
Appeal Decision

Site visit made on 19 August 2025

by **Zoe Raygen DipURP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 September 2025

Appeal Ref: APP/T0355/W/25/3360693

Land South of Kimbers Lane, Maidenhead, SL6 2QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Staxlink Ltd against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 24/00511.
 - The development proposed is the access and layout for 32 dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for a full award of costs was made by Staxlink Ltd against the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant has submitted further details as part of the proposal to address the Council's reason for refusal regarding highway visibility. The Highway Authority has been able to comment, and the information has been available for comment by other parties. Consequently, I am content to accept the information as no party would be prejudiced. The Highway Authority has confirmed it has no objections to the proposal on the basis of the additional information, and I see no reason to disagree.
4. The application the subject of this appeal was made in outline form with matters of access and layout to be considered. I have considered the appeal on the same basis and plans relating to appearance, scale and landscaping have been treated as indicative only.
5. The appellant has submitted a revised layout plan as part of the proposal which amends the pedestrian link to the southern boundary of the appeal site by removing two proposed garages and including additional planting. Given the early stage of the development of both this and the site to the south, and that the Council has had opportunity to provide comments, I am satisfied that no one would be prejudiced if I were to take the plan into consideration. I have proceeded on that basis.
6. The appeal site is part of a wider housing site within the Borough Local Plan 2013-2033 adopted 2022 (the BLP) allocated under reference AL13 within Policy QP1b

for 2,600 new homes and supporting infrastructure . Its development is supported by the South West Maidenhead Development Framework Supplementary Planning Document 2022 (the SPD).

Main Issues

7. The main issues are:

- The effect of the proposal on the character and appearance of the area with particular regard to parking and Kimbers Lane;
- The effect of the development on trees;
- Whether the proposal provides an acceptable provision of affordable housing and other infrastructure;
- The effect of the development on ecology;
- Whether the proposal makes effective connections to adjacent parcels of land;
- Whether the proposal will provide acceptable living conditions for prospective occupiers, including those on the adjacent site, with particular regard to outdoor space and privacy; and
- Whether the proposal delivers acceptable levels of play space.

Reasons

Character and appearance

8. Kimbers Lane forms a pleasant narrow lane which has an abundance of planting on either side creating a verdant country lane. Development prior to the allocation on both sides of the road is restricted to larger houses set back from the road behind planting, reinforcing the rural nature of the lane. With the extent of housebuilding proposed, this character will inevitably change. However, I saw that the housing that has been erected to date on the north side of the road is mainly two and two and a half storeys, set back from the road with gardens towards the road so that the rural verdant character is largely maintained, albeit the buildings are visible. I also note the appeal decision¹ granting consent for the use of land nearby for use as a waste transfer station. However, while this will increase traffic along Kimbers Lane, as well as require the installation of a passing pass, it would not materially change the character of the lane.
9. Two large units are proposed to the appeal site frontage. I appreciate that appearance and scale of the buildings are not for consideration here. However, the supporting elevation detail demonstrates how a footprint of the size and extent of that proposed could appear. At the closest point, the blocks would be about 6.8 metres from Kimbers Lane. Although this distance would increase due to the orientation of the buildings, the buildings would still be close to the lane. This, together with their illustrative scale and massing, would be at odds with the established and emerging character such that they would erode the rurality and be particularly obtrusive. There would be very little opportunity for meaningful planting to soften the appearance at the closest point with Kimbers Lane. This together with

¹ APP/T0355/W/21/3289347

the need to remove a large part of the hedge to accommodate the site access would reinforce the erosion of the rural character of the lane. Although designed to look like large houses, this would not overcome the harm caused by the height and massing of the proposal.

