



Appeal Decision

Site visit made on 7 March 2024

by **E Catchside BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 June 2024

Appeal Ref: APP/T0355/W/23/3329069

Courtleigh Manor and House, Lady Margaret Road, Sunningdale SL5 9QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Apricot Properties Ltd against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 21/02263.
 - The development proposed is demolition of existing apartment building and attached dwelling, and the erection of a replacement building containing 10 apartments with associated landscaping and basement parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing apartment building and attached dwelling, and the erection of a replacement building containing 10 apartments with associated landscaping and basement parking at Courtleigh Manor and House, Lady Margaret Road, Sunningdale SL5 9QH in accordance with the terms of the application, Ref 21/02263 subject to the conditions in the attached schedule.

Preliminary Matter

2. I have been provided with two versions of a unilateral undertaking (UU). The first version was undated, labelled as a draft, and contained a number of errors and omissions. Therefore, the UU would not be effective or enforceable and I have not had regard to it in my consideration of the appeal. The second version of the UU is signed and dated 20 April 2024. It sought to address the errors and omissions in the first version of the UU as well as concerns raised by the Council regarding the original wording of the obligations. The Council has been provided with the opportunity to comment on the revised UU as part of the appeal process, however no comments were received. I will set out my approach to the obligations contained within the UU later in this decision.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site is located on the corner of Lady Margaret Road and Charters Road, which falls within the 'Leafy Residential Suburbs' townscape type in the Royal Borough of Windsor and Maidenhead Townscape Assessment Volume 3: Ascot Group (June 2010) (TA). The area around the appeal site has many of the characteristics of the Leafy Residential Suburbs as described in the TA

- including its large buildings set well back from the road behind dense and high ornamental hedges, with gravel drives and gates. The existing buildings in the locality are typically 2-2.5 storey dwellings and apartment blocks. However, there are also commercial developments nearby, including a car sales garage.
5. There is little consistency in the appearance of existing buildings in the area including their architectural details, roof forms, fenestration, and materials. The individual style of the existing buildings is a distinctive feature of the area.
 6. The proposed apartment block would have a larger footprint than the existing buildings it would replace and, consequently, its building lines would extend closer to the boundaries with Lady Margaret Road and Charters Road. However, the proposed building would be sited in the centre of the appeal site, with private and communal amenity space at the edges. Consequently, and due to the generous size of the appeal site, the building would retain a setback from the highway of a similar depth to nearby dwellings on Charters Road and St James Gate. Sufficient private and communal gardens would also be provided for future occupants. Moreover, the majority of existing trees on the site and the boundary hedgerows would be retained, or otherwise replaced, as part of the development. Therefore, the leafy and spacious character of the area would be preserved.
 7. At 2.5 storeys high, the proposed development would have a similar height to other buildings in the local area and, due to the topography, its ridge height would sit at a lower level than the adjacent properties on St James Gate, and Clareways. Therefore, it would not be incongruous by way of its height in comparison to nearby properties. Moreover, whilst the building would be larger in scale than some other nearby apartment blocks, its appearance would be softened by the proposed mix of building heights, which are stepped on each elevation. This would ensure that the development would not appear bulkier than other local apartment buildings, including Clareways, Silverwood Grange and Laggan House. It would therefore not be unduly prominent in views from the public realm.
 8. Furthermore, the variety of architectural details, including roof forms and materials, as well as the door and window openings, are based on an 'Arts and Crafts' design, which is identified within the TA as being a distinctive building style within the Leafy Residential Suburbs townscape type. Consequently, the appearance of the building would reflect the mix of building styles in the local area and would respect local context.
 9. My attention has been drawn to another appeal decision on a site nearby (Appeal ref. APP/T0355/W/20/3257723, dated 23 March 2021), in which the Inspector notes the general character of the area along Lady Margaret Road is of large, detached properties set within spacious grounds with the hedgerow and trees to the front of the properties contributing to the area's attractive verdant character. I have, similarly, considered this appeal with regard to the local character, which I have described above.
 10. Overall, I conclude that the proposed development would not cause harm to the character and appearance of the local area. Therefore, there would be no conflict with Policy QP3 of the Borough Local Plan 2013-2033 (adopted 8 February 2022) (LP) and the Framework which, taken together and amongst other things, expect development to be of high-quality design that respects and enhances the local, national or historic character of the environment.

