

Appeal Decision

Site visit made on 21 November 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 7th December 2016

Appeal Ref: APP/T0355/W/16/3154594

Land between 9 and 15 Fairfield Approach, Wraysbury, Staines TW19 5DP

- 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 Ranjit Singh Khinda against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/01352, dated 21 April 2016, was refused by notice dated 28 June 2016.
 - The development proposed is the erection of a detached dwelling-house.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Shortly after the application was determined, the Council made a Modification Order ('the Order') under the provisions of Section 53(2)(b) of the Wildlife and Countryside Act 1981 in relation to an unmade track that runs centrally through the appeal site. As objections to the Order have been received, the matter is to be referred to the Secretary of State. I have not been made aware of the current status of the Order although at the time of its preparation the Council's appeal statement indicates that the date of referral is yet to be confirmed. Notwithstanding this, such a matter falls outside the scope of this appeal decision and I have dealt with it solely on the planning merits of the case as defined in the main issues below.

Main Issues

3. The main issues in this appeal are (i) the consequences of the proposed development on flood risk; and (ii) the effects on protected species.

Reasons

4. The appeal site is an overgrown area of land sitting between existing residential properties with physically unrestricted access to a large area of open land at the rear.

Flood risk

5. Development at risk of flooding should be avoided by directing it away from areas at highest flood risk. An area at risk of flooding means land within Flood Zones 2 and 3 or land within Flood Zone 1 where it has critical drainage problems. The appeal site is within Flood Zone 3 which has a high probability
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- of flooding. The appellant argues that the proposed dwelling itself would not be within the functional flood plain and would instead be within Flood Zone 3a.
6. Nevertheless, the site as a whole remains in Flood Zone 3 and the sequential test needs to be applied with the aim of steering new development to Flood Zone 1. Where there are no reasonably available sites in Flood Zone 1, the determination of planning applications for development should take into account the flood risk vulnerability of the land use (defined by Table 2¹ in the Technical Guidance in Planning Practice Guidance (PPG)) and consider reasonably available sites in Flood Zone 2 applying the exception test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered. Table 2 classifies a residential use as being 'more vulnerable' to the risk of flooding.
 7. The submitted sequential test covers a relatively modest area of search around Wraysbury and there is no clear methodology that sets out the reasoning for such a limitation. I note the appellant's argument in respect of the area of Green Belt within the Royal Borough. However, this does not necessarily count against a proposed development where it would meet one or more of the exceptions set out in paragraph 89 of the National Planning Policy Framework (the Framework) and any relevant Green Belt policies of the development plan. Moreover, there is no substantive evidence to indicate over what period the approach to local estate agents was made in the attempt to find alternative sites.
 8. I have also had regard to the appellant's examination of sites in the Council's Strategic Housing Land Availability Assessment (SHLAA). However, the SHLAA is what it says it is – a strategic document. It does not and cannot set out to identify individual windfall sites that may come forward on land not ultimately allocated for development. I therefore consider that this is an inappropriate mechanism for identifying an alternative site in relation to the type of development represented by appeal proposal.
 9. The available evidence does not, therefore, provide any reasonable certainty of there being no alternative sites in Flood Zones 1 or 2 or indeed elsewhere in Flood Zone 3, but on land that is at lower risk of flooding than the appeal site.
 10. In view of the limited information provided and given the seriousness of the consequences of flooding, I am not satisfied that the sequential test has been passed. As such, the exception test does not fall to be considered. To conclude on this first main issue, the proposal runs counter to the key flood risk objectives of saved Policy F1 of The Royal Borough of Windsor and Maidenhead Local Plan (2003) (LP). Although the LP pre-dates the Framework, the objectives of the policy are in accordance with it and therefore attract full weight.

Protected species

11. The Council contends that the surrounding area may provide a suitable habitat for reptiles and, in particular that Grass Snakes have been recorded within 750m of the appeal site. Given the character of the surroundings, I have no reason to disagree. Indeed, the appellant has submitted an Ecological Survey, which has identified that the unmanaged vegetation and dumped material on

¹ Paragraph: 066 Reference ID: 7-066-20140306

the site has some potential to act as terrestrial habitat for reptiles and amphibians.

12. Although no such species were recorded, the survey is dated December 2015, which is during one of the periods of the year where surveying for reptiles should be avoided. Accordingly, the available evidence on the presence or otherwise of reptile habitats is inconclusive.
13. Notwithstanding the above, I do not share the Council's view that this matter could only be addressed prior to the grant of planning permission. The Ecology Survey makes a number of recommendations to deal with a situation where reptiles were found to be on the site and I am satisfied that these could be secured by the use of a suitably worded planning condition were I to allow the appeal.
14. I have also taken account of the level of disturbance from passers by using the, clearly well-used, footpath through the site. In my view, this reduces the likelihood of the presence of reptiles.
15. On the basis of the available evidence, I therefore find that the proposal would not result in residual harm to protected species. However, the absence of such harm is insufficient to outweigh my conclusions on the first main issue.

Conclusion

16. For the above reasons and having had regard to all other matters raised, the appeal does not succeed.

Hayden Baugh-Jones

Inspector