protect and retain trees and carefully consider the impact on existing trees, including those that make a particular contribution to the appearance of the streetscape and local character/distinctiveness.

Effect on biodiversity

27. The appellant has carried out an updated Phase 1 Walkover Survey which has confirmed that there were no significant changes to the baseline from the Preliminary Ecology Appraisal submitted with the application. Furthermore, the revised Bat Survey Report has confirmed that there are no bats or roosts present within the buildings currently on site. The Council has, within its statement of case, confirmed that the development is anticipated to have no potential to support great crested newts, reptiles, badgers, dormice, and protected invertebrates and I have no reason to disagree with their findings.
28. Ecology precautionary measures and enhancements are proposed within the submitted documents and these could be secured by conditions to ensure that the development would not adversely affect biodiversity, particularly bats, within the site and surrounding area.
29. The revised BNG Assessment sets out that the appeal proposal would achieve a net gain in both habitat units and hedgerow units of more than 10%. I acknowledge the views of the Council Planning Officer regarding the need for a legal agreement to secure the management and monitoring of on-site habitats and note that this refers to the Council Ecologist's original comments. However, these matters would be capable of being secured through a condition, as recommended by the Council Ecologist in the latest advice.
30. Moreover, the application was submitted after the 2 April 2024. Therefore, BNG is a mandatory requirement which has a separate statutory basis, and a condition is deemed to apply to every planning permission granted for development.
31. For the above reasons I find that the appeal proposal would not result in unacceptable harm to biodiversity, particularly bats, and would secure appropriate BNG. The proposal would, therefore, comply with Policy NR2 of the LP which, amongst other matters, expects development proposals to demonstrate how they maintain, protect and enhance the biodiversity of application sites, avoid impacts

on habitats and species of principal importance, apply the mitigation hierarchy to avoid, mitigate or as a last resort compensate for any adverse biodiversity impacts, and demonstrate a net gain in biodiversity.

32. For the same reasons, the proposal would comply with the requirements of Policy NP/EN4 of the NP which requires development proposals to seek to enhance biodiversity wherever possible.

Effect on Special Protection Area

33. The appeal site lies within the zone of influence for the Thames Basin Heaths Special Protection Area (SPA) and the lack of means to mitigate the effect of the development on the SPA was included as a reason for refusal. Policy NR4 of the LP seeks to ensure that new residential development, which is likely to have significant effects on the purpose and integrity of the SPA, to demonstrate that adequate mitigation measures are put in place to avoid any potential adverse effects. The policy advises that new development beyond 400 metres threshold but within five kilometres linear distance of the SPA boundary (the SPA zone of influence) would be required to make an appropriate contribution towards the provision of Suitable Alternative Natural Greenspace (SANG) and the Strategic Access Management and Monitoring (SAMM).
34. The Thames Basin Heaths Special Protection Area Supplementary Planning Document (Part 1), July 2010, supports Policy NR4 of the LP in requiring new residential development to mitigate the effect of increasing residential accommodation through the provision of SANG or through payment of financial contributions towards the SANG and SAMM.
35. The appeal scheme would result in a net increase in residential accommodation which could result in adverse effects upon the integrity of the SPA through increased recreational use. Although I have been provided with a draft Unilateral Undertaking this has not been completed or signed and I have concerns that it is not correctly drafted.
36. As the competent decision-making authority, if I had been minded to allow the appeal, I would need to examine these matters further and undertake an Appropriate Assessment of the implications of the appeal scheme upon the SPA. However, as I am dismissing the appeal on other main issues, the outcome of an assessment would have no bearing on the overall outcome of the appeal. Therefore, it is not necessary for me to consider this matter further.

