



Appeal Decisions

Site visit made on 24 May 2016

by **R J Marshall LLB DipTP MRTPI**

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

Decision date: 7 September 2016

Appeal A: APP/T0355/W/16/3144940

Englemere House, Kings Ride, Ascot, Windsor and Maidenhead, SL5 7JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Richard Barter (Millgate) against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/02450, dated 11 August 2015, was refused by notice dated 18 January 2016.
 - The application sought planning permission for redevelopment to provide 17 apartments with basement car park and associated works following demolition of existing buildings and removal of hardstanding areas without complying with a condition attached to planning permission Ref 13/03515, dated 20 June 2014.
 - The condition in dispute No. 18 which states that: *Unless otherwise first agreed in writing, within one month of the substantial completion of the development the buildings shown to be removed on the approved drawings shall, with the exception of the squash court building (or any other building agreed for the purposes of condition 2 in this Decision), be demolished in their entirety and all materials resulting from such demolition works shall be removed from the site.*
 - The reason given for the condition is: *To prevent the undesirable consolidation of development on the site having regard to its Green Belt location. Relevant Policies GB1 and GB2.*
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Appeal B: APP/T0355/W/16/3144941

Englemere Estate, Kings Ride, Ascot, Windsor and Maidenhead, SL5 7JR

- 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 Mr Richard Barter (Millgate) against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/02473, dated 17 July 2015, was refused by notice dated 18 January 2016.
 - The development proposed is *Conversion of ancillary outbuildings (known as The White House and The Wee Flat) back into residential use as 3 no. properties, plus parking, access, and landscaping.*
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for for redevelopment to provide 17 apartments with basement car park and associated works

following demolition of existing buildings and removal of hardstanding areas at Englemere House, Kings Ride, Ascot, Windsor and Maidenhead, SL5 7JR in accordance with the application Ref 15/02450 dated 11 August 2015, subject to conditions on the attached list in so far as they are still subsisting and capable of taking effect, without compliance with condition No. 18 previously imposed on the planning permission Ref 13/03515, dated 20 June 2014.

Appeal B

2. The appeal is allowed and planning permission is granted for Conversion of ancillary outbuildings (known as The White House and The Wee Flat) back into residential use as 3 no. properties, plus parking, access, and landscaping at Englemere Estate, Kings Ride, Ascot, Windsor and Maidenhead, SL5 7JR in accordance with the terms of the application, Ref Ref 15/02473, dated 17 July 2015, and the plans submitted with it, subject to the conditions on the attached list.

Background matters to appeals A and B

3. The 2 appeals relate to the same 2 buildings. Appeal A seeks development without complying with condition No. 18 of planning permission 13/03515 for the erection of 17 apartments on a large previously developed site in the Green Belt. The 17 apartments, which have been constructed are in a single large block. This block replaced a large office building that had initially been a country house. The application for the 17 apartments sought the demolition of all the buildings on the site with the exception of a small maintenance shed. In addition to the large office building 3 building were shown to be demolished. They were the squash court, The White House and The Wee Flat. The disputed condition requires the removal of these buildings, the latter 2 of which have a lawful office use. The Council subsequently allowed the retention of the squash court for the storage of archive material relating to the original house on the site. However, it still seeks the demolition of The White House and The Wee Flat as required by the disputed condition. Appeal B is for the conversion of these 2 buildings to residential use.
4. One of the reasons on which the application in appeal B was refused was on the grounds of absence of mitigation for the impact of additional residents on the Thames Basin Heaths Special Protection Area (TBHSPA). Although not specifically stated I assume that the necessity for mitigation arises from the site being over 400m but within 5km of the TBHSPA. The appellant has subsequently entered into a legal agreement with the Council for the required mitigation by way of contributions towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring plans (SAMM). I am satisfied with the form of the agreement and that adequate mitigation would be provided. The concerns of the Council on this matter need not, therefore, be addressed further.