10. I noted on site that plot 7 on the site to the north is three storeys, giving it a particular prominence in that development. Furthermore, due to land levels it would be higher than the proposed blocks on the appeal site. However, it is set back from the road and has a much smaller footprint than that proposed here, meaning that its massing integrates more satisfactorily into the area. In addition, the house on plot 6, although close to, and presenting a side elevation to Kimbers Lane, is much smaller than the proposed apartment blocks here. The blocks approved on the site to the southwest would be set much further back from Kimbers Lane and located side on so that the height and massing would not be immediately obvious behind the planting proposed.
11. I appreciate that some taller buildings may be required to achieve the proposed quantum of development across the allocation. Indeed, the appellant draws my attention to development up to 6 storeys elsewhere. However, irrespective of the proposed heights contained in the SPD, and what has been approved elsewhere, the specific context of this proposal means that the two blocks would cause harm. It is not the height itself which causes harm, but the combination of the height, scale and massing together with the location close to Kimbers Lane. I have been presented with no other alternative to deliver the quantum of development using the proposed layout.
12. The parking proposed within the appeal site would, in the main, be to the front of the proposed houses. However, as advocated by the Borough Wide Design Guide 2020 (the BWDG) it would be broken up by landscaping. The landscaping would need to be of high quality to ensure that the hard surfacing of the parking would not dominate the proposal, particularly as this would be the proposed green road through the development. I also saw at my site visit that there are examples of this on the approved developments under construction. While these are much bigger sites and parking to the front is intermittent within the layout, there are much larger areas of unbroken parking that have been approved. While these have not been determinative, I am satisfied that this in itself would not cause material harm.
13. Nevertheless, for the reasons above the proposal would be harmful to the character and appearance of the area. Consequently, it would conflict with Policy QP3 of the Borough Local Plan 2013-2033 (the BLP) and the BWDG. Together these require that development be of high-quality design which respects local character and creates attractive new townscapes.

Trees

14. The appellant's Arboricultural and Planning Integration Report June 2024 (the APIR) recommends a number of trees for removal. All of the trees in the written report, to be felled, are assessed as grade C1 or C2 to which the Council has no objections to removal.
15. Within the initial APIR dated February 2024, the accompanying plan shows the trees G13 as being Category B, with some requiring removal to facilitate the development. There is clearly discrepancy between the report and the plan as to the quality of the trees. This was rectified in the June version of the APIR. While

there is very little justification for the Category C2 for the trees in the APIR there is no meaningful challenge from the Council in this respect.

16. The majority of the trees to be retained on the eastern boundary would be within the rear gardens of houses. I saw on site that even though designated category C2, they have a significant spread and contribute positively to the character and appearance of the area. They would cover much of the proposed garden area with the root protection areas covering at least half of the garden area. Not only would this reduce the usable area of the garden, but they would also make the garden shady and give significant leaf drop such that there very well could be pressure from owners to cut back or fell the trees.
17. The same is true of tree T6 which has a significant canopy spread which would also be in rear gardens. I note that the gardens are lengthy and that the canopy also spreads over the garden of one of the new houses built on the adjacent site. However, that is the front garden. Furthermore, however long the gardens are, the canopy and root protection area have a significant spread. I note that this tree is also the subject of a Tree Preservation Order. While people would be aware of this when moving in, and the Council retains control, there well may be subsequent pressure to carry out works to the tree given its relationship to the houses leading to the loss of trees diminishing the character and appearance of the area.
18. The trees to be retained on the site contribute much to the character and appearance of the area providing a green verdant edge and their loss would be harmful to that character and appearance.
19. The parking areas for the apartment blocks are proposed within the root protection areas of several large trees categorised as B1 and B2 which contribute significantly to the character and appearance of Kimble Lane, through their height, spread and position. A no dig construction method, together with a means of construction which would protect roots, could be adopted to ensure no harm to the root system by the development. These matters could be the subject of a condition.
20. I note that a number of trees have been removed on other sites to accommodate development. Furthermore, the SPD states that the size and capacity of the area will likely require higher densities, with pressure on green space, trees and environmental impacts that will need to be mitigated. It goes on to say that it is recognised that to accommodate the level of growth planned for the areas, some loss of trees will be required.
21. However, while the removal of trees in some instances is unavoidable and indeed supported by the Council in the development of this allocation, the effect of the proposal on trees that contribute positively to the character and appearance of the area needs valid consideration. Furthermore, the illustrative Framework plan in the SPD shows retained existing planting and new planting along the east and west boundaries of the appeal site to contribute to connectivity for wildlife benefit. While landscaping is to be determined in the future, the appellant states that 17 new trees would be provided to mitigate the removal of those considered to be of low quality. However, these would be dispersed through the site, with no meaningful replacement or reinforcement along the east and west boundaries.
22. While trees may have been permitted to be felled on other sites, in this case I have found harm from the proposed layout and the effect it may have on trees retained