11. There would also be no conflict with Policy NP/DG2 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan 2011-2026 (adopted 29 April 2014) (NP) insofar as it expects development to be similar in density, footprint, separation, scale and bulk to the surrounding area and neighbouring properties, unless it can be demonstrated that the proposed development would not harm local character.
12. Policy NP/DG1 is not referenced on the decision notice but is referred to in the evidence, including in third party submissions. Because the proposed development would retain the character of the area, there would be no conflict with Policy NP/DG1 of the NP insofar as it allows for development other than low or very low density detached dwellings in the Leafy Residential Suburbs where the identified character of the area would be retained.

Appropriate Assessment

13. The appeal site lies within the zone of influence of the Thames Basin Heaths Special Protection Area (SPA), which is designated for its network of important bird conservation sites and, in particular, its populations of Dartford warbler, nightjar and woodlark. The principal pathway of impact on the SPA is from increased recreational impacts from visitors as well as the effects of urbanisation such as cat ownership, fires and litter dumping. From the evidence, the conservation objectives are to avoid and mitigate the impact of increased population around the Thames Basin Heaths SPA.
14. The Thames Basin Heaths are an important recreational resource, and it is likely that occupants of the proposed development would visit the SPA. Consequently, it is necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SPA.
15. The proposed development would increase the number of households in the area. Consequently, particularly when combined with other local developments, the proposal would have a likely significant effect on the SPA due to increased disturbance through recreational activity and urbanisation.
16. The parties have agreed a financial sum to be put towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM). Natural England has been consulted as part of this Appropriate Assessment and has stated that, subject to the aforementioned financial contributions, which would be sufficient to avoid an adverse impact on the integrity of the SPA, it has no objection to the scheme.
17. I am satisfied that the financial sum would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the proposed development. I therefore find that, subject to the proposed mitigation, the proposal would not result in an adverse effect on the integrity of the SPA.

Planning Obligation

18. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations), and the Framework, state that a planning obligation may only constitute a reason for granting planning permission if the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly related in scale and kind to the development.

19. I have been provided with a signed unilateral undertaking, which makes provision for the following:
- £30,820 towards SANG;
 - £2,204 towards SMM;
 - £8,032 building emissions contribution, £10,144 lifestyle contribution, and a shortfall contribution, each towards the Council's Carbon Offset Fund; and
 - An up-to-date financial viability appraisal (FVA).
20. SANG and SMM: Amongst other things, Policy NR4 of the LP requires appropriate contributions to be made towards the provision of SANG and SMM where new dwellings are delivered within 5km of the Thames Basin Heaths SPA.
21. Taking account of the consultation response from Natural England, and the approach to the application of mitigation measures set out in the Thames Basin Heaths Special Protection Area Supplementary Planning Document (Part 1) (July 2010), which is referenced in the supporting text to Policy NR4 of the LP, I am satisfied that the SANG and SMM contributions are required to mitigate the likely significant effects on the Thames Basin Heaths SPA. They are therefore necessary to accord with Policy NR4 of the LP and The Conservation of Habitats and Species Regulations 2017. These financial contributions therefore meet the tests contained in the CIL Regulations and the Framework.
22. Carbon Offset Fund: The two contributions towards the Council's Carbon Offset Fund are justified by the Council on the basis of Policy SP2 of the LP and the Position Statement on Sustainability and Energy Efficient Design (March 2021) (PSSEED). Policy SP2 of the LP, which was adopted after the publication of the PSSEED, requires all developments to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change but makes no reference to a carbon offset fund or planning obligations.
23. The PSSEED seeks for all developments to achieve net-zero carbon emissions and, where this cannot be met on-site, includes provision for a financial contribution to be made to the Carbon Offset Fund. However, on the basis of the evidence before me, the PSSEED has not been subject to formal public consultation and is not referenced in the adopted local plan.
24. The Planning Practice Guidance (PPG) states that policies for planning obligations should be set out in plans and examined in public. Moreover, the PPG goes on to state that it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination.
25. On this basis, and in the absence of any substantive evidence to indicate otherwise, I attach limited weight to the PSSEED. Consequently, I am not satisfied that it has been demonstrated that any of the obligations towards the Carbon Offset Fund are necessary to make the development acceptable in planning terms. These contributions would therefore fail to meet the tests contained within the CIL Regulations and the Framework, and I have not taken them into account in my decision.

