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## Appeal Decision

Site visit made on 12 November 2019

**by Neil Pope BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 December 2019

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**Appeal Ref: APP/J0350/W/19/3224244**

**17 to 31, Elmshott Lane, Slough, Berkshire, SL1 5QS.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mirenpass Limited against the decision of Slough Borough Council (the LPA).
  - The application Ref.P/04670/13, dated 20/6/18, was refused by notice dated 17/9/18.
  - The development proposed is the demolition of existing retail/residential buildings, construction of reconfigured retail/storage at ground floor, and the formation of 34 no. two-bedroom, self-contained flats and 85 no. one-bedroom, self-contained flats, at first, second, third and top floor levels, with associated parking at lower ground floor, and realigned access to Elmshott Lane.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. All matters of detail have been reserved for subsequent consideration. Other than the site location plan showing the land edged in a red colour (drawing ref. P-13) I have treated all other plans as being illustrative only.
3. The description of the proposed development on the Appeal Form and the LPA's decision notice is: *"Outline planning application with all matters reserved for the demolition of existing retail/residential buildings. Construction of five storey building and basement consisting of associated parking at basement level, retail/storage at ground floor level and the formation of 34 no. two-bedroom flats and 85 no. one-bedroom flats at first, second, third and fourth floor levels. Associated landscaping and realigned access to Elmshott Lane."*
4. As part of the appeal, the appellant has submitted some revised plans. These include a reduction in the number of proposed flats and revisions to the proposed mix. 4 three bedroom flats, 35 two bedroom flats and 75 one bedroom flats are now proposed. The proposed three bedroom flats would be on the first floor of the new building and no other flats would be 'remixed' on any other floors of the building. The revised plans also include alterations to some of the proposed communal and private gardens, adjustments to a proposed landscape area, enlargement of the proposed loading and servicing areas to the retail units, as well as alterations to the height of boundary trees.
5. Whilst I have already noted that the plans are illustrative only, the Planning Inspectorate's Procedural Guide to Appeals, amongst other things, advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by

the local planning authority. I am also mindful of the Wheatcroft principles<sup>1</sup> and the fact that the application attracted a large number of representations from interested parties, including many neighbouring residents.

6. There is little doubt in my mind that many, if not all, of those interested parties who commented on the application and the appeal would be likely to want the opportunity of commenting upon the amended plans. Whilst it was open to the appellant, when submitting the appeal, to undertake a process of consultation with interested parties in respect of these plans, this has not taken place<sup>2</sup>.
7. The amended plans involve material alterations. If I was to determine the appeal on the basis of these plans it could deprive those who should have been consulted on the changed development of the opportunity of such consultation and would be likely to cause prejudice. I have therefore determined the appeal on the basis of the description in the LPA's decision notice (and the Appeal Form) and the plans that were considered by the LPA at that time.
8. The LPA accepts that it is unable to demonstrate a five year supply of deliverable housing sites (HLS) and that the 'tilted balance', set out within paragraph 11(d) of the Framework, is engaged.
9. The appellant has submitted a planning obligation<sup>3</sup> (a unilateral undertaking [UU]) under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). Amongst other things, this includes financial contributions towards the cost of providing affordable housing elsewhere within the Borough, as well as educational and recreational infrastructure. It also includes transport obligations. If I was to allow the appeal it would be necessary to assess the UU against the tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
10. An application for an award of costs was made by the appellant against the LPA. This application is the subject of a separate Decision.

## **Main Issue**

11. The main issue is whether any adverse impacts of the proposal, having regard to: the likely effect upon the character and appearance of the area; the effect upon the living conditions of neighbouring residents<sup>4</sup>; the adequacy of living conditions for occupiers of the proposed flats; the effect upon highway safety along the local road network; flood risk; the provision of affordable housing and the need to help achieve inclusive and mixed communities and; the implications for infrastructure, air quality and crime prevention, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

## **Reasons**

### *Planning Policy*

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

<sup>2</sup> I also note the concerns of the LPA and some interested parties that the appellant chose to not engage residents in any pre-application consultation. Whilst my decision does not turn on this lack of engagement, paragraph 124 of the National Planning Policy Framework (the Framework) refers to effective engagement between applicants, communities and local planning authorities throughout the development process.