on the site. The proposal to plant 17 trees is laudable. However, the illustrative planting, together with the pressure placed on retained trees would not sufficiently comply with the development framework within the SPD, nor would it maintain, protect and enhance the biodiversity of the appeal site including features of conservation value such as the hedgerows and trees.

23. I appreciate that landscaping is a reserved matter, but I have not been presented with a plan to adequately demonstrate how the proposed quantum of development could acceptably be provided on site without causing harm. I am also considering layout as part of this proposal.
24. The appellant has provided details of the tree survey from the Elivia Homes planning application, also within the AL13 allocation. However, while I understand that more trees were allowed to be removed on this site including Category B trees, I also note that the tree survey provides much more detail on the condition of the trees than the APIR, particularly those of category C. In addition, there are more trees proposed which would provide green roads given their location along the roadside in accordance with the SPD. Furthermore, trees that contribute positively to the character and appearance of the area would be retained. This is not the case with the scheme before me where pressure would be placed on trees that contribute positively to the character and appearance of the area and are not adequately compensated for.
25. For the reasons above, the proposal would have an unacceptable impact on trees failing to protect existing habitats for biodiversity. It would therefore conflict with policies QP1b, NR2 and NR3 of the BLP. Together these require that development should protect and retain trees, provide appropriate mitigation and demonstrate how they maintain, protect and enhance the biodiversity of sites including trees.

Infrastructure and Affordable housing

26. The appellant has submitted a signed section 106 agreement in the form of a Unilateral Undertaking to secure 10 of the houses as affordable in accordance with the AL13 Pro Forma in the BLP. The Council's housing officer confirms that the 4 affordable homes and 6 affordable flats would be in accordance with the required affordable housing mix. There are some minor alterations required by the Council in terms of numbers and dates. Nevertheless, for the purposes of this appeal, I am satisfied that the UU would adequately secure affordable housing in accordance with Policy HO3 of the BLP.
27. The SPD provides an evidence base on the main infrastructure requirements and costs associated with development on the allocation. This costs the total infrastructure required to deliver the project and involves a simple but comprehensive approach to delivery whereby a combination of the CIL receipts payable in relation to the development within the South West Maidenhead area and section S106 contributions would fund those main infrastructure requirements. There is an expectation therefore that all development would contribute, secured by a S106 agreement.
28. Although this was proposed at the time of the Council's assessment of the planning application via a detailed draft S106 agreement from the appellants, none has been forthcoming as part of the appeal. Although not a reason for refusal, the appellant is therefore aware of the requirement. In the absence of any way to secure such contributions in accordance with the SPD then the proposal would fail

to deliver an appropriate level of infrastructure and conflict with Policy QP1b in this respect.

29. The Council is content that matters relating to carbon neutral development, which would have been contained within a S106 agreement can be secured by way of a condition. I see no reason to disagree.

Ecology

30. The appellant's Bat Survey Report 2024 (BSR) details the results of bat activity surveys undertaken between May and September 2024. The report concludes that the northern hedgerow offers valuable foraging resources and commuting corridors for bats given its good connectivity to the wider landscape. The report recommends the preservation or creation of trees and hedgerows to maintain foraging areas, a sensitive lighting strategy and inclusion of bat boxes.
31. The BSR recommends that to maintain landscape permeability, vegetated green corridors and features, such as hedgerows and trees should be preserved where possible or included as part of the landscaping of the Site if preservation is not possible. There would be loss of part of the northern boundary due to the new access. I accept that as the appeal site is part of an allocation it is inevitable that some form of access would be required here. However, it is also unclear as to the extent of the remainder of the hedge and trees to be retained, certainly to the east of the proposed access. Although the report outlines mitigation measures to ensure that the foraging potential of the site would not be materially harmed, these involve planting of hedgerows and trees which would take some time to establish. I cannot conclude therefore that the proposal would not have a harmful effect on protected species.
32. For the reasons above, I conclude that the proposal would be harmful to ecology and therefore there would be conflict with policy NR2 of the BLP which requires that protected species be safeguarded from harm.