Main issues

5. The main issue in appeal A is whether the disputed condition is necessary and reasonable to prevent inappropriate development in the Green Belt and if so whether its removal would be justified by very special circumstances.
6. The main issues in appeal B are; **first**, whether the proposed conversion of The White House and The Wee Flat would be inappropriate development in the

Green Belt; and **second**, whether the absence of a financial contribution towards affordable housing should stand against the proposal.

Reasons

Appeal A

Whether inappropriate development

7. Following a long established planning principle the National Planning Policy Framework (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Royal Borough of Windsor and Maidenhead Local Plan (LP) (Incorporating Alterations Adopted in June 2003) limits development in the Green Belt other than in very special circumstances to, amongst other things, limited infilling or partial or full redevelopment of designated major development sites. The proposed development would not be on such a designated site. However, the Framework adopts a more liberal view. It says that whilst the construction of new buildings would be inappropriate in the Green Belt an exception would be made for the limited infilling or partial or complete redevelopment of previously developed sites (brownfield land) which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. As this is the most up to date advice I attach it more weight than the LP.
8. The key question in this case, acknowledged as such by the parties, is whether the removal of the disputed condition and the retention of The White House and The Wee Flat would cause the development for the 17 apartments to have a greater impact on openness than the development existing at the time that permission was granted. In my consideration of this I have had regard to the recent Court of Appeal decision *Turner v SSCLG & East Dorset District Council* on which I sought the views of the parties.
9. The appellant has provided a thorough breakdown of building volume on the site existing at the time of the permission for the 17 apartments and that which would exist were The White House and The Wee Flat retained. These figures differ slightly from those provided by the Council. However, I prefer them as having been more thoroughly set out and the Council has provided no similarly detailed breakdown to justify its slightly different figure. Amongst other things the appellant has shown clearly how recent permissions for the replacement of 2 small buildings were for buildings of a marginally lesser volume than the structures to be replaced.
10. The figures I rely on, therefore, are that with all the buildings on the site demolished the scheme for the 17 apartments gives rise to a 9.3% increase in volume over and above that existing at the time of the permission. With the squash court retained, as subsequently permitted, the percentage increase in volume rises to 13.3%. If The White House and The Wee Flat were also retained, as now proposed, the percentage increase in volume would rise to 22.4%.
11. The openness of the Green Belt has both a spatial and visual element. The increase in volume means that in spatial terms allowing the 2 buildings to stay would mean that there would be a greater impact on openness in terms of built form. However, the degree of that additional impact would be lessened by

these buildings being notably well screened from within and outside the site by extensive tree and shrub planting and being in close proximity to development just beyond the site. In addition more than just the increase in building volume needs to be taken into account. The scheme for the 17 apartments provided for underground parking. As a result a large car park that served the now demolished office building was enabled to be removed. Given the substantial size of that office building, and a location where workers were likely to have relied largely on the private car to commute to work, there was a substantial likelihood of the car park being extensively parked up for much of the working day adding to its impact on openness. Although this area would not have been greatly visible from beyond the site its location would have made it notably visible from within the site. And as such there was the potential for it to have had a considerable impact on openness.

12. It is, therefore necessary to weigh in the balance the substantial beneficial effect on openness of the loss of the main car park, in a highly visible area, against the effect of retaining a greater volume of development in a notably well screened location. This is a matter of planning judgement and on balance, from what I saw, retaining the buildings with the car park removed would result in the development for the 17 apartments having a broadly neutral impact on openness. I note that this was in essence the view of the Council Officers when reporting to Committee on the application on which the disputed condition was attached and on the proposal before me.
13. It is concluded that the proposal would not be inappropriate development in the Green Belt. This being so I do not need to look to other matters that might, taken together, constitute very special circumstances.

Conditions

14. As I am minded to allow the appeal I have considered what conditions should be imposed.
15. The Council has suggested some 16 conditions most of which do not restate those on the original permission. In the absence of a more substantial case I see no need to do more than restate the conditions on the original permission in so far as they are still subsisting and capable of taking effect. I shall not re-impose condition No. 1 as development has begun and nor conditions 10 and 11 as they no longer reflect Government Policy. Most of the conditions now suggested appear to relate to the proposal under appeal B and, where justified, may be imposed on that proposal.

