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## Appeal Decision

Site visit made on 16 March 2020

**by Ben Plenty BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 April 2020**

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**Appeal Ref: APP/W0340/W/19/3243640**

**1 Kennet Road, Newbury RG14 5JA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Simmons against the decision of West Berkshire Council.
  - The application Ref 19/01883/FULD, dated 16 July 2019, was refused by notice dated 12 December 2019.
  - The development proposed is the partial demolition and refurbishment of 1 Kennet Road, Newbury and the delivery of three new dwellings with associated parking and gardens.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr and Mrs Simmons against West Berkshire Council. This application is the subject of a separate Decision.

### Procedural matters

3. The application was refused on two grounds. However, the Council has since identified that the proposal would also be at risk of flooding being in flood zone 3. Consequently, the Council considers that the proposal would be contrary to policy CS16 of the West Berkshire Core Strategy 2006-2026 (2012) (CS) and would fail the sequential test of the National Planning Policy Framework (The Framework). As this is a significant point of dispute, I shall make this a further main issue of the decision.
4. The Council partly refused the proposal as it found the site to be within the Newbury Conservation Area. However, evidence has since established that only the footway adjacent to the appeal site is within the conservation area.

### Main Issues

5. Accordingly, the main issues are:
  - The effect of the proposed development on the character and appearance of the area, with particular regard to the adjacent Newbury Conservation Area (CA) and the setting of nearby listed buildings,
  - the effect of the proposal on the living conditions of future occupiers with particular regard to the provision of external space, and

- whether the proposal would comply with local and national policy which seeks to steer new development away from areas at the highest risk of flooding.

## **Reasons**

### *Character and appearance*

6. The appeal site is a corner plot adjacent to the junction of Kennet Road and Craven Road. Historic plans show that the appeal site was originally part of Westmills Farm. The plot was subdivided and by 1898 the farmland had been redeveloped. This created the row of dwellings that run along Craven Road. The corner garden of the appeal site is enclosed by hedging and includes a large wooden outbuilding. Consequently, the site presents a gap in built form that is largely enclosed and offers limited views in or out. The site therefore makes a neutral contribution to the character and appearance of the area.
7. The majority of the site is outside the CA, with only the footway within its boundary. The footway is proposed to be altered to create new crossovers. Several listed buildings along Craven Road are close to the appeal site and within the CA. The Framework identifies significance as 'the value of a heritage asset to this and future generations' and is derived 'not only from its physical presence, but also its setting'. It explains that elements of a setting may make a positive or negative contribution to its significance or may be neutral. Therefore, the question is whether change within their wider 'setting' would result in a loss of (or degrading to) their 'significance' as a heritage asset.
8. The significance of the CA partly derives from the extent of historic buildings and their connection with the original street layout of the town. The local street scene contains a variety of house-types, many being villa style housing. These are a combination of 2 and 3 storeys. In addition, the majority of local buildings are set close to the highway. These reinforce the established street pattern of shallow front gardens. They create a largely continuous building line along Craven Road and Kennet Road and form a relatively hard urban edge. Being set back away from Craven road, No's 34 Craven Road (No 34) and 1 Kennet Road are anomalous features in the street. These therefore contrast sharply with the established street pattern. Furthermore, although the appeal site presents a gap in the building line, it is enclosed. The gap therefore presents a void in built form rather than a conceived area of open space.
9. The proposal would result in the erection of a 3-storey building. The proposal includes projecting gable ends and two-storey bay windows. These complement the local built vernacular and add interest to the streetscene. The proposal would accordingly address the corner and the public realm with a considered and competent design. Furthermore, it is unconvincing that the corner or the vista of No 34 has particular importance or status in consideration of the historic development of the area. Accordingly, the proposal would have a positive effect on the setting of the CA.
10. The site is close to several grade II listed buildings including 29 and 31 Craven Road (No's 29 and 31) and 26 to 32 Craven Road (No's 26 to 32). No's 29 and 31 are a pair of double fronted dwellings on a corner site, these are significant due to their age and architectural detailing including distinctive diamond brick detailing. No's 26 to 32 are a pair of villas that are a combination of brick and render. These are also significant due to their age and architectural detailing.

Both of these groups are within a similar street pattern of built form with limited front gardens. Accordingly, the proposal would accord with this established pattern and scale of local development without dominating the existing character of the area. Consequently, the proposal would have a neutral impact on the significance of the listed buildings.

11. Taking the above into consideration, the proposed dwellings would occupy a site that conveys a neutral contribution to the character and appearance of the area. The proposal would follow the established and largely regular form of local development and include design features that would complement the local streetscene. The proposed development would therefore make a positive contribution to the character and appearance of the area.
12. Accordingly, in regard to its effect on the character and appearance of the area the proposal would satisfy policies CS14 and CS19 of the CS. These policies amongst other things require development to contribute positively to local distinctiveness, create a sense of place and to ensure development is appropriate in scale and design. Furthermore, the proposal would satisfy Part 2 of the Council's Quality Design Supplementary Planning Document (SPD) (2006). This seeks development that would respect building lines and encompass the rhythm and scale of frontages along the street.