Connections

33. The SPD advocates the delivery of strategic green links and pedestrian and cycle links to support the use of other transport choices than the car and relieve the existing challenges at roads and junctions throughout the allocated area. The route through the appeal site should be a green street connecting to the Green Spine.
34. Some of the area around the appeal site has already been developed and some is under construction. As a result, linkages are already emerging. The proposal is for the central road through the appeal site to form the green linkage leading to the site to the immediate south which is under construction. The linkages on the site to the north are already in place.
35. Although the link to the north is not direct, requiring residents to journey along Kimbers Lane, this would not be for a significant distance in either direction to one of the two linkages into the northern site. Furthermore, the linkage to the west of that emerging from the appeal site to the site to the north has a similar indirect character to it, given that residents would only journey a short distance before reaching a road and having to dogleg onto another road within the development. This is also the case for the approved link to the south.

36. While the route is not continuous, requiring residents to cross a number of roads within the appeal site, those roads would unlikely be carrying a lot of traffic given they only serve small amounts of housing. I do not consider therefore that the link would be harmfully unattractive to residents. The entrance into the site from the south would be landscaped. In addition, although parking would be to the front of the properties along the main road, it would be broken by landscaping which should be of a high quality to create the envisaged green street through the development. The council would retain control of this through any subsequent reserved matters approval.
37. For the reasons above, I conclude that the proposal would make effective connections to adjacent parcels of land. As a result, there would be no conflict with policies QP1b and QP3 of the BLP or the SPD which require development provide green, direct, legible and convenient connections and easy and safe access for pedestrians and cyclists.

Living conditions

38. The proposal would have eight properties located along the southern boundary with rear elevations looking towards a development site to the south. That site is currently being constructed and eventually there will be a number of houses with their rear elevations facing towards those on the appeal site with a rear garden of 12 metres length to the boundary. Those on the appeal site would have a rear garden depth of about 7.5 metres creating an overall separation distance of 19.5-20 metres.
39. The BWDG states that a 20-metre minimum distance between the rear of two storey buildings should exist to ensure no material loss of privacy. Extra distance may be required where there are significant changes in level or where new development is greater than two storeys in height.
40. The illustrative material states the properties on the appeal site would be 2.5 storeys high. However, the distance between the higher elements of buildings on the two sites would be between about 27 and 31 metres, with the Council having measured from the single storey element. Even though there is a difference in levels, I consider this distance to be acceptable and well in excess of the BWDG requirements to ensure there would be no material loss of privacy between the two storey elements of the properties.
41. The illustrative material provided suggests that these properties would have 4+ bedrooms. As such the BWDG requires that each have 70 sqm of outdoor space. The appellant has submitted a plan which demonstrates that each property would have over 70 sqm of garden space. The Council has discounted access routes to cycle stores, gardens to the side of dwellings, and land in between the dwellings and garages as the space is too narrow or required to provide access. However, I disagree. Although the BWDG states that the outdoor space should be roughly rectangular in space I do not consider the areas included by the appellant to be so narrow or not rectangular to be considered unusable.
42. For the reasons above, I conclude that the proposal will provide acceptable living conditions for prospective occupiers, including those on the adjacent site, with particular regard to outdoor space and privacy. Consequently, there will be no conflict with Chapter 8 of the BWDG, Principle 8.4 of the BWDG and the National

Planning Policy Framework (the NPPF). Together these require that development require a high standard of amenity for existing and future users.