<sup>3</sup> I note that some of the obligations are based on the amended plans and the site plan in Schedule 4 of the UU does not identify the site in a red coloured edging as stated.

<sup>4</sup> With particular regard to the outlook and privacy of the occupiers of some residents in Patricia Close, Charlcot Mews and 33 Elmshott Lane.

12. The development plan includes the Slough Local Development Framework Core Strategy 2006-2026 (CS), which was adopted in 2008 and the 'saved' policies of the Slough Local Plan (LP), which was adopted in 2004. My attention has been drawn to numerous policies, all of which pre-date the Framework.
13. The most relevant development plan policies to the determination of this appeal are: LP policies EN1 (standard of design), H14 (amenity space), T2 (parking restraint), T8 (cycling network and facilities), S1 (retail hierarchy<sup>5</sup>) and; CS policies CP1 (spatial strategy), CP4 (type of housing), CP7 (transport), CP8 (sustainability) and CP10 (infrastructure). Whilst policies for the supply of housing are now out-of-date due to the HLS position, the above noted policies are broadly consistent with the provisions of the Framework.

### *Benefits*

14. The proposed development would increase the choice of housing within the Borough and assist in addressing the shortfall in housing land supply. In this regard, there is nothing to refute the appellant's argument that the LPA is only able to demonstrate 1.92 years HLS<sup>6</sup>. This is a very significant shortfall to which I attach considerable weight. The proposed net increase of over 100 dwellings on the appeal site would accord with the thrust of the Government's objective of boosting significantly the supply of housing and weighs heavily in favour of an approval. The site is also conveniently located with regard to services and facilities, including public transport such as the trains which stop at Burnham railway station<sup>7</sup> about 10 minutes walking distance away. The proposed development has the potential to reduce the need to travel by car.
15. The proposed retail element of the development would provide modern premises/facilities within this Neighbourhood shopping centre and continue to offer day-to-day services for the local community. It would accord with the provisions of LP policy S1. The proposals would also entail the more efficient use of previously-developed urban land. If the evidence submitted in support of the proposal indicates that it could be designed to a high standard, the development could enhance the appearance of the local area, including the street scene of this part of Elmshott Lane.
16. I attach considerable weight to the social, economic and potential environmental benefits of the proposals. However, as also provided for within the development plan and the Framework, new development must, amongst other things, create high quality buildings and places<sup>8</sup>, maintain an area's prevailing character and setting, as well as providing a high standard of amenity for existing and future users.

### *Character and Appearance*

17. As I noted during my visit, the appeal site lies within an area that contains a mix of uses. These include residential properties<sup>9</sup> of various types and styles, a primary school, library, churches and shops<sup>10</sup>. The buildings are mainly one

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<sup>5</sup> Elmshott Lane/Bath Road is identified as a Neighbourhood shopping centre/area.

<sup>6</sup> When the LPA determined the application it considered that it had about 6.5 years HLS.

<sup>7</sup> This will form part of the Crossrail Elizabeth line services.

<sup>8</sup> The National Design Guide, amongst other things, advises that well-designed places have an integrated mix of housing tenures and types to suit people at all stages of life and are well-integrated to be socially inclusive.

<sup>9</sup> The houses in Patricia Close are immediately adjacent to the north eastern and eastern boundaries of the site.

<sup>10</sup> These include a Co-op store (approximately 1,394m<sup>2</sup>) which occupies the southern part of the site and a small parade of shops (with flats above) that occupy part of the northern half of the site.

and two storeys high with the 3-4 storey block of flats at Charlcot Mews adjacent to the southern boundary of the site. Whilst the appeal site and the immediate surroundings do not possess any special<sup>11</sup> or distinctive qualities, the scale of the buildings and some of the spaces and trees around them soften the impact of development and are positive elements of the local environment. The western part of the site is prominent in the street scene of Elmshott Lane.

