
Appeal Decision

Site visit made on 17 February 2015

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02/04/2015

Appeal Ref: APP/T0355/A/14/2219582

Old Linkside, Shoppenhangers Road, Maidenhead, Berkshire, SL6 2QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Silver Mount Investments Limited against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 14/00501, dated 13 February 2014, was refused by notice dated 9 May 2014.
 - The development proposed is demolition of existing house and garage and erection of a block of 10 flats with access, parking, cycle and bin stores, landscaping and ancillary works.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing house and garage and erection of a block of 10 flats with access, parking, cycle and bin stores, landscaping and ancillary works at Old Linkside, Shoppenhangers Road, Maidenhead, Berkshire, SL6 2QD in accordance with the terms of the application Ref 14/00501, dated 13 February 2014, subject to the attached schedule of conditions.

Procedural Matters

2. As part of the appeal process the appellant submitted an additional survey and further information in respect of bats and proposed mitigation¹. The Council has confirmed that the proposed mitigation could be secured by a planning condition and on that basis has confirmed that the third reason for refusal has been resolved.
3. A signed and completed S106 Unilateral Undertaking (UU) has been submitted by the appellant. It would secure contributions towards infrastructure provision. Further comments were received from the appellant with regard to the requirements of the UU, and the Council were given the opportunity to respond to those comments. I return to this matter later.

Main Issue

4. The main issue in this appeal is the effect on the character and appearance of the area and upon the living conditions of occupiers of neighbouring properties with particular regard to outlook and privacy.

¹ Bat Emergence Survey, John Wenman Ecological Consultancy, Appellant's Appendix 6.

Reasons

5. The appeal site, Old Linkside, is a large mature detached dwelling within a generous plot, set well back from the highway, and located on the eastern side of Shoppenhangers Road in an area which is predominantly residential in character.
6. At the time of my visit to the appeal site and the surrounding area, particularly along Shoppenhangers Road, I saw that the area comprises mainly houses and some larger flatted developments. In the immediate locality the appeal site is bordered by detached 2 storey houses on either side, although one (Broomfield) is separated by an access drive leading to one of the three large flatted developments (Linkside) to the rear. Given these factors, I consider that the prevailing housing typology which characterises both the immediate and wider surrounding area is best described as a mixture of 2 storey houses and flatted developments.
7. The Council does not dispute that the site would be an acceptable location for redevelopment for housing in principle. The proposed development would consist of the replacement of the existing large detached dwelling and garage with a single block of 10 two bedroom flats, each having a private balcony or patio, and set behind a front access and parking area.
8. Due to the accommodation of the second floor flats into the pitched and gabled roof form, the overall height of the 2.5 storey building would not be out of scale with surrounding properties. Although the eaves height would be higher than the 2 neighbouring properties on either side, I consider that the roof form and staggered frontage would moderate and integrate the overall mass of the building such that it would sit comfortably with the houses either side and in street scene views. In addition, there would also be sufficient spacing between the building and its neighbours to the side and rear, such that it would be compatible with the spacing I saw between other properties in the area.
9. The building would be internally and vertically divided around a central lobby area on each floor such that 3 of the flats would be located in the southern element, with the other 6 flats located in the northern element nearest to Broomfield. The front elevation of the northern element of the building would not project forward of Broomfield, although it would project marginally forward of the neighbouring dwelling (1 Foxborough Court) to the south. However, I consider that it would not be harmful to outlook from that property due to the staggered southern element of the proposed building being set further back.
10. The rear elevations and part of the side elevations would project further back than the 2 neighbouring properties either side. However, given that I have found that the building's height would not be out of scale, together with the plot size, separation distances, fences, walls and existing boundary trees and planting, I consider that there would be no unacceptable impact on the rear outlook of those 2 properties, or upon the character and appearance of the area.
11. In addition, the use of privacy panels to balconies, obscure glazing, high level windows and roof lights to rooms in the side elevations would prevent any significant overlooking and loss of privacy to Broomfield and 1 Foxborough Court. Also, taking account of the height of the proposal, the rear boundary wall and planting, and the intervening distance between the proposal and

Linkside to the rear, I consider that there would be no significant harmful impact on the outlook or privacy of occupiers of that property.

