
Appeal Decision

Site visit made on 16 January 2014

by R J Marshall LLB DipTP MRTPI

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

Decision date: 24 April 2014

Appeal Ref: APP/T0355/A/13/2200046

95 Straight Road, Old Windsor, Windsor, SL4 2SE

- 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 Geoffrey Douglas (GSMD Ltd) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 12/03485, dated 17 December 2012, was refused by notice dated 8 March 2013.
 - The development proposed is demolition of existing buildings and construction of residential scheme for 11 dwellings.
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Decision

1. The appeal is dismissed.

Background

2. The Council has no in principle objection to housing on the appeal site. Indeed it has been identified at consultation stage in an emerging local plan as a potential housing allocation. However, the proposed development was refused permission on specific flood risk and highway safety grounds. A third reason for refusal was that the scheme failed to provide for off-site infrastructure and amenity improvements directly related to it.
3. The appellant subsequently provided a Unilateral Undertaking making financial contributions towards various facilities which, in the absence of evidence to the contrary from the Council, I take to overcome the third reason for refusal.

Main Issues

4. The main issues in this appeal are: **first**, whether the proposed development is acceptable in flood risk terms with special reference to the provision of a safe route of access; and **second**, the effect of the proposed development on highway safety and the free flow of traffic on the A308 with special reference to the proposed raising of the carriageway level.

Reasons

Flood risk

5. The appeal site lies within a suburban and predominantly residential area close to the River Thames. The site lies to the south and rear of a petrol filling station. It is currently a car sales premises with some fairly substantial

- buildings and open hard surfaced sales areas. It fronts onto the A308 (Straight Road) from which vehicular access is taken. The proposal is to redevelop the site in its entirety with the construction of 11 houses. Vehicular access will be onto the A308.
6. The appeal site lies within a Flood Zone 3a as defined by the Technical Guide to the National Planning Policy Framework (the Framework). Such areas have a high probability of flooding. For new housing development to be acceptable in such areas a Sequential Test and Exception Test should be met. It is common ground between the parties that the former test is met leaving just the latter test in dispute.
 7. For the Exception Test to be passed it must be demonstrated that the development: a) provides wider sustainability benefits to the community that outweigh flood risk informed by a Strategic Flood Risk Assessment where one has been prepared; and b) a site-specific flood risk assessment (FRA) must demonstrate that the development would be safe for its lifetime taking account of the vulnerability of its users.
 8. The Council acknowledges that the first part of the Exception Test is met. Reference is made in its Committee report to a substantial range of community benefits with which I have no reason to disagree. However, the Council says that the second test, given its concerns about the means of escape from the site, is not met.
 9. There is the potential for the site and the area in the vicinity to flood to a level of 17.48m AOD. To leave the site on foot to gain higher land it would be necessary to cross the A308 which is at approximately 17.19m AOD in the centre. To cross this at a time of peak flood would be classified as a "Danger to Some", that is to children, the elderly and the infirm. To provide a safe means of access across this road the appellant proposes to raise its height to 17.34m AOD in the centre and 17.23m AOD at the sides. Thus there would be a flood depth over the road of no greater than 0.25m. This would provide a means of escape across the road acceptable to the Council and the Environment Agency (EA).
 10. The Council says that its Highways department would not support or approve the proposed raising of the road level. However, given my findings on the second issue I am not convinced that this stance would remain. Had I been minded to allow the appeal I consider that it would not have been unreasonable to impose a Grampian condition seeking the highway works to be undertaken.
 11. However, like the Council, I am concerned about other aspects of the means of escape. The appellant's FRA says at paragraph 9.9 and accompanying diagram that having crossed the A308 it would be necessary, before travelling south, to cross over a strip of private land onto Malthouse Close. This road would then be followed a short distance southwards before joining the A308. However, the appellant has no right of access over this private land and, moreover, a substantial roadside hedgerow would physically prevent crossing over it. Given that the route of escape proposed in the FRA cannot be relied upon the appellant has not shown that a safe means of escape could be provided.
 12. The appellant says that it was not his intention to propose a means of escape over the third party land and that the application plans do not show a means of escape over this area. However, I consider that the Council was justified in

relying, as it did, on the FRA, a document referred to in a Planning Statement supporting the application as indicating the proposed means of escape. So far as I can ascertain, no justification has been given for moving away from this. In arriving at this view I have noted a degree of ambiguity in the FRA on the flood evacuation route. However, my reading of it in its entirety supports the view that it seeks a route over the third party land and no conclusive evidence to the contrary has been provided. Indeed it appears logical for this to be the flood evacuation route. The appellant's site survey shows that it quickly allows notably higher ground in Malthouse Close to be reached and it avoids the need to cross the Malthouse Close/A308 junction where land levels have fallen to well under the minimum level for a "very low hazard" route of 17.23m AOD. Without evidence to the contrary I see no reason why crossing this area in a major flood event would be safe for the young, elderly or infirm given the appellant's apparent acceptance of the necessity to raise the height of the A308 adjoining the appeal site.

