

**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD  
PLANNING COMMITTEE**

**MAIDENHEAD DEVELOPMENT CONTROL PANEL**

21 June 2023

Item: 1

<b>Application No.:</b>	20/03149/OUT
<b>Location:</b>	Maidenhead Spiritualist Church York Road Maidenhead SL6 1SH
<b>Proposal:</b>	Outline application for access, appearance, layout and scale only to be considered at this stage with all other matters to be reserved for the construction of 49 No. apartments with associated parking and landscaping following demolition of existing building.
<b>Applicant:</b>	Shanly Homes Limited
<b>Agent:</b>	Mr Kevin Scott
<b>Parish/Ward:</b>	Maidenhead Unparished/St Marys
<b>If you have a question about this report, please contact:</b> Jeffrey Ng on or at <a href="mailto:jeffrey.ng@rbwm.gov.uk">jeffrey.ng@rbwm.gov.uk</a>	

1. SUMMARY

- 1.1 Following the refusal of application ref. 20/03149/FULL, an appeal has been submitted to the Planning Inspectorate, with a Hearing scheduled for the 1<sup>st</sup> August 2023. The appellant has submitted an updated viability statement in support of the appeal.
- 1.2 The updated viability statement has been reviewed by the Council's Independent Viability Assessors, with a conclusion that the scheme continues to result a deficit and accordingly that the scheme is not able to viably contribute to either the provision of affordable housing or to make any contributions towards provision of affordable housing.
- 1.3 As such, it is considered that in the upcoming Hearing, the Council cannot robustly defend the reason for refusal relating to the lack of the provision of affordable housing as part of the appeal process. This could also expose the Council to significant risk of costs being awarded as part of the appeal process.

<b>It is recommended the Panel authorises the Head of Planning:</b>	
<b>1</b>	<b>To write to the Planning Inspectorate and appellant setting out that the Council will now only be pursuing the appeal on the second and third reasons for refusal; and,</b>
<b>2</b>	<b>To finalise a Section 106 legal agreement with the appellant to be submitted to the Planning Inspectorate to secure a Review of Development finances with regard to affordable housing provision.</b>

2. REASON FOR PANEL DETERMINATION

- 2.1 The Committee resolved that it would have refused the application for three reasons. These now form the grounds of an appeal and as part of the appeal

process additional information has been received as part of the appeal process with particular significant to one of the grounds of appeal. The handling of appeals, including the preparation of statements and consideration of additional information are matters which are delegated to officers. However, on this occasion, given the extent of debate on the matter at the original meeting, the Head of Planning wishes to use his discretion to seek a resolution from the Committee to provide additional transparency.

### 3. BACKGROUND

- 3.1 Outline planning application ref. 20/03149/OUT was submitted on the 23<sup>rd</sup> November 2020. The description of development was as follows:

Outline application for access, appearance, layout and scale only to be considered at this stage with all other matters to be reserved for the construction of 49 No. apartments with associated parking and landscaping following demolition of existing building.

- 3.2 This application was first presented to the Maidenhead Development Management Committee on the 15<sup>th</sup> June 2022 with the following recommendation:

It is recommended the Panel authorises the Head of Planning to GRANT planning permission subject to the following:

1. Referral to the Secretary of State\*\*. In the event the Secretary of State opts not to call the application to defer to recommendation 2 and 3 below
2. The conditions listed in Section 15 of this report.
3. The completion of a Section 106 Legal Agreement to secure a Review of Development finances with regard to affordable housing provision.