Play space

43. The Council accepts that even though the BLP would require the provision of a Locally Equipped Areas of Play on this site, given the proximity and linkages available to the one on the adjacent site then one would not be required on this site. I see no reason to disagree.
44. However, both the Council's Open Space Study 2019 and Appendix F of the BLP also requires that for sites delivering five or more dwellings a Local Area of Play (LAP) would be required. LAPs normally provide for an opportunity for young children to play, parents to sit and promote social cohesion in a highly localised manner. Such facilities are typically utilised by those in the immediate locality and should be within a 100-metre walking distance.
45. Although there would be LAP provided on the site to the east, direct access from the appeal site would require walking a significant distance along Kimbers Lane, a narrow country lane with no footway, not ideal for small children. However, there would be better access to the site to the north where a LAP, although over 100 metres away, would still only be a short walk away. I note that policy would require provision on the appeal site, however in this instance the allocation as a whole should be considered and, given nearby provision, I accept that a LAP on this site while beneficial, especially given the provision of apartment blocks, would not be essential.
46. For the reasons above, I conclude that the proposal delivers an acceptable level of play provision. Hence there would be no conflict with Policy INF4, AL13 Pro Forma and Appendix F of the BLP which set out the standard levels of play areas to be delivered in association with new development.

Other Matters

47. I note the comments from the Lead Local Flood Authority, and the concerns raised by the Council's ecologist regarding the appellant's submission in respect of Biodiversity Net Gain. However, these matters can be dealt with by the imposition of appropriately worded conditions.
48. On many of the issues the appellant refers to how applications in the surrounding area have been considered differently by the Council, leading to unfairness and a lack of consistency, supported by detail from the planning applications. However, I have made my decision based on the specific circumstances of this appeal site, its location and relationship to other sites.

Planning Balance and Conclusion

49. The proposal is part of an allocated site and will form a valuable part of the housing land supply at a time when according to the evidence before me the Council is able to demonstrate only a 4.47-year housing land supply. The appellant provides evidence that it could be as low as 3.69 years. Either way the benefits of the proposal would attract significant weight.

50. Significant weight would also be attached to the delivery of affordable housing given the considerable under provision, together with the high level of unaffordability of housing in the Borough.
51. The provision of houses that would be wheelchair accessible as well as adaptable houses would also attract significant weight.
52. The contribution to the local economy from the provision of jobs, use of construction materials and future spend of residents would be moderate given that this forms one small part of the overall housing allocation.
53. In addition, the appeal scheme is Community Infrastructure Levy ('CIL') liable and as a result would make a significant contribution towards infrastructure provision in the immediate and wider area of about £1,472,569.35. This is not insignificant and should weigh in favour of the appeal scheme
54. There would also be a small benefit from additional planting on the site.
55. The proposal would be brought forward by a Small and Medium Enterprise housebuilder which the Framework acknowledges can make an important contribution to meeting housing requirements and can often be built out quickly.
56. However, I have found that the proposal would cause harm to the character and appearance of the area and the trees on site. Furthermore, I cannot be sure that the effect on protected species would be effectively mitigated. Moreover, although CIL liable, the proposal would not secure contributions to infrastructure required by policy. These are considerable environmental and social harms.
57. Consequently, the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole and having particular regard to key policies as directed by paragraph 11dii of the Framework. In particular, the proposal would not secure a well-designed place.
58. I note the comments made by the appellant if the appeal were to be dismissed and the developable site area needed to be reduced due to the need to protect trees, living conditions and provide a LAP and the consequent reduction in housing numbers. I have not agreed with the Council on all these matters but have made a determination on the plans before me and found harm. That does not rule out a different way of providing the quantum of development that eliminates or moderates the harm I have found and hence a different planning balance.
59. The proposal would conflict with the development plan as a whole and the considerations I outline above, including the Framework, are not sufficient to outweigh that conflict. The appeal should therefore be dismissed.

Zoe Raygen

INSPECTOR

Costs Decision

Site visit made on 19 August 2025

by **Zoe Raygen DipURP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 September 2025