Conclusion (Appeal A)

16. For the reasons given above the appeal is allowed.

Reasons

Appeal B

Whether inappropriate development

17. LP Policy GB1 allows for the change of use of buildings in the Green Belt provided they do not have a greater impact on openness than the present or last use of the building. The Framework, to which I attach greater weight as it is more up to date says that the re-use of a building of permanent and

substantial construction is not inappropriate provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land in it.

18. The proposed development would result in no increase to the bulk of The White House. The Wee Flat would be increased in volume by 11%. Such a negligible increase in volume would have an insignificant effect on openness and mean that the proposal would preserve the openness of the Green Belt. In arriving at my view I have had regard to the Fact that the driveway to The White House and The Wee Flat would be retained along with a small area of hardstanding between the 2 buildings, for this has a negligible impact on openness. And only a small area of hardstanding would be retained as a parking area for these buildings and it is very well screened.
19. Given the above it is concluded that the proposed conversion of The White House and The Wee Flat would not be inappropriate development in the Green Belt.

Affordable housing

20. LP Policy H3 says that the Council will seek to achieve that a proportion of the total capacity of suitable residential schemes, on sites of over 0.5 ha or providing over 15 net dwellings, be delivered in the form of affordable housing. Supplementary Guidance (SPG) says that the Council will generally seek a 30% affordable housing provision and that in exceptional circumstances a financial contribution towards affordable housing will be accepted in lieu of on-site provision. The Council would accept a financial contribution in this case. However, no such contribution has been made.
21. In determining the application for the 17 apartments the Council obtained a £400,000 contribution for affordable housing off-site. This is said to equate to a 12% affordable housing contribution. The application before me would provide 3 residential units, 2 in The White House and 1 in The Wee Flat. A key objection raised by the appellant is that with only 3 dwellings proposed the proposed development is below the threshold at which Policy H3 applies. By contrast the Council says that this proposal should be linked to the permission for the 17 flats and that, in effect, the appellant is now seeking 20 residential units on the site.
22. Although not expressly stated by the Council I take it that it seeks support for its view by the statement in the SPG that Policy H3 "... will be applied on the basis of a comprehensive development of the whole development area". Clearly it is undesirable for developers to split up parcels of land in a deliberate attempt to circumvent Policy H3 by reducing the size of the site and the number of dwellings proposed to a level that would fall below the Policy thresholds or artificially limit the affordable housing provision sought. However, this is not the situation before me. Here the appellant submitted the application for the 17 apartments with, as part of the scheme, the removal of The White House and The Wee Flat due to then perceived advantages of consolidating development in one location. In permitting that development the Council required by condition the removal of these buildings on the grounds that this was necessary to make the proposal acceptable on Green Belt grounds. Thus I consider that the scheme for the 17 apartments may legitimately be regarded as a proposal for the comprehensive development of the site to which Policy H3 applies and the proposal before me as a separate application to which the Policy should not apply. In arriving at this conclusion I

note that at one stage the appellant offered a contribution of £44,000 for affordable houses on the current proposal. However, that is no longer on the table and without more evidence on what had led to that offer I do not consider that this should stand against the stance now adopted by the appellant.

23. It is concluded that absence of a financial contribution towards affordable housing should not stand against the proposal. There would be no conflict with LP Policy H3.

Other matters

24. Clear evidence has been provided, with no contradiction by equally clear evidence, that the Council lacks a 5 year housing land supply. The Framework seeks to boost significantly the supply of housing. Thus even the provision of the limited number of properties proposed would, in this sustainable location, be a factor significantly in favour of the scheme.
25. Given the relatively small scale of the proposed development, and its location well removed from other housing, there should be no harm to the living conditions of those nearby with regard to noise and disturbance. Nor for the same reason would there be any undue impact on local facilities and services.