12. I note the Council's concern regarding the size and appearance of the proposed hard-surfacing for parking and turning, and the material increase in traffic. However, the extent, layout and appearance of the parking and turning area, together with the expected increase in traffic, would not be incongruous with other flatted developments along Shoppenhangers Road, and the proposed parking area would be an appropriate level of parking provision for the 10 flats. Consequently, it would not result in harm to the character and appearance of the area I have previously described.
13. In conclusion, drawing all of the above factors together, I consider that with regard to the height, scale and siting of the building and the provision and use of the parking area, the proposed development would be compatible with the street scene and the surrounding area. As such, it would not result in a cramped or overly intrusive form of development. In addition, it would not result in any significant harm to the living conditions of occupiers of neighbouring properties with regard to outlook and privacy.
14. As such, the proposed development would accord with the requirements of Policies DG1, H10 and H11 of the Royal Borough of Windsor and Maidenhead Local Plan (LP) which, amongst other matters, seek to ensure that new residential developments are of a high standard of design; the design and scale of new buildings is compatible with the established street façade having regard to the scale, height and building lines of adjacent properties; and that harm is not caused to the character of the surrounding area through development which is cramped or which results in the loss of important features which contribute to that character. These policies are broadly consistent with the core principles of the National Planning Policy Framework (2012) (the Framework) which requires that planning should take account of the character of different areas and always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

15. With regard to the comments and submissions from a third party and local residents regarding the proposed new access, I acknowledge that it may have been the case that the Council and the Highway Authority had a preference to use the existing access. However, as I am required to do so I have determined the appeal on its own merit and on the basis of the same drawings and details as was submitted to, and determined by, the Council. In respect of highway safety the Highway Authority did not object to the proposal on this basis and it did not form one of the Council's reasons for refusal. Moreover, there is no evidence before me which would lead me to conclude that the proposed new access would result in any significant increase in risk to highway safety.
16. Local residents object to the proposal on a wider basis, including in respect of setting a precedent, loss of privacy for future residents of the proposal in the garden area, noise disturbance, loss of light, over-shadowing of the driveway, devaluation of existing properties, and traffic congestion.
17. However, devaluation is not a material planning consideration to which I can attach any significant weight. With regard to the other concerns, these did not form part of the Council's reasons for refusal and I am satisfied that these

matters would not result in a level of harm which would justify dismissal of the appeal. In addition, I have considered the appeal entirely on its own merit and in the light of all the information before me; any future proposals nearby would also need to be considered in the same manner. Hence, allowing the appeal would not set a precedent for further similar development in the area.

18. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

S.106 planning obligation

19. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
20. There is a signed and completed UU. It requires the appellant to make financial contributions totalling £98,705.67 towards infrastructure as follows: £540 towards allotments, £342 towards local biodiversity initiatives, £9,361.37 towards education, £23,735 towards highways and public transport, £40,341 towards public open space, £5,472 towards community and youth facilities, £6,324.30 towards library services, £3,590 towards public art and heritage, £8,375 towards indoor sports facilities, and £625 towards waste disposal and recycling.
21. Support for the contributions in the UU and how they would be spent is set out in LP Policies IMP1, R3 and T6, the Council's statement², and adopted guidance³. In addition, national planning policy regarding S106 was updated in November 2014⁴ together with associated revisions to the PPG⁵ guidance; a matter also referred to in the appellant's further comments. The updated national policy now provides an exemption to the requirement for affordable housing and tariff style contributions for housing developments which do not exceed a threshold of 10 units or less and 1000sqm floor space. The proposal in this appeal exceeds the 1000sqm threshold and hence does not benefit from the exemption.
22. With regard to the Council's evidence, I am not convinced that the £3,950 towards public art and heritage, the £540 towards allotments, and the £342 towards local biodiversity initiatives are directly related to the development, or necessary to make the development acceptable. I therefore attach no weight to them in reaching my decision.
23. However, I am satisfied that the remainder of the proposed contributions are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with CIL Regulation 122. I have therefore attached weight to them in reaching my decision.

² Appendix 3: 'Developer Contributions'.

³ 'Planning Obligations and Developer Contributions' SPD (Revised March 2014), and

'Interpretation of Policies R2 to R6 – Public Open Space provision.

⁴ Written Ministerial Statement, Brandon Lewis, 28 November 2014.

⁵ National Planning Practice Guidance paragraphs 12-23.

24. There is also a requirement for £697 towards the Council's monitoring and administration costs associated with the UU. However, all of the contributions sought are required to be paid prior to commencement of any development. There is no evidence before me which would indicate that the cost of monitoring and administering the UU would give rise to additional costs over and above the Council's existing resources. Having regard to the recent judgment of the High Court⁶, I consider that this is an unjustified requirement and I have therefore not taken into account in reaching my decision.

Conditions

25. The Council has suggested a number of planning conditions which I have considered against the advice in the PPG and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permission. As a result, I have amended some of them for clarity and elimination of duplication.
26. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans. Conditions to secure appropriate refuse disposal facilities, finishing materials, slab levels, external lighting, tree retention and landscaping, and window height details are necessary in the interests of amenity and the character and appearance of the area. Highways conditions, including provision of the access prior to first occupation, visibility splays, cycle storage, and provision of parking and turning areas are necessary to ensure highway and pedestrian safety and to encourage more sustainable forms of transport. Conditions to secure a high standard of design and energy efficiency are also necessary. In the interest of protecting the bat population I have also imposed a condition to secure mitigation measures. A condition to secure a Construction Management Plan (including access during demolition and construction) is necessary to ensure there are no significant adverse impacts upon the living conditions of local residents, or upon the highway.
27. I have not imposed the proposed conditions in respect of requiring Code level 3 of the Code for Sustainable homes (COSH) because the achievement of at least COSH level 3 is now enshrined in Part L of the Building Regulations. I have also not imposed the proposed condition requiring the existing northern access to be stopped up because this is already shown on the submitted drawings and required to be complied with by condition No. 2. The proposed condition requiring privacy screen details is not necessary because these are shown on the submitted drawings and approval of samples of external materials is required by condition No. 3.