18. The proposed provision of over 100 dwellings on the appeal site together with approximately 2,165m<sup>2</sup> of retail floorspace would involve the erection of a very sizeable new building(s). The illustrative plans submitted with the application show a new five storey building with basement parking. The 'footprint' of this indicative building occupies the majority of the site and is shown extending almost the entire length of the Elmshott Lane frontage. Much of the remainder of the site is shown as vehicular accesses, loading/servicing areas and a 3m wide landscape buffer along some boundaries with neighbouring dwellings.
19. On behalf of the appellant, it has been calculated that the density of the existing residential development<sup>12</sup> on the site is 28 dwellings per hectare (dpa) and the density of the proposed housing would be 238 dpa. The new housing would be provided at a very high density and in all likelihood, would be much higher than anything else in the immediate area. It would be at odds with the provisions of CS policies CP1 and CP4 which include a requirement for high density housing to be located in Slough town centre. There is some doubt in my mind as to whether the increase in activity that would arise from having so many new one and two bedroom flats on this site could be successfully assimilated into the surroundings, which has a very different character to the town centre. Whilst this weighs against granting planning permission my decision does not turn on the issue of density.
20. Density calculations alone reveal little in terms of the likely impact on the character or appearance of an area. Furthermore, the Framework, in seeking the efficient use of previously-developed land, encourages building on or above service yards and car parks, as is proposed. Nevertheless, in this instance, the illustrative plans show that in addition to the extensive plot coverage, the likely height and massing of the new building would be very much greater than the neighbouring houses and the buildings on the opposite side of Elmshott Lane. It would also be significantly taller than Charlcot Mews. The proposal would introduce an uncharacteristically large building into this part of the Borough.
21. As shown on the submitted plans, the building could be designed so that its height and massing diminished closer to the boundary with the houses in Patricia Close. The upper storey could also be set back to reduce the impact of the massing along Elmshott Lane. However, I share the concerns of the LPA and some interested parties that the scale of building(s) necessary to accommodate the quantum of proposed development would be ill-fitting for this site and would detract from the positive elements of the local environment.
22. Developing part of the existing car park, the removal of the rather bland looking food store building and the new landscape planting (including street trees) has the potential to enhance the appearance of the area. Nevertheless, the height and very large mass of likely new building that would be required to

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<sup>11</sup> I note that Cippenham School is a locally listed building but I have not been informed of its heritage significance. The LPA accepts that the proposal would not harm the setting of this building.

<sup>12</sup> This comprises a mix of 1, 2 and 3 bedroom flats.

provide the proposed development, as well as the limited space that would be retained within the site would contrast awkwardly with neighbouring properties and have an unacceptable impact on the character and appearance of the area.

23. The proposal would not comprise a high standard of design that would be compatible or sympathetic to local character. It would conflict with CS policy CP8, LP policy EN1 and the provisions of the Framework that are aimed at achieving well-designed places. This harm weighs heavily against granting planning permission.

