



Appeal Decision

Site Visit made on 11 May 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2021

Appeal Ref: APP/J0405/W/21/3266669

Sloane/Sweda House, New Street, Aylesbury HP20 2NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Marc Green, Oakmont Homes against Buckinghamshire Council - North Area (Aylesbury).
 - The application Ref 20/02795/APP, is dated 19 August 2020.
 - The development proposed is addition of a 3rd floor atop the present building comprising an additional 10 units of accommodation formed by 1 and 2 bedroom flats and external alterations to the facade.
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Decision

1. The appeal is allowed and planning permission is granted for 'addition of a 3rd floor atop the present building comprising an additional 10 units of accommodation formed by 1 and 2 bedroom flats and external alterations to the façade' at Sloane/Sweda House, New Street, Aylesbury HP20 2NH in accordance with the terms of the application Ref 20/02795/APP dated 19 August 2020 subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Marc Green, Oakmont Homes against Buckinghamshire Council – North Area (Aylesbury). This application is the subject of a separate Decision.

Procedural Matters

3. I have been advised of various grants of prior approval for change of use of the appeal building to dwellings. However, the submitted plans and both main parties within their evidence indicate that it is the scheme for 52 dwellings which is being implemented on the site ('the PA development').
4. The Council failed to determine the application within the prescribed period. Following submission of the appeal, the Council prepared an appeal statement and delegated report advising that had it determined the application, planning permission would have been refused. Two putative reasons for refusal were given; the first relating to the effect of the proposal on protected species, and the second to requirements for financial contributions towards affordable housing and infrastructure provision.
5. In response, the appellant submitted further information including an Affordable Housing Viability Assessment (AHVA). Although comprising new information, the evidence before me indicates that the Council's position regarding the affordable housing and other contributions sought had not been raised with the appellant

prior to the submission of the appeal, and the appellant was not therefore able to address this matter earlier when the appeal was originally submitted. The AHVA is of material relevance to the issues which remain outstanding between the parties, and the Council was afforded an opportunity to comment on it. While the Council advised that it had been unable to instruct a review within the timescales set out, it did not request an extension to allow this to take place, advising that it was not looking to further lengthen the appeal and requesting that I take a view on the submitted information. In view of the specific circumstances of this case, I consider it appropriate to have regard to the appeal stage evidence including the AHVA, and I have taken it into account in my assessment of the appeal.

6. The evidence before me also includes a 'statement of agreed position' between the main parties. As part of this, I have been recommended a condition to require supervision of certain works to the appeal building by a licensed bat ecologist, and providing that works would cease and Natural England contacted regarding the need for a licence and/or further survey in the event that evidence of roosting bats was found. The Council confirms that this condition would address its first putative reason for refusal concerning the effect of the proposal on protected species.
7. I note that surveys undertaken at the site did not find evidence of bats. In view of the low likelihood of protected species being present and with regard to the characteristics of the appeal building, ongoing works to convert it under the PA development and the nature of the appeal proposal, I agree with the parties that a planning condition would in this case be appropriate and proportionate to ensure that protected species were not adversely affected by the proposal. I have not therefore treated this matter as a main issue.
8. The statement of agreed position also refers to amended elevation plans submitted as part of the appellant's final comments. The Council advises that these amended plans would satisfy a suggested condition to require details of materials to be used as part of the development and commends that they be accepted as part of the appeal. As well as changes to the external finishes of the building however, the revisions illustrate changes to the design and arrangement of fenestration with an increase in the number of windows, and I cannot be certain that potentially interested parties have had the opportunity to comment on them. To avoid the risk of prejudice and in the interests of fairness in accordance with the Wheatcroft Principles¹, I have therefore determined the appeal on the basis of the plans which were before the Council and interested parties at the time of the Council's decision.
9. The appellant has additionally submitted a Unilateral Undertaking (UU) under the provisions of section 106 of the Town and Country Planning Act 1990. The UU includes planning obligations relating to the delivery of affordable housing and financial contributions sought by the Council. Nevertheless, clause 4.2 of the UU provides that any obligation would not take effect if my decision letter records that it does not meet the tests set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (the CIL regulations). I return to this matter below.
10. Finally, I have been referred to policies within the emerging Vale of Aylesbury Local Plan (eVALP). The Council indicate that the eVALP is at an advanced stage,

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

but it is yet to be adopted and I cannot be sure that policies will be adopted in their current form. As such, they carry moderate weight in my assessment.