Conditions

26. As I am minded to allow the proposed development I have considered what conditions should be imposed in addition to the standard condition on the time limit for the commencement of development.
27. To protect the character and appearance of the area I shall impose conditions requiring the submission and approval of: external materials; a landscaping scheme; an Arboricultural Method Statement; and details of bin storage. In the interests of conserving the historic environment I shall require a survey of historic features in the buildings and their retention. To ensure the site is satisfactorily drained I shall require parking and manoeuvring areas to be of porous materials. To ensure acceptable parking I shall require car and cycle parking provision to be made in accordance with the approved plans and retained. To ensure adequate privacy I shall restrict the use of a flat roof element of the proposal and prevent the insertion of additional windows on some elevations. To protect the openness of the Green Belt and protect the appearance of the buildings I shall remove permitted development rights to extend. In the interests of good planning I shall require development to be undertaken in accordance with the approved plans. The conditions I shall impose will follow broadly the wording of those suggested by the Council, amended where necessary to accord with Government guidance.
28. Given the legal agreement referred to above there is no need for a condition protecting the TBHSPA. I see no need to require by condition the obscure glazing of bathroom windows as it is highly unlikely that such glazing would not be provided.

Conclusion (Appeal B)

29. For the reasons given above the appeal is allowed.

R J Marshall

INSPECTOR

Conditions: Appeal A

- 1 Prior to the commencement of any works of demolition or construction details shall be submitted to and approved in writing by the Local Planning Authority of proposals for recording and interpreting the historic interest and significance of the building, including on-site preservation in the former squash court building or in another location on-site as agreed, archive records and any artefacts of note (to be agreed as part of this condition) from the demolished buildings. The details shall include details of reasonable public access arrangements to this building for a minimum of four days per year, and for access at other times by appointment with the Management Company for persons carrying bona fide historic research. Other matters to be agreed may include relocation or replacement of the RBWM plaque, additional plaque(s) and / or a local historical publication, and information to be made available to successive owners. The building, archive record and retained artefacts and the arrangements for public and research access shall then be retained as approved, unless otherwise first agreed in writing by the Local Planning Authority.
- 2 No demolition works may be undertaken until written evidence of a contract for the construction of the approved building, including details of the contractual arrangements for the substantial key stages of demolition and construction, has been submitted to and approved in writing by the Local Planning Authority.
- 3 No demolition shall commence in association with the development until a biodiversity mitigation strategy, including further survey work and details of habitat provision / improvements, has been submitted to and approved in writing by the local planning authority. The approved mitigation measures shall then be implemented in their entirety within the timescales approved within the strategy.
- 4 Prior to the commencement of any works of demolition or construction a management plan showing how demolition and construction traffic, (including cranes), materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved and maintained for the duration of the works or as may be agreed in writing by the Local Planning Authority.
- 5 Prior to any equipment, machinery or materials being brought onto the site and prior to any demolition works in connection with the development, details of the measures to protect, during construction and demolition, the trees to be retained within the development shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to any demolition works or before any equipment, machinery or materials are brought onto the site, and shall then be maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. These measures shall include fencing in accordance with British Standard 5837:2012. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within

those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the Local Planning Authority.

- 6 No construction works shall commence in connection with the development 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 then 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. Details to be provided include (but are not limited to) routing of all underground services outside the root protection areas of retained trees, and boundary treatment including acoustic fencing where necessary. Other details shall include numbers and grades of each plant species / variety selected, including provision for larger growing structural planting using species, means of planting and aftercare, and details with samples if considered necessary of hard landscaping materials and any hard boundary treatments. If within a period of five 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, unless the Local Planning Authority gives its prior written consent to any variation.
- 7 No development shall take place until samples of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.
- 8 No development shall commence until details of all finished slab levels and roof heights in relation to ground level (against OD Newlyn) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.
- 9 No part of the development shall commence until evidence to demonstrate compliance with the Lifetimes Homes standard and other details of how the development will provide for the needs of an ageing population have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the first occupation of the development, and retained as such.
- 10 No part of the development shall be occupied until vehicle parking and turning space has been provided, surfaced and marked out in accordance with the approved drawing. The space approved shall be kept available for parking and turning in association with the development.
- 11 No other construction works shall commence in connection with the development until full details of enclosed refuse bin storage area and recycling facilities including elevational treatment, to be located outside the root protection areas of any retained trees, have been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until these facilities have been provided in accordance with the approved details, and the facilities shall then be kept available for use in association with the development at all times.