*Living Conditions (Neighbouring Residents)*

24. The proposed development would be in close proximity to numerous neighbouring properties. These include adjacent houses in Patricia Close<sup>13</sup>, some flats in Charlcot Mews and an upper floor flat at 33 Elmshott Lane. As I saw during my visit, there is limited boundary screening between the site and these properties. There are also numerous windows to habitable rooms within these neighbouring properties that face towards/overlook the site.
25. Although I did not view the appeal site from inside any neighbouring properties I was able to appreciate the relationship between these dwellings and the site whilst standing on and walking around the site. From many of the facing windows, the outlook is either onto the sizeable expanse of car park and/or the rear of the Co-op store and flats that occupy part of the western boundary of the site. It appeared to me that the outlook from many of these facing windows is not especially pleasant and for a few neighbouring residents, the close proximity of the solid walls of part of the Co-op building is unfortunate.
26. Any redevelopment of the appeal site would change the outlook for neighbouring residents. However, that is not to say this would be harmful. Moreover, given the pressure for additional housing within the Borough and established planning policies that encourage the more efficient use of urban land for housing, it is perhaps almost inevitable that neighbouring residents could reasonably expect some change in outlook from their properties.
27. The illustrative drawings submitted with the application indicate that a new building could be stacked in height, with the tallest part along the Elmshott Lane frontage. For neighbouring residents in Patricia Close the mass of any such building would diminish closer to the common boundary and could be set back an adequate distance, with a landscape buffer, so as to avoid any overbearing or oppressive effects or any harmful loss of light.
28. For some residents of Charlcot Mews, the submitted drawings indicate that the upper floors of the new building would be closer to the common boundary than would be the case for the residents of Patricia Close. However, this existing neighbouring block of flats is set back a meaningful distance from the boundary with the appeal site and there would be adequate separation<sup>14</sup> from the proposed flats and retail premises to prevent any harmful loss of outlook.
29. However, the situation is likely to be very different for the occupiers of the upper floor flat in 33 Elmshott Lane, which is only a very short distance from the common boundary with the appeal site. The illustrative drawings show the proposed building very close to this boundary. At four storeys high the likely

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<sup>13</sup> Nos. 19, 21, 23, 25, 27, 59, 61, 63 and 65.

<sup>14</sup> On behalf of the appellant, it has been calculated that a distance of 21m could be achieved.

mass of the proposal would dominate the outlook from the facing windows and appear overbearing and oppressive for the occupiers of this neighbouring flat. It would be very unlikely to provide a high standard of amenity for existing residents. Whilst this harmful impact alone would be insufficient to dismiss the appeal, it adds moderate weight to the argument for withholding permission.

30. The illustrative plans indicate that there would be some direct overlooking between some habitable windows and garden areas in the proposed flats and some rooms and rear gardens in some neighbouring properties. However, the degree of separation between these windows and gardens of properties in Patricia Close and Charlcot Mews would be sufficient to avoid any serious loss of privacy for neighbouring residents. Some screen fencing could be provided around some of the proposed garden areas and it is not uncommon in urban areas for residential properties to be overlooked in the manner that would be likely to occur if the appeal was allowed.
31. However, for the occupiers of the first floor flat in 33 Elmshott Lane, the illustrative plans indicate that there would be facing windows to some habitable rooms a very short distance away from what appear to be habitable rooms in this neighbouring flat. This would produce an uncomfortable relationship between some of the proposed flats and No.33 and, in all likelihood, a harmful loss of privacy for these neighbouring residents. This also weighs against granting planning permission.
32. Whilst the proposed development would remove the existing sizeable parking area<sup>15</sup> and could improve the outlook for some neighbouring residents, there would be much activity and noise from motor vehicles on this part of the site. Any potential benefits to the living conditions of those living in Patricia Close and Charlcot Mews would not outweigh the likely harm to the living conditions of the occupiers of No.33 Elmshott Lane that I have identified above.

#### *Living Conditions (Future Occupiers)*

33. I have found above that whilst there would be mutual overlooking between some neighbouring properties and some of the proposed flats, in the main, the extent of separation would be sufficient to avoid any serious issues regarding privacy. However, the illustrative plans indicate that some first and second floor flats immediately adjacent to 33 Elmshott Lane would have windows to habitable rooms in very close proximity to existing facing windows in this neighbouring flat. This would be likely to result in some incoming residents feeling uncomfortable in their properties due to the potential overlooking. I concur with the LPA that the proposal would result in inadequate amenity for some future occupiers. This also weighs against granting permission.
34. I note from the LPA's officer report that the kitchens to a number of the proposed two bedroom flats would not have a window and would be at odds with the LPA's guidelines. I have not been provided with a copy of these guidelines and, as the name suggests, they are guidance only. On behalf of the appellant, it has been argued that the national minimum space standards do not require external kitchen windows in two bedroom flats. Be that as it may, incoming residents could reasonably be expected to spend much time in their kitchens. The illustrative plans suggest that these habitable spaces are

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<sup>15</sup> Approximately 70 parking spaces.

likely to be quite gloomy living spaces. With so many flats proposed, it is very far from certain that this could be resolved by way of reserved matters.