Costs application in relation to Appeal Ref: APP/T0355/W/25/3360693

Land South of Kimbers Lane, Maidenhead, SL6 2QP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Staxlink Ltd for a full award of costs against Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of outline planning permission for the access and layout for 32 dwellings.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council has acted unreasonably on both procedural and substantive grounds in relation to each of its 11 reasons for refusal. Consequently, they consider that the Council has prevented development that should clearly have been permitted.
4. The applicant raises a number of points which I will address individually. First during the course of the Council's consideration of the planning application a revised plan was submitted by the applicant to address the Council's concerns regarding the pedestrian link. These concerns were discussed in a Teams meeting between the Council and the applicant on 14 May 2024. However, the Council declined to accept the plan. The Planning Practise Guidance (the PPG) states that it is at the discretion of the local planning authority whether to accept such changes. This is not therefore unreasonable behaviour. Neither does it demonstrate a lack of co-operation, particularly given that a Teams meeting was held to discuss the application.
5. The applicant considers that the Committee Report (CR) that was considered by the Planning Committee at its meeting on 14 July 2024 contained information that was untrue or inaccurate. This was brought to the officers' attention by the applicant but was not updated or corrected prior to the meeting. Consequently, the Planning Committee made its decision on information that was wrong.
6. Paragraphs 10.159-10.165 of the CR deals with the effect of the proposal on protected species and in particular bats. Although the CR correctly identifies that

three automated surveys are required at paragraph 10.161; it mistakenly goes on to state that emergence surveys would be required at paragraph 10.164 when the applicant's Preliminary Ecological Appraisal discounts any requirement for these. This mistake is continued into the reason for refusal. While the CR and subsequent reason for refusal are not accurate in terms of the type of survey that would be required, the comments from the Council's ecologist are clear that the activity surveys would be required prior to the determination of the application, or if not received, their absence form a reason for refusal. It is regrettable that the wrong survey was alluded to in the CR and the reason for refusal, but the absence of reports would have been a reason for refusal in any case. I have carefully considered whether a condition could have been applied. However, as the application required the consideration of access and layout, then it is imperative that the results are known prior to determination to ensure that the access and layout would not cause harmful impacts. I have found that they would. Consequently, the applicant has not been put to unnecessary or wasted expenditure in this regard.

7. Paragraphs 10.33 to 10.39 of the CR refer to Policy QP3 of the Borough Local Plan (BLP) and the Borough Wide Design Guide (BWDG) with regard to parking associated with the development. Although the policy and guidance advocates for parking to the side of dwellings the principal is that developments be designed to minimise the visual impact of traffic and parking. While paragraph 10.37 of the CR states that the proposal is in direct contradiction to Principles 6.7 and 6.8 of the adopted BWDG it goes on to say that the principles make it clear that on-plot parking should *generally* be provided to the side of rear of the property (my emphasis). The CR also considers at paragraph 10.38 that opportunities for landscaping to break up the front parking would be limited and therefore, it did consider whether parking to the front that was proposed would be acceptable. Although I have disagreed with the Council, I consider this to be a matter of interpretation of the policy and guidance, and I am satisfied that the Committee were not misled on this point. Therefore, the Council has not acted unreasonably.
8. Paragraph 5.4 of the CR states that the proposed blocks that are situated either side of the access road are situated on average at 9.5 metres from the northern boundary of the site; which narrows to 5.5 metres at its closest point on the north western proposed block. The applicant disputes this and provides their own measurement. It appears that the discrepancy lies in the position where the measurements have been taken from. The Council measures to the northern edge of the appeal site and the applicant to the edge of the road. The Council made it clear in its CR that the measurements were to the northern boundary of the site. The Council has not therefore acted unreasonably in this respect. Irrespective, I have found harm using the measurements supplied by the applicant.
9. The Highway Authority raised concerns with the proposal and a revised plan was submitted by the applicant to address those concerns on 15 July 2024. However, the revisions were not reported to the Planning Committee at its meeting as the Council considered that due to other insurmountable issues with the proposals the matter should not be progressed. As I have already stated it is the choice of the Council whether to accept revised plans. Consequently, the Council has not acted unreasonably in this respect. Furthermore, it confirmed in its statement of case that the revisions are acceptable and therefore the reason for refusal regarding highway matters has not been pursued.

