
Appeal Decision

Site visit made on 14 September 2016

by Siobhan Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 September 2016

Appeal Ref: APP/T0355/W/16/3154088

Garage Site, South West of Lynwood Cottages, Robin Willis Way, Windsor, SL4 2PX

- The appeal is made by Mr Christopher Andrews under section 78 of the Town and Country Planning Act 1990 against the failure of the Royal Borough of Windsor and Maidenhead to give notice within the prescribed period of a decision on an application for planning permission.
 - The application Ref 16/01175 was dated 7 April 2016.
 - The development proposed is the demolition of existing garage block and the construction of 4 linked studio dwellings.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development upon (i) the character and appearance of the area; (ii) highway safety; and (iii) flood risk.

Reasons

Character and Appearance

3. The site is a block of garages away from the main road frontage and located along an access track leading to a recreation ground. Including the garage block, there are a number of different types and styles of buildings in the vicinity ranging through from a bungalow, 2-storey dwellings with hipped or gabled roofs, and a long parade of shops. Given the variety of building styles and scale in the vicinity, I consider that the proposed dwellings would simply add to the mix. Whilst the plots would be smaller than surrounding residential plots, I have no reason to conclude that this difference would cause any harm to the area.
4. I therefore conclude that the proposed development would not harm the character and appearance of the area. Consequently, I find no conflict with Policies DG1, H11 and N6 of the Royal Borough of Windsor and Maidenhead Local Plan (LP) which seek to protect character and appearance.

Highway Safety

5. Each dwelling would have an off road parking space, however, there is a gate across the access track leading to the site which is locked by the Parish Council between 8pm and 7am. I do not have sufficient evidence before me to confirm either way whether or not the future occupiers of the dwellings would be
-

entitled to have a key to that gate. Nevertheless, even if access were blocked at night, at worst, only 4 cars would be displaced onto the surrounding highway. I have no technical evidence that this would cause a danger to motorists or pedestrians.

6. I conclude that the proposed development would not have a harmful effect upon highway safety. Consequently, there would be no conflict with the aims and objectives of LP Policies P4 and T5 which are that development should not harm highway safety and should have adequate car parking.

Flooding

7. The Framework says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The aim of the Sequential Test (ST) is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
8. If, following application of the ST, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test (ET) can be applied. The ET is not carried out if the ST is not "passed".
9. Whilst I note the appellant's query over whether or not the site is in Flood Zone 2 or 3, the information before me, including that contained in the Flood Risk Assessment, suggests that the site is within Flood Zone 3a where development of this type must pass the ST.
10. In his ST, the appellant has identified a large number of small windfall sites and I agree that this approach is correct. However, all of these sites have been discounted for a variety of reasons. Some have valid reasons such as being Listed Buildings, because they are not of a suitable size or have a history of being refused planning permission. However, some have been discounted for being unavailable to the appellant because they are being pursued by other parties. In my opinion, a "reasonably available" site is not one which is only available to the appellant; it is a site which is available to the community at large. National guidance does not specify that sites should be suitable, developable and deliverable only by the applicant or appellant.
11. Furthermore, whilst the appellant has discounted a number of sites of a comparable size to the appeal site as being unsuitable, evidence of their unsuitability is lacking. For example, just because a site has planning permission for a detached dwelling or flats does not mean that it is automatically unsuitable for 4 studio dwellings instead.
12. For these reasons, I consider the ST to be flawed. It has not therefore been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
13. In the light of my conclusions on the ST, which indicate the proposed development is unacceptable in principle, it is not necessary for me to consider whether it would pass the ET. Furthermore, I do not need to consider whether the development would be appropriately flood resilient and resistant or whether any residual risk could be safely managed.

14. I therefore conclude that the proposed development would be subject to unacceptable flood-risk and would therefore be contrary to LP Policy F1 which seeks to ensure that there is not an increase in the number of properties at risk from flooding.

Other Matters

15. The Council has confirmed that it cannot demonstrate an up to date supply of land for housing. However, whilst LP Policy F1 can be considered to be out of date, this does not mean it is irrelevant or should be disregarded. The proposal, being studio dwellings, would make a small contribution to the Borough's supply and mix of housing on a brownfield site close to shops and services. However, I do not consider that these factors would outweigh the risk to homes and people that arise by building within an area of flood risk.
16. I do not agree with the appellant that the garages are unsightly and I have no real evidence that they are a gathering point for people displaying anti-social behaviour. I am also unconvinced that the dwellings would result in a material benefit to the security of the area. I have considered the representations from interested parties but none outweigh my above findings.

Conclusion

17. For the above reasons the appeal is dismissed.

Siobhan Watson

INSPECTOR