Climate change

37. Policy SP2 of the LP requires all developments to demonstrate how they have been designed to incorporate measures to adapt and mitigate climate change. Policy EP1 seeks to ensure that developments do not have an unacceptable effect on environmental quality. However, neither policy sets a specific target for off-setting carbon.
38. Policy SP2 refers to the adopted Sustainable Design and Construction Supplementary Planning Document (SPD), the Borough Wide Design Guide SPD and the Environment and Climate Strategy 2020-2025, or successor documents. The Sustainable Design and Construction SPD has been superseded by the Sustainability SPD which now forms the supporting document to Policy SP2 and is

a material consideration. The Sustainability SPD seeks to secure a financial contribution for developments where an Energy Assessment demonstrates that a net zero outcome cannot be fully achieved.

39. The appellant's Energy Statement sets out the proposed carbon savings achievable as part of the development. It also identifies a carbon shortfall and a proposed financial contribution.
40. The adoption of the Sustainability SPD is a materially different policy situation to the Cookham appeal⁵ referred to by the appellant. However, the appellant has also drawn my attention to an appeal at Datchet⁶. As noted in that decision the Planning Practice Guidance (PPG) is clear that policies for planning obligations should be set out in local plans and examined in public so they can be accurately accounted for in the price paid for land. Moreover, it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination and SPDs should not add unnecessarily to the financial burdens on development. The requirement for the planning obligation is set out in the Sustainability SPD, not within a LP policy and it has not been subject to independent examination or viability checks. Whilst The Sustainability SPD can encourage developers to exceed current policy and aim to provide net zero carbon emissions it cannot introduce new compulsory targets.
41. For these reasons, the contribution to the Carbon Offset Fund is not necessary to make the development acceptable in planning terms and would fail to meet the tests for legal agreements contained in the National Planning Policy Framework (the Framework) and the PPG.
42. Although I acknowledge the two appeals submitted by the Council, where Inspectors have taken a different approach and sought the financial contribution to the Carbon Offset Fund, other colleague Inspectors have also taken the same approach as the Datchet appeal. Moreover, I have considered the advice set out in the PPG in reaching my decision on this matter.
43. For the above reasons I conclude that the proposal would not conflict with development plan policies in respect of climate change and carbon emissions. There is no conflict with Policies SP2 or EP1 of the LP in this respect. However, this would not affect my findings on the other main issues.

Other Matters

44. The appeal proposal would be contrary to policies that seek to ensure that development respects and enhances the character and appearance of the area, it would also place a protected tree at risk and not mitigate the harm to the SPA. I consider that the harm and policy conflict would be such that the proposal would conflict with the development plan as a whole. This is a matter to which I attach substantial weight.
45. The Council has confirmed that it is unable to demonstrate a five-year supply of deliverable housing land. Its latest information is a supply of only 4.69 years, which is a short fall, albeit only limited.

⁵ APP/T0355/W/24/3344592

⁶ APP/T0355/W/24/3348429

46. The benefits of the scheme include, amongst other matters, the addition of five new dwellings which would contribute towards boosting the supply of housing. Moreover, the site is a small to medium sized site which can be built out quickly and is within a location that would have good access to services and facilities. The proposal would provide two and three bedroom properties, which are identified as required in the Strategic Housing Market Assessment, 2016. However, given the small number of additional dwellings the benefits are limited.
47. Paragraph 11d of the Framework sets out the presumption in favour of sustainable development. This includes, in summary, that where the policies which are most important for determining the application are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development proposed. The policies referred to in this part of the Framework are set out in footnote 7 and include habitat sites and those sites listed in paragraph 194 of the Framework, which include SPAs.
48. In this case, I have found that the harm to the SPA would not be mitigated due to the lack of a completed agreement under Section 106. This harm is significant and would not be outweighed by the public benefits. This provides a strong reason for refusing the proposal. Consequently, the presumption in favour of sustainable development would not apply in this case.
49. That there are no refusal reasons relating to living conditions of existing or proposed occupiers, highway safety, or drainage matters are considered to be neutral factors. The benefits of the scheme merit limited weight and this would be outweighed by the harm and policy conflict which I have found should be attributed substantial weight.

Conclusion

50. For the reasons given above I have found that the proposal would be contrary to the development plan as a whole, including the Neighbourhood Plan and the Framework. There are no other material considerations that would indicate that the proposal should be determined other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

K Townsend

INSPECTOR