35. The proposed development could be designed to include adequate private and communal amenity spaces for incoming residents. During my visit, I also noted the close proximity of the appeal site to existing areas of public open space. There would be no conflict with LP policy H14.

#### *Flood Risk*

36. In refusing permission the LPA argued that it has not been demonstrated that the proposals would not have an unacceptable impact on surface water drainage. In this regard, it is important to ensure that new development does not increase the risk of flooding. I note that the appellant's Flood Risk Assessment and Drainage Strategy (FRADS) is dated March 2019. This identifies the appeal site within Flood Zone 1 (low risk of fluvial flooding) and in an area where there is a low to medium risk of surface water flooding, as shown on maps produced on behalf of the Environment Agency.
37. The proposed drainage strategy for the site would include storing surface water runoff in 2m deep geocellular tanks before discharging runoff at a restricted rate. On behalf of the appellant, a 30% betterment is predicted over the existing surface water runoff rate. The proposed green roofs and the 3m wide buffer landscape strip would also assist in intercepting surface water flows. This would all be managed by a robust maintenance regime, the details of which would be available at reserved matters stage.
38. Whilst the FRADS post-dates the LPA's decision notice, the evidence submitted in support of the appeal indicates that the proposed development would be unlikely to increase the risk of flooding. This matter could be addressed by way of a suitably worded planning condition.

#### *Highway Safety*

39. The appeal site lies along a section of Elmshott Lane that is subject to a 20mph speed limit and which includes speed humps, a pedestrian crossing and on street parking restrictions. In addition to the site's convenient location, which would avoid the need for most incoming residents to require access to a motor car, the appellant's Transport Assessment indicates that over the last five years this section of the public highway has not been the subject of any cluster of road safety incidents such to render it as unsafe or especially dangerous. As I saw during my visit, visibility at the site accesses is also satisfactory.
40. The proposed development would generate a significant increase in the number of person trips to and from the site. However, most of these would be undertaken by walking, cycling and/or public transport, which would be supported by a Travel Plan/Sustainable Travel Information Pack. The illustrative layout indicates that adequate basement car parking<sup>16</sup> could be provided for visitors and to limit the risk of any significant increase pressure for on-street parking arising from the modest increase in retail space. The illustrative layout plan also indicates that there would be sufficient space for secure covered cycle parking for use by incoming residents, as well as space for the loading and manoeuvring of delivery and refuse lorries<sup>17</sup>.

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<sup>16</sup> On behalf of the appellant, it has been calculated that there would be 30 additional spaces.

<sup>17</sup> There is also adequate space available to undertake any necessary adjustments to the access ramps.

41. Whilst noting the concerns of the LPA and a number of interested parties, there is a greater weight of evidence to support the appellant's argument that notwithstanding the site's close proximity to Cippenham Primary School, the proposals would not significantly increase congestion along Elmshott Lane or have any unacceptable impact on highway safety interests. There would be no severe residual cumulative impacts on the road network. The proposals would accord with the aims and objectives of LP policies T2 and T8 and CS policy CP7.