Main Issues

11. On the basis of the evidence before me and with regard to the above, I consider that the main issues are:
- i) whether or not the proposal would make appropriate provision for affordable housing;
 - ii) the effect of the proposal on local infrastructure in respect of health services and sport and leisure; and
 - iii) the effect of the proposal on highway safety and convenience with particular regard to on-street parking.

Reasons

Affordable Housing

12. On developments of 25 or more dwellings, Saved Policy GP.2 of the Aylesbury Vale Local Plan 2004 (AVLP) seeks a minimum of 20% and up to 30% of the dwellings as affordable. The appeal proposal for 10 dwellings would be below this threshold. The more recent National Planning Policy Framework (the Framework) is a material consideration though and outlines that at least 10% of homes within major development involving housing should be available for affordable home ownership. The parties also refer to the Council's Affordable Housing Interim Position Statement November 2019 (AHIPS) which indicates a requirement for at least 10% affordable home ownership on developments of 10-24 dwellings. Provision of 10% of the proposal as dwellings for affordable home ownership in accordance with the Framework and AHIPS would equate to a requirement for one dwelling.
13. However, the dwellings would share the same entrance and internal access as those to be delivered through implementation of the PA development. At the time of my visit, this development had not been completed. The appeal scheme also includes alterations to the façade of the existing building alongside the proposed additional storey, and I have no firm reason to disagree with the Council's assertion that the building works would be likely to comprise a single operation. The total number of dwellings that would result from the appeal proposal together with the PA development would exceed the 25 dwelling threshold above which the AHIPS seeks 30% affordable housing. On this basis but in recognition of the fact that there is no requirement for affordable housing as part of the PA development, the Council consider that 30% of the dwellings now proposed should be affordable.
14. The appellant's view is that the appeal scheme is separate from the PA development, and that seeking affordable housing according to the cumulative developments would not be directly related to the development before me. The requirement would not therefore be in accordance with Regulation 122 of the CIL regulations which are noted at paragraph 56 of the Framework and which require that any planning obligation is 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.
15. In any event though, Policy GP.2 of the AVLP confirms that the individual circumstances of each development will be taken into account in seeking

affordable housing, including the economics of development. Setting aside the disagreement between the parties over the requirement, the AHVA concludes that no affordable housing could viably be delivered. The Council has not disputed the AHVA, indicating that it has been unable to carry out a formal review. I have nevertheless considered the AHVA and assumptions made within it. The AHVA approaches viability on the basis of a comparison of the residual land value of the development against a benchmark land value reflecting the PA development. It explains the basis for the development values and costs, as well as other assumptions which underpin the appraisals of the schemes. Based on my experience and with regard to the evidence before me, I consider the AHVA to offer a reasonable assessment, and I have no firm reason to disagree with its conclusions that the proposal could not viably support any affordable housing provision.

16. Irrespective of any conclusion that I may reach as to the requirement for affordable housing, I therefore conclude on this main issue that the individual circumstances of the development justify a departure from the general expectation for affordable housing to be provided at Policy GP.2 of the AVL, and similar provisions within Policy H1 of the eVALP. For the same reasons, I do not find that the provision within the Framework seeking at least 10% of the dwellings to be available for affordable home ownership would in this case justify dismissal of the appeal.
17. As a consequence, I find that the provision of affordable housing is not in this case necessary to make the development acceptable in planning terms. Accordingly, neither the Schedule 2 Affordable Housing Obligations nor the Schedule 3 Affordable Housing Obligations within the UU would meet the tests set out in Regulation 122 of the CIL Regulations. I have not therefore taken them into account in determining the appeal, and they do not constitute a reason for granting planning permission.