Conclusion

28. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development (para. 14) bearing in mind the objective (para. 47) to boost significantly the supply of housing.
29. Paragraph 14 states that where the presumption in favour of sustainable development applies, and where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly

⁶ Oxfordshire CC v Secretary of State for Communities and Local Government [2015] EWHC 186 (Admin).

and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Despite their age I have in any event concluded that the proposed development would accord with the Council's Development Plan policies.

30. Moreover, the development would provide a social benefit of much needed additional housing at a time when there is a recognised shortage. It would add to the economy by sustaining construction jobs and, through additional residents, it would likely result in an increase in spending on local shops and services. In environmental terms it would result in a development which would be constructed to achieve the Lifetime Homes⁷ standard and occupied utilising energy efficient features. With regard to paragraph 14 of the Framework I consider that these would amount to substantial benefits in support of the proposal which are not significantly and demonstrably outweighed by adverse impacts when assessed against the policies of the Framework taken as a whole.
31. For all the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Thomas Shields

INSPECTOR

⁷ Lifetime Homes Design Guide (2011).

CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than 3 years from the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the following plans: 1100D, 1101D, 1102B, 1103, 1200B, 1201B, 1202B, 1203B, 1300A, 1301A, 1302A, 1303A, 1304A.
- 3) Prior to the commencement of development samples of the external materials to be used for the construction of the buildings hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall commence until details of all finished slab levels in relation to ground level have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) For the purposes of this condition a 'retained tree' is one shown on drawing 1100 Rev D. The erection of fencing for the protection of any retained tree and any other protection specified shall be undertaken in accordance with the Method Statement for the protection of existing trees in the Tree Condition Survey by Goodger Design Associates before any equipment, machinery or materials are brought on to the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. Ground levels within protected areas shall not be altered, nor shall any excavation be made, nor anything stored or placed within them.
- 6) No tree or hedgerow shown to be retained in drawing 1100 Rev D shall be cut down, uprooted or destroyed, nor shall any retained tree be lopped or topped other than in accordance with the approved plans and particulars or without the prior written approval of the local planning authority, until 5 years from the date of occupation of the building for its permitted use. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 Tree work. If, within 5 years, any retained tree is removed, uprooted or destroyed or dies, a replacement tree of the same size and species shall be planted in the immediate vicinity.
- 7) No development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of 5 years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity.
- 8) The measures for sustainable design and construction and Lifetime Homes set out in the Design and Access Statement shall be implemented prior to the first occupation.

- 9) Notwithstanding condition 8, no development shall commence until details of the construction of the photovoltaic panels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Prior to the commencement of any works of demolition or construction a construction management plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include details of how demolition and construction traffic, (including cranes), vehicular access to the site, parking and manoeuvring, materials storage, and facilities for operatives will be accommodated during the development. The development shall be carried out in accordance with the approved CMP.
- 11) No part of the development shall be occupied until the vehicle parking and turning spaces have been provided, surfaced and marked out in accordance with the approved drawings. The parking and turning spaces shall be kept available for parking and turning thereafter.
- 12) Prior to the commencement of development a scheme for the operational management of facilities to be provided for the storage, and emptying of refuse and recycling bins shall be submitted to and approved in writing by the local planning authority. The refuse and recycling facilities shall be provided prior to first occupation and retained thereafter and managed for the lifetime of the development.
- 13) Prior to first occupation of the development the covered and secure cycle storage facilities shall be provided in accordance with the approved drawings and shall thereafter be kept available for the storage of cycles.
- 14) Prior to first occupation of the development the access shall be constructed in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
- 15) Prior to first occupation of the development the visibility splays shown on the approved drawings shall be provided. The areas within these splays shall thereafter be kept free of all obstructions to visibility above a height of 0.6 metres from the surface of the carriageway.
- 16) There shall be no external lighting on the site other than in accordance with a scheme of lighting which shall have first been submitted to and approved in writing by the local planning authority.
- 17) The first and second floor windows in the southern elevation shall have a cill level that is a minimum of 1.7m above the finished internal floor level. No further windows shall be inserted at first or second floor level in the side elevations of the building.
- 18) The proposed scheme shall be carried out in accordance with the proposed bat mitigation measures as detailed in the Bat Emergence Survey dated May 2014 produced by John Wenman Ecological Consultancy.

END OF SCHEDULE