#### *Living conditions*

13. The Council's Quality Design SPD refers to private amenity space. This states that the quality of space is of greater importance than its size but suggests appropriate garden sizes as a guide. This indicates that one- and two-bedroom flats should have access to 25 square metres per flat as communal garden space. It also states that dwellings with three or more bedrooms should have a garden of 100 square metres. However, the guidance also states that some flexibility in traditional garden standards is needed to accommodate higher densities.
14. The proposal would include a retained garden that would fall slightly below the stated threshold. However, both gardens are of rational and regular shape and would be of significant benefit to future occupiers. Furthermore, both would gain a reasonable degree of privacy and generally meet the aspirations of the Council's SPD to deliver good quality and private garden areas. Consequently, despite the minor deficiency of private space available for the retained dwelling, overall the proposal would achieve a quality design. Furthermore, as it would generally follow the scale and design of local development it would not appear as a cramped form of development.
15. As such, in regard to living conditions the proposal would satisfy policy CS14 of the CS. This seeks development to be high-quality and of a sustainable design. The proposal would also accord with the Council's Quality Design SPD which seeks development to provide good quality and suitable outdoor amenity space.

#### *Flood risk*

16. The site is within flood zone 3. The flood zone map indicates that this area benefits from flood protection measures that provides a 1% chance of flood in any given year and hence is at a reduced risk. However, policy CS16 of the CS states that areas that are subject to flood risk will only be acceptable for

development if it is demonstrated that there are no suitable and available alternative sites at lower risk of flooding. It also states that the sequential approach to development will be strictly applied across the district. It also explains that development would only be allowed in flood risk areas where a set of criteria can be satisfied. This includes requiring that benefits to the community outweigh the risk to flooding. The Council's drainage engineer<sup>1</sup> raised no objection to the proposal. However, this advice did not consider the issue of alternative sites or referred to community benefits that might satisfy the requirements of the policy.

17. The Planning Policy Guidance (The Guidance) identifies a risk-based approach to development and to keep development out of medium to high flood risk areas. It explains that the Sequential Test aims to steer development to areas with the lowest probability of flooding. The site has a high probability of flooding and the Council is satisfied that there are sites available in lower areas of risk. Table 3 of the Guidance identifies that development classified as 'more vulnerable development' within flood zone 3a would require an Exception Test. However, it also states that a Sequential Test should be applied first to guide development to flood zone 1, then zone 2 and then zone 3.
18. The Appellant's Flood Risk Assessment<sup>2</sup> (FRA) considers the Sequential Test and Exceptions Test. It concludes that it is not possible to relocate the development to a lesser zone as the entire site is within flood zone 3 and that there are no reasonably available sites in flood zones 1 or 2. However, the Sequential Test should not be constrained by land ownership or to the site itself. It should explore alternative sites to reduce the impact of development on areas of higher risk of flooding. Limited evidence has been provided to illustrate the reasons for not considering alternative sites or to explain why development could not be located on a site with a reduced risk of flooding. The proposed development would include the demolition of around half of the footprint of the existing dwelling and the removal of its driveway. However, the proposed permeable hardstanding and flood resilient and resistant construction methods would not outweigh the flood impact of development on the site. Furthermore, the Framework makes it clear that the Exceptions Test should only be applied once the Sequential Test is passed.
19. The Guidance states that the decision taker must be satisfied that the proposed development would be safe and would not lead to increased flood risk elsewhere. It is unconvincing that the latter would be satisfied. Therefore, the limited Sequential Test details are insufficient to illustrate that adequate consideration of alternative sites has been explored. I am therefore unconvinced that the arguments advanced in the FRA provide satisfactory analysis that sites in less vulnerable areas do not exist.
20. The appellant refers to other dwellings approved by the Council within the flood zone. However, these decisions were made between 2012 to 2018 and I am not satisfied that these were determined in a similar policy context. Further examples have been referenced by the appellant with respect to active cases where no objection was raised by the Council's drainage engineer. Although, these comments may illustrate some inconsistency in decision making, I am not satisfied that these have established a clear and determinative precedent.

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<sup>1</sup> Luke Barrett, Senior Engineer (Land Drainage) 23 August 2019

<sup>2</sup> Flood Risk Assessment and Drainage Strategy, SDS Consulting 2 July 2019

Furthermore, these matters do not obviate the requirement for this development to pass the Sequential Test.

21. Consequently, based on the evidence before me there is insufficient detail to conclude that there are no alternative, reasonably available sites appropriate for the proposed residential development in areas with a lower probability of flooding. Having regard to the precautionary principle, I am therefore unable to conclude that the appeal proposal has passed the Sequential Test.
22. Accordingly, in regard to the effect on flood risk, the proposal would fail policy CS16 of the CS. This seeks development to only be accepted in areas with a history of flooding if there are no suitable and available alternative sites at a lower risk of flooding. This policy is also consistent with the flood risk objectives of the Framework which require development to avoid inappropriate development in areas at risk of flooding.

### **Planning balance and conclusion**

23. Although I have not found harm to the character and appearance of the area or to the living conditions of future occupiers, these merits would not set aside the precautionary approach required to development in areas of flood risk advanced by the development plan. Accordingly, these merits do not indicate that a decision should be made other than in accordance with the development plan.
24. For the above reasons, the appeal is dismissed.

*Ben Plenty*

INSPECTOR