- 12 Prior to the commencement of development a landscape management plan including long-term design objectives, management responsibilities and maintenance schedules for a minimum period of 5 years shall be submitted to and approved in writing by the Local Planning Authority. The plan shall cover any areas of existing landscaping, including woodlands, and all areas of proposed landscaping other than private domestic gardens.
- 13 The hard surface vehicle access and manoeuvring area shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
- 14 No part of the development shall be occupied until gate and access management details have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented and maintained in accordance with the approved details.
- 15 No outdoor lighting may be provided at the site unless details have first been submitted to and agreed in writing by the Local Planning Authority. The development shall then be implemented and maintained in accordance with the approved details.
- 16 The development to which this planning permission relates shall be undertaken in accordance with the plans and drawings listed below unless otherwise subsequently agreed in writing by the local planning authority.

Approved Plan Reference Number(s):

TMC-13053-L, version no.: n/a, received on 2 December 2013

TMC-13053-S, version no.: B, received on 2 December 2013

13-P894-01 (COLOURED), version no.: A, received on 27 March 2014

13-P894-07 (COLOURED), version no.: A, received on 27 March 2014

13-P894-08 (COLOURED), version no.: A, received on 27 March 2014

13-P894-LP, version no.: n/a, received on 2 December 2013

13-P894-11, version no.: n/a, received on 2 December 2013

13-P894-14, version no.: n/a, received on 2 December 2013

13-P894-SC01, version no.: n/a, received on 2 December 2013

13-P894-01, version no.: A, received on 25 March 2014

Conditions: Appeal B

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until samples of the external materials to be used in the conversion of the buildings hereby permitted, including brickwork, window frames, rainwater goods, cladding, terrace railings/barriers, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) 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. These works shall be carried out in accordance with the approved details and prior to the occupation of any part of the development or in accordance with the programme agreed with the local

- planning authority. If within a period of 5 years from the date of planting of any tree, or any shrub, or any tree or any shrub planted in replacement of 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.
- 4) No development shall take place until a plan of trees to be retained and an Arboricultural Method Statement and construction statement relating to their protection during building works has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved plan/statements.
 - 5) No development shall take place until details have been submitted to and approved by the local planning authority for refuse bin storage. Development shall be carried out in accordance with the approved details and these facilities shall be retained for the stated purpose.
 - 6) No development shall take place until details have been submitted to and approved by the local planning authority of i) a survey of the building to identify features associated with the history of Englemere House that are of historic interest and significance; and ii) the means of retaining those features. Those features shall subsequently be retained on site.
 - 7) No unit shall be occupied until space has been laid out within the site in accordance with the approved plans for the parking and manoeuvring of cars and the parking of bicycle. The car parking and manoeuvring areas shall be of porous material. These features shall subsequently be retained on site for the stated purpose.
 - 8) The flat roof area to the side (east) of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the local planning authority.
 - 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no windows other than those expressly authorised by this permission shall be constructed on the on the side or facing elevations of either building.
 - 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no works under Classes A, B and E of part 1 of Schedule 2 of that Order shall be carried out.
 - 11) The development hereby permitted shall be carried out in accordance with the following approved plans: ENG-SP-100, ER-01A, ER-02A, ER-03, ER-04A , ER-05, ER-30, ER-31, ER-40, ER-41, ER-42, ER-43, ER-44, ENG-SLP-110 and TMC-13053-S Rev. F