26. FVA: No affordable housing is proposed as part of the appeal scheme. However, it is common ground between the parties that the provision of affordable housing would not be economically viable. Therefore, subject to a viability review mechanism being incorporated into a planning obligation, the Council did not object to the proposal on the basis of the lack of affordable housing.
27. The associated obligation before me would provide an up-to-date FVA prior to the commencement of the development. The drafting of the obligation seeks to address the Council's concerns with a previous iteration of the obligation in respect of its compliance with the requirements set out in the Affordable Housing Planning Guidance Document (AHPG) and the mechanism for the delivery of affordable housing. The obligation as now drafted makes specific reference to the criteria for FVAs in the AHPG. Therefore, I am satisfied that the FVA would be carried out in accordance with the requirements of the AHPG.
28. However, whilst the obligation makes some reference to proposals being prepared for on-site affordable housing and the transfer of monies, the wording is ambiguous and imprecise. Moreover, I am not persuaded that the obligation includes enforceable measures to secure the delivery of affordable housing in the event that the development is found to be financially viable. Consequently, I cannot be certain that the obligation as drafted would achieve what is intended and, therefore, it would not be effective.
29. The PPG states that plans should set out circumstances where review mechanisms may be appropriate as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. However, whilst Policy HO3 of the LP sets out the requirements for the provision of affordable housing, it does not require a viability review mechanism on sites that are not financially viable.
30. Some provision for securing a claw back via an overage clause is referenced in the AHPG. However, from the evidence, the AHPG pre-dates the LP and is not referred to in the supporting text of Policy HOU3 of the LP. Rather, the LP states that it is the Council's intention to produce an Affordable Housing Delivery Supplementary Planning Document (SPD) which, amongst other things, will set out the Council's advice on the open book approach to viability assessments.
31. There is no substantive evidence before me to indicate that the AHPG has been reviewed since the adoption of the LP, or that meaningful progress has been made on the Affordable Housing Delivery SPD. The Council concedes that the delivery of affordable housing would not be financially viable, therefore the conflict with Policy HOU3 of the LP would not justify refusal of planning permission. Based on the evidence, I have no reason to take a different view. Therefore, and in the absence of any substantive evidence to the contrary, I am not satisfied it has been demonstrated that an FVA review is necessary to make the development acceptable in planning terms. It would therefore fail to meet the tests contained within the CIL Regulations and the Framework.
32. Overall, since the obligations relating to the Carbon Offset Fund and FVA fail to meet all of the tests set out in the CIL Regulations, I am unable to take them into account in determining the appeal. However, I have taken account of the

obligations in respect of the SANG and SAMM, which are required to mitigate the effects of the development and to comply with policy.