10. Paragraphs 10.69-10.76 of the CR deals with the provision of open space on the appeal site. It is a policy requirement of the Borough Local Plan 2013-2033 adopted 2022 (the BLP) that sites such as the appeal site should provide both a Local Area of Play (LAP) and a Local Equipped Area of Play (LEAP) due to the proposed number of dwellings. The Council considered that due to the proximity of the LEAP on the adjacent site then the provision of one could be discounted on this site. However, due to the distance to LAPs on nearby sites being above the recommended distance, then the lack of a LAP on the appeal site was a reason for refusal. Although I have disagreed in my decision, this is a valid decision by the Council given the policy requirement and shows that it did consider the proximity of other LEAPs and LAPs. The Council has not acted unreasonably in this respect.
11. Paragraph 1.3 of the CR states that “Owing to these significant concerns, the case officer has not progressed a S106 agreement in order to satisfactorily secure provision of affordable housing, public open space, adoption of roads and other matters”.
12. Although the PPG encourages legal agreements to be progressed as early as possible in the planning process, it is not unreasonable for the Council to not progress matters, if it considered that there was no prospect of the proposals receiving support. I note though that the Council has not engaged with the applicant during the appeal process in order to finalise a legal agreement and this is unreasonable behaviour. Due to the lack of co-operation from the Council, the applicant has had to prepare a Unilateral Undertaking to secure the affordable housing. However, there has been no unwasted expense as the applicant would have had to prepare a legal agreement whether the planning application was granted or refused.
13. Paragraph 10.117 of the CR states that “The rear gardens of these properties located to the southern portion of the site range from c. 50 sqm which would fail to meet the minimum garden sizes for 2/3 bedroom properties and substantially short if these properties were provided as 4+ bedrooms; as illustrated in the supporting documentation”. The Council has clarified that this relates to a rectangular portion of the rear private garden excluding areas which it considers are not unusable such as access routes to cycle stores, side gardens and land in between dwellings. Principle 8.4 of the BWDG states that private outdoor space should be roughly rectangular in shape. It is clear therefore that the minimum outdoor amenity space size standards should be private space and therefore that within the rear garden. I have disagreed with the Council in this respect, considering the gardens as measured by the applicant to be acceptable and not so sufficiently unrectangular for the whole of the garden to be unusable. However, this is a valid consideration and a matter of judgement on which the Council was entitled to reach its conclusion given the wording of the BWDG.
14. Paragraph 10.121 of the CR states that “the extant permission to the south of the site (23/00511/FULL) establishes rear gardens of 12 metres to the boundary. The proposed layout of the properties would establish a rear garden depth of c. 7.5 metres (including boundary vegetation); setting a total separation distance of c. 19.5 – 20 metres”.
15. This is the correct distance when measured between the two properties. The applicant submits that the distance should be longer, but this is when measured from the rear of the 2.5 storey element of the building rather than the single storey

part. The BWDG states that a minimum distance of 20m is the Council's generally accepted guideline for there to be no material loss of privacy between the rear of two storey buildings directly facing each other (i.e. a back-to-back relationship). This guidance relates to two storey buildings, not single storey.

16. It would have been helpful with regard to both of these issues for the Council to set out in its CR how the figures had been obtained and provide the detail that was subsequently provided in its appeal statement together with the figures provided by the applicant prior to the meeting so that the Committee could have made a more considered decision based on the applicant's submission. This is unreasonable behaviour.
17. Paragraph 10.56 of the CR states that "The Local Planning Authority's Tree Officer advised in verbal consultation on 16th May 2024 that the loss of a group of category B trees along the eastern boundary appears to not be justified within the Arboricultural Impact Assessment."
18. This was based on the applicants initial Arboricultural and Planning Integration Report February 2024 (the APIR), which shows on the associated plan that trees to be removed on the eastern boundary are category B trees. Although the accompanying written survey lists them as Category C2, this discrepancy was not rectified until the applicant submitted a revised APIR on the 10 June 2024. It is not clear if the Council made any assessment of its own of the trees. However, the revised APIR was received by the Council prior to the consideration of the Committee on 24 July 2024. Hence the information should have been clarified and updated in the CR. This is unreasonable behaviour by the Council.
19. I accept that the Council's reason for refusal does not relate specifically to the category of tree to be removed or placed under pressure. However, this does not negate the fact that the CR was incorrect.
20. At paragraph 10.155 the CR states that "The submitted supporting BNG Assessment recommends that 'all boundary trees' are retained. However, the submitted layout plan seeks their removal contrary to the applicant's own Ecologist's advice. Such a proposal appears to be made on the assumption that such losses can be compensated. An assumption that is contrary to adopted policy." However, this is not contained in the Biodiversity Net Gain Assessment dated February 2024 which is before me. The Council do not comment on this matter, so I have to conclude again that this error is unreasonable behaviour.
21. I have found incidences of unreasonable behaviour. Principally these relate to the contents of the CR. In the case of the applicant's updates regarding distances and the way garden space had been calculated the CR could have been a lot clearer and fairer in the way the cases were reported. With regard to the category of trees to be removed and BNG the CR contained wrong information. In addition, although the Council considers that the correct planning balance was applied in the CR, it is my understanding that it is unable to demonstrate a five-year housing land supply. As a consequence, paragraph 11dii of the Framework is relevant and should have been applied. This was not done and is also unreasonable behaviour.
22. It may have been that had members had all of the information and the correct information and understood the benefits of the proposal they would have made a different decision, and an appeal would not have been necessary. However, I cannot be sure, especially given that there are 11 reasons for refusal and I have