*Affordable Housing / Mix of Housing*

42. Although there is limited information before me regarding the housing needs of the local community, it would be very surprising to discover if there was anything other than an urgent need for affordable housing within the Borough. In this regard, LP policy CP4 includes a requirement, for the amount of affordable housing to be between 30% and 40% and emphasis on family housing. The supporting text to this policy states that the exact type and amount of affordable housing will depend upon a number of site specific factors and will be complicated by the need to obtain large family accommodation, which may affect the overall percentage of units. The Framework expects affordable housing to be met on-site unless an appropriate financial contribution in lieu can be robustly justified and contributes to the objective of creating mixed and balanced communities.
43. I note that the proposed development would entail the loss of 4 three bedroom flats. Whilst that in itself is unlikely to be harmful, the proposed mix of one and two bedroom flats would do little, if anything, to meet the aims of LP policy CP4 in providing family housing or to satisfy the objective of creating mixed and balanced communities.
44. In addition to the above, it is not the intention to provide any affordable housing on site. In this regard, on behalf of the appellant, it is argued that *"it is confirmed (and well established in the market) that a single apartment block is of no interest to an RSL due to management issues, service charges etc. It will not be practical or viable therefore to provide an on-site provision of traditional, RSL-type affordable housing."* Instead, a financial contribution towards the cost of providing 34 affordable units off-site has been submitted.
45. I appreciate the difficulties for a Registered Social Landlord of managing affordable housing as part of a single building block with market housing. However, it is by no means certain that the appeal site would need to be redeveloped as a single building (it currently comprises several different blocks) and there is no viability assessment to demonstrate that it would be unviable to redevelop the site with an element of on-site affordable housing.
46. The proposed mix and type of housing and lack of robust evidence to justify not providing any affordable housing on site is at odds with the provisions of the development plan and the Framework. This also weighs against granting planning permission.

*Infrastructure, Air Quality and Crime Prevention*

47. The proposed development would almost certainly result in some increase in pressure on existing infrastructure such as schools and recreation facilities, as well as some very modest increase in motor vehicle emissions. The development would also need to be designed so as to limit the potential for any



crime and/or anti-social behaviour. However, I have not been informed of any capacity issues at local schools or deficiencies to existing recreational facilities. There is also nothing to demonstrate any harmful impact to such facilities if the appeal scheme was permitted. I also understand that the site does not lie within an Air Quality Management Area and no cogent evidence has been submitted to demonstrate that existing or incoming residents would suffer unacceptable exposure to air pollution. The reserved matters/detailed design would also be appropriate stage for resolving any crime/security issues.

48. The proposal would accord with the provisions of LP policy CP10.

#### *Other Matters*

49. I note that some other high density housing schemes have been permitted elsewhere within the Borough and outside the town centre. However, no two sites and their surroundings are the same and there are likely to have been material differences that led the LPA to the decisions it made. Whatever the actual circumstances, these previous decisions do not set a precedent that I must follow. I have determined the appeal on its own merits.

50. Some interested parties have expressed concerns over the loss of local businesses/amenities and an increase in pressure on local GP practices. I appreciate the role the existing Co-op store and other shops play in serving the local community. However, the proposal would include a small increase in the amount of retail floorspace on the site and it may be possible for some existing retailers to resume trading as part of the completed scheme. Even if existing businesses relocated elsewhere, there is no cogent evidence to demonstrate that this would harm the local community. There is also nothing from local health service providers to indicate that existing GP practices would be unable to cope with the influx of new residents.

#### *Planning Balance/Overall Conclusion*

51. The adverse impacts of the development upon the character and appearance of the area, as well as the harm to the living conditions of the occupiers of 33 Elmshott Lane, the inadequate living conditions for occupiers of some of the proposed flats, the proposed affordable arrangements and the intended mix of housing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

52. I have found that the proposal would accord with some aspects of the CS and LP but conflict with other policies. Whilst the development plan recognises the importance of providing sufficient housing to meet the needs and demands of the local community this is not to be achieved at the expense of improving the environment of the Borough and the quality of life for residents. When considered overall, the proposal conflicts with the development plan. It would not comprise sustainable development and the appeal should not therefore succeed.

*Neil Pope*

Inspector