*\*\*the application is currently subject to a formal objection from the Environment Agency, as a statutory consultee. In the event the local planning authority resolves to grant planning permission with that EA objection outstanding then it will be legally necessary to refer this application to the Secretary of State.*

- 3.3 The Committee resolution was that the application be deferred, subject to a viability report being made publicly available. This was actioned and the application was again presented to the Maidenhead Development Management Committee on the 20<sup>th</sup> July 2022, with the same recommendation as above. The Committee resolution was to refuse the application for the following reasons:

1. The application fails to provide affordable housing to meet the needs of the local population contrary to Borough Local Plan policy HO3. This harm is considered to have substantial weight and the evidence provided to justify the lack of affordable housing provision is not considered to outweigh this harm.
2. The proposed development fails to provide an adequate buffer to the riverbank of the adjacent waterway and would therefore cause harm to nature conservation and habitats. The proposal would therefore be contrary to Borough Local Plan policies NR1 and NR2.
3. The proposed development would be harmful to the character of the area and would be harmful to the living conditions of nearby properties due to loss of light and privacy. The proposed development would result in a significant

**change to the character of the site by introducing a densely built-up form. The proposal is therefore contrary to Borough Local Plan policy QP3.**

3.4 Following the refusal of the application, an appeal has been submitted to the Planning Inspectorate. A Hearing on the appeal is scheduled for the 1<sup>st</sup> August 2023.

4. **EXPLANATION OF RECOMMENDATION**

4.1 **The first reason for refusal of the application (as detailed above) relates to the lack of provision of affordable housing and that the submitted viability statement fails to fully demonstrate that the proposed development could not viably deliver affordable housing due to its validity and the findings of the appellant's original viability statement.**

4.2 **An updated viability statement has been provided by the appellants in support of the appeal. This has been reviewed by the Council's Independent Viability Assessor and the comments have been provided below for review, including the main differences and overall conclusions on the report.**

4.3 **With regard to indexation of the Gross Development Value (GDV), whilst the Council's Assessor's figure is marginally higher than the appellant's viability consultants, the Council's Assessor considers that the GDV figure provided by the appellant's viability consultant is reasonable. In terms of indexation of Build Costs, the appellant's viability consultant assessed that there is an increase of 13.38% of the build costs. The Council's Assessor considers this to be reasonable when considering the costs to current day values.**

4.4 **Overall, the Council's Independent Viability Assessor agrees with the conclusion of the appellant's updated viability statement, which is that the scheme is not able to viably contribute to the provision of affordable housing or to make any contributions. However, the Council's Assessor recommends that the viability of the appeal scheme is subject to pre-implementation and late-stage reviews, which would be secured through the completion of a Section 106 legal agreement.**

4.5 **In reviewing which grounds to defend on appeal, the Council has to be conscious of the duties placed on the Local Planning Authority and expert witnesses by virtue of the Planning Appeals procedural guide, reputational risks and the risk of costs being awarded against the Council if it fails to substantiate the case. If the Council fails to produce evidence to substantiate the reason for refusal, there would be a significant risk of the Council being considered to have behaved unreasonably and an application for costs being successful.**

4.6 **In conclusion, the updated viability statement is considered to overcome the concerns raised regarding the validity of the report. The viability of the appeal scheme has also been reassessed and as set out above, the Council's Independent Viability Assessor also concurs with the finding of the appellant's updated viability statement, in that the scheme is not able to viably contribute to the provision of affordable housing or to make any contributions towards affordable housing provision, subject to pre-implementation and late-stage reviews.**

4.7 **Officers cannot find any other evidence to substantiate the reason for refusal and therefore it would be unreasonable for the Council to attempt to defend reason for refusal 1 at the upcoming Hearing and to continue to do so would be contrary to the public interest.**

5. CONCLUSION

- 5.1 **For the reasons set out above, Officers recommend that the Council no longer seek to pursue the appeal based on reason for refusal 1. The Council will continue to defend the reasons for refusal 2 and 3.**

6. APPENDICES TO THIS REPORT

- **Appendix A – Site Location Plan**

7. REASONS RECOMMENDED FOR REFUSAL TO BE THE BASIS FOR COUNCIL'S CASE ON APPEAL

1. **The proposed development fails to provide an adequate buffer to the river bank of the adjacent waterway and would therefore cause harm to nature conservation and habitats. The proposal would therefore be contrary to Borough Local Plan policies NR1 and NR2.**
2. **The proposed development would be harmful to the character of the area and would be harmful to the living conditions of nearby properties due to loss of light and privacy. The proposed development would result in a significant change to the character of the site by introducing a densely built up form. The proposal is therefore contrary to Borough Local Plan policy QP3.**