Provision for Infrastructure

18. The UU includes financial contributions towards leisure and open space provision and health services (the Sport and Leisure Contribution and health services (the Buckinghamshire Healthcare NHS Trust Contribution)). These have been sought by the Council with reference to saved Policies GP.86, GP.87, GP.88 and GP.94 of the AVL which set out that development will be required to contribute towards provision of community facilities and childrens' play made necessary by it. Policies I1, I2 and I3 of the eVALP include similar requirements for development to make adequate provision for infrastructure.

Sport and Leisure Contribution

19. The Council's officer report on the proposal refers to standards for the provision of community and leisure facilities applied to all applications for new residential development resulting in a net gain of residential units. It advises that an off-site leisure provision contribution would be required towards 'a specified project', and that the Parks and Green Infrastructure Officer confirmed the proposal would generate a £24,750 Sport and Leisure contribution.
20. However, specific information defining the extent of any local deficiencies in community leisure or sport facilities has not been provided. I also have no detailed assessment of the effect that the appeal proposal might have on these facilities, nor details of the 'specified project', or information to otherwise

identify how and where the requested financial contribution would be spent. I am not therefore satisfied that the evidence before me demonstrates that the proposal would generate a demand for community leisure or sport facilities or resources which would not be met, or that the requested contribution would be necessary to make the development acceptable in planning terms.

Buckinghamshire Healthcare NHS Trust Contribution

21. In its response to the proposal, Buckinghamshire Healthcare NHS Trust (the Trust) comments that it is currently operating at full capacity in the provision of acute and planned healthcare, and that the proposal will impact on ability to provide services as required. It advises that payments for the provision of health services are made under contracts that do not include provision for increases in population due to new dwellings being constructed. It therefore seeks a financial contribution to mitigate the funding gap it asserts would be created by potential patients resulting from the development.
22. Policy GP.94 of the AVL P includes provision for financial contributions towards community facilities, and I see no reason that health services would not be considered a community facility.
23. Be that as it may, I agree with the appellant that at least some of the occupiers of the development are realistically likely to reside within the Trust's area currently and they would therefore already be reflected in funding arrangements. As a result and in the absence of firm evidence to the contrary, I can have little certainty that the requested contribution which is based on expected population of the development as a whole would in reality be fairly and reasonably related in scale and kind to the development. Accordingly, I am not persuaded that the evidence before me clearly demonstrates that the proposal would result in new population within the Trust's area so as to lead to additional demand for services which would not otherwise occur to the suggested degree.
24. While I am sympathetic to the Trust's position, I am not therefore satisfied that the requested contribution would meet the statutory tests set out in Regulation 122 of the CIL Regulations, nor that the evidence demonstrates that the proposal would harm the provision or availability of health facilities without the requested contribution.

Conclusion on Provision for Infrastructure

25. For the above reasons, I conclude on this main issue that the Sport and Leisure Contribution and the Buckinghamshire Healthcare NHS Trust Contribution within the UU have not been demonstrated to be reasonable or necessary to address the requirements of saved Policies GP.86, GP.87, GP.88 or GP.94 of the AVL P or Policies I1, I2 or I3 of the eVALP. Notwithstanding the appellant's viability evidence, the related obligations within the UU would fail to meet the statutory tests set out in Regulation 122 of the CIL Regulations. I am therefore unable to take them into account in determining the appeal, and they do not constitute a reason for granting planning permission.