agreed with the Council on some of them. Furthermore, even applying paragraph 11dii of the Framework I have concluded that the appeal should be dismissed. Moreover, regarding the matters on which I have agreed with the applicant, much of the information contained in the appeal statement had already been supplied to the Council during the course of the planning application. Consequently, I conclude that there has been no wasted or unnecessary expense.

23. The CR was published on the 10 July 2024, 5 working days before the meeting on the 21 July. The applicant states that this was the first that they were aware of five reasons for refusal that had not been raised in any correspondence or in the Teams meeting. Four of those reasons relating to the removal of trees, garden space, living conditions and Local Areas of play, the applicant believes are based on incorrect facts. I have already discussed these matters above. The fact that the applicant was not aware of the reasons for refusal is unhelpful but not unreasonable.
24. The National Planning Policy Framework states that local planning authorities (LPAs) should work pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. However, LPAs are also encouraged to determine planning applications within a strict timescale. Consequently, the Framework also promotes early engagement through good quality pre-application discussion which enables better coordination between public and private resources and improved outcomes for the community and enables the resolution of more issues. I understand in this instance no such preapplication was submitted. Furthermore, a Teams meeting was held between the applicant and the Council to discuss the application. Therefore, I do not consider the Council has acted unreasonably in terms of the informative on the decision notice.
25. The applicant considers that the Council's Statement of Case raises new reasons for refusal in respect of lack of infrastructure, Biodiversity Net Gain and flooding. However, the Council has raised BNG and flooding for information purposes, both can be adequately dealt with through the imposition of a condition. There is no unreasonable behaviour or wasted expense here.
26. The lack of an infrastructure contribution as required by Policy QP1b was not a reason for refusal but was referred to in paragraphs 10.170-10.173 of the CR. In addition, the applicant had submitted a draft S106 agreement to address these matters, but which was not progressed by the Council due to other unsurmountable issues. This is not therefore a surprise to the applicant. The fact that the matter was not included as a reason for refusal is unreasonable behaviour. However, there has been no wasted expense as the applicant would have had to prepare a legal agreement whether the proposal was granted or refused by the Committee.
27. The applicant submits that in most instances the proposals have been treated differently to those proposed on surrounding sites. It is true that a consistent approach is necessary to determining planning applications. However, in this case the site is within a development framework which has been applied to all of the applications within the allocation. I have determined the appeal in accordance with the evidence before me and my observations on site. I have considered evidence from other sites and applied it accordingly.

28. While I have disagreed with the Council in some instances, I have agreed with others and found harm. It is not the case therefore that the development should clearly have been permitted. Furthermore, I have been able to understand the Council's case from the submitted CR and its Statement of Case, with reference to policies from the development plan which clearly details the impacts and concerns. I have also found that there are no circumstances where a condition could reasonably have been applied instead of a reason for refusal.
29. For the reasons above I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application is refused.

Zoe Raygen

INSPECTOR

Richborough