Other Matters

33. Concerns have been raised about the effect of the proposal on the living conditions of the occupants of nearby dwellings, with particular regard to overshadowing, loss of daylight and sunlight, privacy, and noise disturbance from moving vehicles. However, there would be sufficient separation distance between the proposed building and neighbouring properties to protect the living conditions of existing residents. The details of balconies could also be secured through condition to ensure no undue overlooking would occur. Moreover, there is no substantive evidence before me to indicate that the noise from moving vehicles would be greater than that associated with other residential land uses in the area.
34. Whilst there may be some localised noise and disturbance associated with construction of the development, it would be for a temporary period and could be adequately controlled through appropriate construction management techniques. Therefore, this matter would not justify planning permission being withheld.
35. Third party concerns have been raised about the perceived inadequacy of the proposed parking provision. However, the evidence indicates that the development would comply with local maximum parking standards. The site is reasonably close to shops and services, as well as public transport connections. I am therefore satisfied that adequate parking provision would be provided for future occupants of the development.

Conditions

36. The Council has provided a list of suggested conditions, which I have considered against the tests set out in paragraph 56 of the Framework and the PPG. Where appropriate, I have adjusted the wording of the conditions to improve precision and enforceability. The parties have been provided with the opportunity to comment on the schedule of conditions, including the accuracy of the plan numbers referenced in condition 2. I have taken the comments received into account.
37. In addition to the standard time limit condition, I have attached a condition that defines the permitted plans to provide certainty.
38. In order to protect the character and appearance of the area, I have included a pre-commencement condition requiring the protection of trees during construction works. The condition is pre-commencement as it relates to the mitigation of harm during the construction period.
39. Further conditions that are necessary to protect the character and appearance of the area are included to require the retention of trees proposed to be retained, the submission of external materials and refuse and recycling facilities, and the implementation of the proposed means of enclosure.
40. In order to mitigate the risk of harm to protected species during the construction of the development, I have included a condition requiring the submission of a Construction Environmental Management Plan. This condition is pre-commencement as it relates to the construction period. Further conditions

that are necessary to protect and enhance biodiversity include the submission of details of lighting and biodiversity enhancement measures.

41. To prevent parking pressure on local roads and to encourage travel by sustainable modes, conditions are included to require the delivery of the proposed car parking spaces and bicycle parking facilities prior to the occupation of the development. However, whilst the Council suggested a condition should require the installation of electric vehicle charging points, this is now covered by separate legislation and a planning condition is therefore not necessary.
42. A condition requiring details of balcony elevations and materials to be submitted is required to protect the living conditions of residents occupying dwellings on St James Gate. The Council suggested this condition could be worded as a compliance condition. However, I have required details to be submitted to ensure the condition is precise and reasonable.
43. A condition is also included that requires the submission of a surface water drainage scheme, which is necessary to ensure the development incorporates sustainable drainage systems. The Council suggested this condition should be discharged prior to commencement of the development. However, it is not necessary to delay the development whilst details of the drainage are secured. Consequently, I have amended the trigger for the condition to require the drainage scheme to be implemented prior to occupation of the development.

Conclusion

44. The proposed development would conflict with the development plan in respect of affordable housing provision. However, the provision of affordable housing would not be financially viable, therefore this policy conflict would not justify the refusal of planning permission. I have not identified conflict with other development plan policies.
45. Therefore, I conclude that the proposed development is in accordance with the development plan. The material considerations do not indicate a decision should be made other than in accordance with the development plan. Therefore, for the reasons given above the appeal should be allowed.

E Catcheside

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LP Rev B, CP Rev C, 032, 001 Rev G, 010 Rev F, 011 Rev E, 012 Rev E, 013 Rev E, 014 Rev E, 015 Rev E, 016 Rev E, 017 Rev D, 018 Rev A, 750.02/03A, 750.02/02B, 750.2/04, 3467.1/02A.
- 3) No development shall commence, and no construction equipment, machinery or materials shall be brought to the site, until tree protection fencing has been erected in accordance with the details shown on approved plan no. 3467.1/02A. The tree protection fencing shall thereafter be retained for the duration of the construction period and until all construction equipment, machinery or materials have been permanently removed from the site. No mechanical digging shall take place, no items shall be stored or placed, and no alterations to ground levels or excavations shall take place, within areas protected by tree protection fencing for the duration of the construction period.
- 4) No development shall commence, including demolition, ground works and vegetation clearance until a Biodiversity Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The submitted CEMP shall include details of the measures to be taken to mitigate the risk of harm to protected species during the construction period, including:
 - A biodiversity risk assessment of potentially damaging construction activities.
 - The identification of any necessary biodiversity protection zones.
 - Practical measures, including physical measures and working practices, to be taken to avoid or reduce impacts on protected species during construction.
 - The location and timing of works that may cause harm to protected species.
 - Identification of an Ecological Clerk of Works.
 - Construction activities that would be overseen by an Ecological Clerk of Works.
 - Roles, responsibilities and necessary lines of communication to avoid harm to protected species.