Parking

26. The UU also includes financial contributions sought by the Council towards the implementation of any traffic regulation order to introduce parking restrictions along Cambridge Place (the TRO Contribution) as well as monitoring of this (the TRO Monitoring Contribution). In seeking these contributions, the Council and

- comments made by the Highways Authority refer to the inability to attach planning obligations or conditions to the previous prior approvals given for the change of use of the existing building to dwellings. However, the tests within the CIL regulations require that any obligation is directly related to the development. Although the proposal includes external alterations to the appeal building, it does not alter the number or type of dwellings which are to be delivered within it under the PA development. In this regard, I do not consider that parking that may be associated with occupation of the existing building would be directly related to the development now proposed.
27. There is no current provision for parking within the appeal site, and the Council advise that prior approvals granted for change of use of the existing building concerned car-free developments. As part of the current appeal, the submitted plans indicate 8 parking spaces set between the wings of the building which would be accessed via Cambridge Place.
28. The provision of 8 spaces to serve the 10 dwellings now proposed would accord with the maximum parking requirements specified by the AVLPS Supplementary Planning Guidance 1 Parking Guidelines 2002 (SPG) which seek one space per 2-bedroom dwelling plus one visitor's space per 2 dwellings. There would be a shortfall against the optimum standard of 2 spaces per 2-bedroom dwelling indicated within the eVALP. However, the eVALP notes that deviation from these standards may be justified by local circumstances. The Council has not argued that the level of parking proposed would be inadequate to meet the needs of future occupiers, and given the accessible location of the site enabling convenient access to a range of local services and public transport and the evidence before me, I see no reason to reach a different view.
29. In addition, there is no substantive evidence before me to show that on-street parking in the area around the appeal site is under stress that would be exacerbated by the proposal, nor to otherwise demonstrate why the proposal would result in harm so as to require mitigation through additional parking restrictions or restrictions on parking permits. Although I note concerns raised by an interested party regarding parking for the building as a whole, I therefore find no conflict with Policies T1, T5 or T6 of the eVALP which seek amongst other things to ensure new development does not have a severe impact on the highway or public transport networks.
30. For these reasons, I am not satisfied that it has been demonstrated that the TRO Contribution and associated monitoring contribution would be necessary to make the appeal development acceptable, nor that they would be directly related to the development before me. Moreover, the submitted information does not explain how the requested contributions have been calculated. Even if I were to have reached a different conclusion regarding the necessity of contributions, I cannot therefore be sure that those sought are fairly and reasonably related in scale and kind to the development.
31. Notwithstanding the appellant's view that they would negatively impact the scheme's viability, I am therefore unable to conclude from the evidence before me that the TRO Contribution and the TRO Monitoring Contribution obligations within the UU would meet the tests at Regulation 122 of the CIL Regulations. I am accordingly unable to take them into account in determining the appeal, and they do not constitute a reason for granting planning permission.

Conditions

32. I have considered suggested conditions having regard to the tests set out at paragraph 55 of the Framework. As a result, I have amended some where necessary, or for the sake of consistency, brevity or clarity. I have also avoided the use of pre-commencement conditions where this is not necessary for a condition to achieve its purpose.
33. In addition to the standard time limit (1), I have also imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty (2). To safeguard the living conditions of neighbouring occupiers and highway safety, a pre-commencement condition is necessary to agree how construction will be managed with details required before any works take place to ensure that they are satisfactory (3). The appellant's final comments include written agreement to the suggested condition.
34. Conditions to require supervision by a licensed bat ecologist of works which may affect bat roosting features (4) and the implementation of ecological enhancement measures (5) are necessary in the interests of biodiversity on the site. However, I have amended the suggested wording for condition 4 to ensure that it is sufficiently precise and reasonable regarding the works subject to the condition and how they may proceed in the event that bats are found to ensure adequate protection. I also see no reason from the information before me why details of swift and bat boxes to be incorporated would be necessary prior to any works taking place, and I have amended condition 5 accordingly.
35. While the changes to fenestration shown mean that I have not determined the appeal on the basis of the amended plans submitted with it, I am satisfied that revisions to the external finishes of the building can be suitably secured by a condition to require details of materials (6). I agree with the Council that this condition is necessary in the interests of the character and appearance of the area, although I consider that it is only necessary for details to have been agreed before they are installed, rather than before any works take place. Details of landscaping are similarly required in the interests of the character and appearance of the area (7). However, given the extent and condition of the existing landscaping on the site and that no trees of significance are indicated to be retained, I have amended the suggested condition as I do not consider that it is necessary to seek details of retention or protection of existing features.
36. Finally, I have imposed conditions to require cycle storage (8) to promote sustainable transport, and measures to ensure that future occupiers are not harmed by noise (9) in the interests of the living conditions of future occupiers.