13. It is also claimed by the appellant that the Council has confirmed, notwithstanding the evidence in its appeal statement, that its flood risk concern relates solely to the AOD level of a length of pavement adjoining the A308 and to the south of Malthouse Close. However, I do not read that as being the case. Reading the addendum to the Committee Report, in conjunction with the Council's e-mail to the appellant of 12 March 2013, access over this land appears to be an additional area of concern to the Council over and above those matters already referred to above. Nor do subsequent e-mails from the Council on this support the appellant. From these it seems that the plan supplied by the Council, of the length of pavement south of Malthouse Road, indicates an area where it considers the escape route presents a "hazard for some" rather than comprising the sole area of its concern.
14. Turning to the length of footpath south of Malthouse Close there are areas at or slightly above 17.23m AOD. However, parts of this area are significantly below this level and this is a legitimate additional matter of concern.
15. It is the view of the NRA, based on the information provided, that the proposed development does not have a very low hazard route in the event of flooding available on publicly accessible land. It considers that this would place an unacceptable risk to the health and safety of the site's occupants in a flood event. This objection could, however, be removed if the local planning authority accepted an emergency flood plan for the development.
16. There is no evidence of the Council having approved such a plan. Reference is, made in the FRA to there being ample time between the issue of a flood warning and the flooding of this area. Advice is given on when and how to evacuate the dwellings. However, this would rely on people heeding the warnings. There is no guarantee that this would be so even if outside assistance was provided. Thus the need to evacuate the young, and especially the elderly, in the event of some personal emergency, could potentially arise and divert emergency services from other essential work. I consider this to be undesirable.
17. The proposed raising of the roadway would offer some assistance to existing residents in the event of a major flood in terms of access over the A308. However, this benefit would be insufficient to outweigh the harm identified above.

18. It is concluded that the proposed development is unacceptable in flood risk terms with special reference to the provision of a safe route of access. As such it would be contrary to Policy F1 of the adopted Royal Borough of Windsor and Maidenhead Local Plan in so far that it seeks to prevent an increase in the number of people and properties at risk from flooding.

Highway safety and free flow of traffic

19. The Council's concerns relate solely to the proposed raising of the height of the road. It says that this would adversely impact on the free flow of traffic on the A308, an arterial road. It is also said that in the absence of kerbs adjoining the raised section of road there would be insufficient protection for pedestrians and that the proposed highway alteration would fail to comply with design standards for pedestrian crossings. The Council also has an in principle objection to works to the highway which, as here, are not required to improve highway safety.
20. On the impact on the free flow of traffic the proposed raising of the road would not result in the creation of a speed hump. It seems to me that the proposed relatively lengthy raised area and low gradients would, as the appellant says, have no undue impact on traffic flows. The Council has provided no substantial justification for a contrary view.
21. Turning to the alleged absence of kerbs the appellant says that they would in fact be provided in a key area, that is between the adjoining filling station and the proposed crossing point over the A308. Whilst I find the plans rather difficult to interpret on this find no reason to dispute what the appellant says in the absence of any substantial justification for the Council's allegation.
22. On the need to meet design standards for pedestrian crossings the appellant says that this requirement applies to cases where a specifically designed pedestrian crossing point is proposed. This is not the case here. The Council has provided no substantial justification for its assertion that the design standard it refers to needs to be met in the circumstances of this case.
23. As for the Council's in principal objection to any works to the highway, this has not been justified by reference to the Local Plan, or other substantial evidence.
24. It is concluded that there would be no detrimental effect on highway safety and the free flow of traffic on the A308 arising from the proposed development with special reference to the proposed raising of the carriageway level. As such there would be no conflict with adopted Local Plan Policy T5 which seeks to prevent such harm.

Other matters

Appellant's observations

25. The appellant says that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. The basis for saying this is limited to a reference in appeal decision APP/T0355/A/12/217636 to the Council only being able to demonstrate a 4.05 year supply and the findings in appeal APP/T0355/A/12/2185290 that the evidence on 5 year land supply was inconclusive. Given the age of the first decision, and the inconclusive findings of the second decision, the appellant's case on this point is not that strong.

However, as it may have some merit I shall consider the implications of the absence of a 5 year supply.

26. The absence of a 5 year supply of deliverable sites would result in paragraph 49 of the the Framework being engaged. This says that in such circumstances relevant policies for the supply of housing should not be considered up to date. This though has little bearing on this appeal where policies relied on by the Council do not relate to the supply of housing.
27. However, paragraph 49 of the Framework also says that housing applications should be considered in the context of the presumption in favour of sustainable development and paragraph 47 seeks to boost significantly the supply of housing. Thus a shortfall of housing land would be a substantial point in favour of the proposed development.
28. However, given the importance of ensuring safe access from the site in the event of flooding I consider that the harm identified in the first issue would outweigh the social and economic benefits of providing new housing of the type proposed. This would be so notwithstanding the benefits referred to by the appellant of development on a brownfield site accessible to public transport and amenities.
29. The proposed development would result in a decrease in hardsurfacing and built form on the site, which in flood events would result in some reduction in flood water flows from the site. However, in the lack of more substantial evidence I do not consider this to outweigh the harm on the main issue.
30. The appellant says that the proposed development would improve the character and appearance of the area. There is also strong local support for the proposal on this ground. However, in the context of its immediate surroundings the existing use is not unduly obtrusive. Any modest advantage arising from the proposed development in character and appearance terms would not outweigh the harm identified.

Third party observations

31. There is some support for the proposal on the grounds of reduced traffic generation. However, in terms of overall traffic levels on the adjoining highway the reduction is likely to be minimal. Turning to local concerns there is no substantial evidence that the proposed access is unsatisfactory or that a right of way to neighbouring development would be impeded. However, lack of harm in these respects does not make the proposed development acceptable given the harm on the first issue.

Conclusion

32. Given my conclusion on the first issue I am minded to dismiss the appeal. Thus Regulation 122 of the Community Infrastructure Regulations (CIL), on the limitation on use of planning obligations, does not apply. It is thus unnecessary in the determination of this appeal to assess the obligation against its tests.
33. Drawing together my views I consider the harm on the first issue alone to be the decisive consideration. For the reasons give above the appeal should be dismissed. In arriving at this conclusion I have had regard to the Government's introduction of the Planning Practice Guidance (PPG) after the site visit. The

content of the PPG has been considered but in the light of the facts in this case it does not alter my conclusions.

RJ Marshall

INSPECTOR

Richborough Estates

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