The construction of the development shall thereafter be undertaken in accordance with the approved CEMP.

- 5) No development shall take place above slab level until details of the materials to be used on the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

- 6) The development shall not be occupied until all walls, fencing or other means of enclosure have been constructed in accordance with details that have first been submitted to and approved in writing by the local planning authority. All walls, fencing and other means of enclosure shall be retained in accordance with the approved details thereafter.
- 7) Notwithstanding the details shown on the approved plans, the development shall not be occupied until a refuse and recycling bin storage area or areas have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The refuse and recycling bin storage area(s) shall be retained in accordance with the approved details thereafter.
- 8) The development shall not be occupied until vehicle parking spaces have been provided in accordance with the details shown on approved plans 010 Rev F and 001 Rev G. The vehicle parking spaces shall be retained for vehicle parking thereafter.
- 9) The development shall not be occupied until covered and secure bicycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. The bicycle parking facilities shall be retained for the parking of bicycles thereafter.
- 10) The development shall not be occupied until biodiversity enhancement measures have been implemented in accordance with details that have first been submitted to and approved in writing by the local planning authority. The submitted details shall include the locations and specifications of biodiversity enhancements, including bat and bird boxes and native and wildlife friendly landscaping. The biodiversity enhancement measures shall be retained in accordance with the approved details thereafter.
- 11) The development shall not be occupied until a surface water drainage scheme, based on sustainable drainage principles, has been implemented at the site in accordance with details that have first been submitted to and approved in writing by the local planning authority. The submitted details shall include:
 - i. Full details of all components of the surface water drainage scheme, including dimensions, locations, gradients, invert levels, cover levels, and construction details,
 - ii. Supporting calculations, demonstrating compliance with DEFRA's Sustainable Drainage Systems: Non-Technical Standards for Sustainable Drainage Systems (March 2015) (or any subsequent version), and
 - iii. A management and maintenance regime for the surface water drainage scheme, including details of who has responsibility for implementing the management and maintenance regime.

The approved surface water drainage scheme shall be retained, managed and maintained in accordance with the approved details thereafter.
- 12) No tree or hedgerow shown to be retained on approved plan no. 750.02/03 Rev A shall be cut down, uprooted or destroyed, nor shall any retained tree be lopped or topped until the development has been occupied for at least

five years. Any tree or hedgerow that dies, is removed, or becomes seriously damaged or diseased within five years of the first occupation of the development shall be replaced in the next planting season with a tree or hedgerow of a similar size and species.

- 13) No external lighting shall be erected at the site until details of the external lighting have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- i. A lighting layout plan with beam orientation.
 - ii. A schedule of lighting equipment.
 - iii. Measures proposed to reduce glare.
 - iv. An isolux contour map showing light spillage to 1 lux both vertically and horizontally, along with details of ecologically sensitive areas.
 - v. Hours of operation of external lighting.

External lighting shall thereafter only be implemented in accordance with the approved details.

- 14) No balcony shall be erected on the rear elevation of the building hereby permitted, as shown on approved plan no. 016 Rev E until details of the balcony elevations and materials have been submitted to and approved in writing by the local planning authority. The submitted details shall include the locations and dimensions of privacy screens proposed to be installed on balconies facing St James Gate. The balconies shall thereafter be erected and retained in accordance with the approved details.