Conclusion

37. Subject to conditions, and for the reasons given above, I find that the proposal would comply with the development plan when it is read as a whole and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan Rev P1, Site plan 25.08.20, Existing north & south elevations 02.08.20 Rev P1, Existing east & west elevations 02.08.20 Rev P2, New Street Street View 12.08.20 Rev P2, North & South elevations 02.08.20 Rev P3, East & west elevations 02.08.20 Rev P3, Ground floor plan 02.08.20 Rev P4, Third floor plan 02.08.20 Rev P2 and Roof plan 02.08.20 Rev P2.
- 3) Prior to the commencement of any works on the site, a construction traffic management plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall provide for the following:
 - i. The routing of construction vehicles.
 - ii. Construction access details, temporary or otherwise.
 - iii. The parking of vehicles of site operatives and visitors.
 - iv. Loading, unloading and storage of plant and materials used in constructing the development.
 - v. Operating hours.
 - vi. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
 - vii. Wheel washing facilities.
 - viii. Before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused.The approved CTMP shall be adhered to throughout the construction period.
- 4) Works to the building comprising removal or enclosure of potential suitable roosting features for bats as noted within the Enzygo letter dated 8 October 2020, Ref CRM.1708.001.EC.R.002 shall only be undertaken under the supervision of a licensed bat ecologist. In the event that any evidence of roosting bats is encountered during the works, works shall cease until Natural England has been contacted to determine the need for licence or further survey and details of the advice received and evidence that any necessary measures are in place have been submitted to and approved in writing by the Local Planning Authority.
- 5) Prior to first occupation of the development hereby permitted, 5 swift boxes and 5 bat boxes shall be provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority, and they shall be permanently retained as such thereafter.
- 6) Notwithstanding previously submitted details, details of the following shall be submitted to and approved in writing by the Local Planning Authority prior to their installation:
 - i. all materials to be used on the external surfaces of the development,
 - ii. all brickwork detailing to the façade of the building, and
 - iii. all materials to be used on the raised planters.

The development shall be completed strictly in accordance with the agreed details.

- 7) Prior to first occupation of the development hereby permitted, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented so that planting is carried out no later than the first planting season following the occupation of the building or the completion of the development whichever is the sooner. All planted materials shall be maintained for five years and any trees or plants removed, dying, being damaged or becoming diseased within that period shall be replaced in the next planting season with others of similar size and species to those originally required to be planted unless the Local Planning Authority gives written consent to any variation.
- 8) Prior to first occupation of the development hereby permitted, cycle storage shall be provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The approved cycle storage shall thereafter be kept free of obstruction and available for the parking of cycles only.
- 9) Prior to first occupation of the development hereby permitted, all glazing installed in habitable rooms should meet the following acoustic attenuation specifications as a minimum: R_w/R_w+C_{tr} : 35/32 dB; and if relying on trickle ventilation for whole dwelling ventilation, trickle vents should meet the following acoustic attenuation specifications: $D_{n,e,w}/D_{n,e,w}+C_{tr}$: 44/42 dB. If mechanical ventilation is being installed to provide whole dwelling ventilation, it shall be installed in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority prior to occupation of the development and thereafter shall be retained.

End of Schedule