
Appeal Decision

Site visit made on 16 October 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 17th November 2017

Appeal Ref: APP/T0355/W/17/3179164

Ann Cherry Cottage, Howe Lane, Binfield, Bracknell RG42 5QS

- 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 Muir against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 17/00524, dated 8 February 2017, was refused by notice dated 9 June 2017.
 - The development proposed is a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at Ann Cherry Cottage, Howe Lane, Binfield, Bracknell RG42 5QS in accordance with the terms of the application, Ref 17/00524, dated 8 February 2017, and the plans submitted with it, subject to the conditions on the schedule below.

Application for costs

2. An application for costs was made by Mr Muir against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - whether the proposal would be inappropriate development in the Green Belt;
 - its effect on the openness of the Green Belt;
 - whether it would increase flood risk elsewhere;
 - if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

4. The National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and
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should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate development in the Green Belt. A number of exceptions to this are set out in paragraph 89. Of these, the most relevant is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

5. Saved policy GB1 of the Royal Borough of Windsor and Maidenhead Local Plan (incorporating alterations adopted in June 2003) (LP) sets out the criteria for development in the Green Belt and refers to LP policy GB3. This policy, and policy GB2 which concerns the criteria for replacement dwellings in the Green Belt, are more prescriptive than the Framework which limits the weight I can accord them.
6. The proposed house would be taller than the bungalow, occupy a larger footprint and its floor area would be substantially greater (308m² compared to around 100m²). The proposal would be materially larger than the building it would replace. The appellant accepts that it would be inappropriate development in the Green Belt. I have no reason to disagree.
7. The proposal would therefore be inappropriate development in the Green Belt. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances.

Openness of the Green Belt

8. The Framework states that openness is one of the essential characteristics of Green Belts. Openness is generally considered to be the absence of built development. The increase in the volume of development on the appeal site, when compared with the existing situation, would reduce the amount of space not occupied by built form, and thereby diminish the openness of the Green Belt. While the loss of openness would be moderate, this weighs substantially against the proposal which would be in conflict with LP policy GB2 which resists permission for replacement development which has a greater impact on openness, as well as the policies in the Framework.

Flood risk

9. The site lies in Flood Risk Zone 3, an area with an annual probability of flooding greater than 1 in 100. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in areas at risk of flooding, it should be made safe, without increasing flood risk elsewhere. To achieve this, the Framework advocates a Sequential Test to steer new development to areas with the lowest probability of flooding. If, after the application of the Sequential Test, it is not possible for development to be located in zones with a lower probability of flooding, an Exception Test can be applied comprising two elements:
 - *It must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a SFRA where one has been prepared; and,*
 - *A site-specific Flood Risk Assessment (FRA) must demonstrate that the development will be safe for its lifetime taking account of the vulnerability*

of its users, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

10. For a development to be permitted, both elements of the Exception Test must be passed, and it has to be demonstrated that, amongst other things, the development is appropriately flood resilient and resistant, including having safe access and escape routes where required, and that any residual risk can be safely managed.
11. LP policy F1 prevents development within the area liable to flood unless it is shown that the proposal would not impede the flow of flood water or reduce the capacity of the flood plain to store water or increase the number of people at risk.

The Sequential Test

12. The Council considers that the proposal passes the Sequential Test. Given the redevelopment nature of the proposal, I have no reason to disagree.

The Exception Test

13. However, it concludes that it fails the Exception Test because it would impede the flow of flood water or reduce the capacity of the flood plain to store water. Moreover, the Council considers that it would not provide wider benefits to the community that outweigh flood risk.
14. The level of water in a 1% Annual Exceedance Probability event on the site is estimated to be 40.8m above Ordnance Datum (AOD), substantially above the floor level of the existing bungalow, which is 40.48m. While the access and egress to the site would not change, the ground floor of the house is proposed to be 41.4m AOD; well above the flood level and including a 400mm freeboard. In addition, the sleeping accommodation would be set at first floor, rather than on the ground floor.
15. The opportunity for a replacement house to provide wider sustainability benefits to the community is limited. However, the raising of the floor level would make the house a more sustainable dwelling in that its occupants would be less affected by flooding. A house constructed to modern standards also offers the opportunity for long term carbon savings over the existing building. In these respects the proposed house would contribute to the sustainability of the community of which it is a part. The first part of the Exception Test is passed.
16. Notwithstanding this, the existing bungalow has a footprint of around 12m x 7.6m. The footprint of the proposed house would be around 221m². This increase would be likely to have an adverse effect on the capacity of the flood plain to store water and it may impede its flow, thereby increasing flood risk elsewhere. The second part of the Exception Test is therefore failed.

Fallback position

17. However, the appellant claims a fallback position from his right to complete extensions (PD) to the existing bungalow which have already commenced and which are covered by a Certificate of Lawfulness of Proposed Development¹.

¹ LPA Ref:15/01310/CPD of 8 July 2015

The footprint of the appeal proposal compared to the PD scheme would be smaller by 185m². It would be likely to increase substantially the flood plain capacity and to have a lesser effect on the movement of flood water compared to the PD scheme. The appeal proposal would include significant benefits in terms of safety and flood risk; the ground floor would be raised above the estimated flood level and the sleeping accommodation would be at first floor level.

18. The Council acknowledges the benefits of the proposal over the PD scheme in terms of flood risk. However, because of the lack of progress since digging the footings of the PD scheme, it does not attach significant weight to the fallback position. However, the appellant is adamant that he intends to develop the property, whether that is by completing the PD scheme or by building the appeal proposal. Like the appeal proposal, the PD scheme would provide an additional bedroom and greater living space than the existing bungalow. Given the pressing need for housing in south-east England, and that both schemes would achieve similar floor areas, I consider that there is a greater than theoretical possibility that the fallback scheme would be completed, were the appeal to be dismissed.
19. I attribute substantial weight to the prospect of the completion of the PD scheme, which would be negated by the development of the proposed house with its far smaller impact on the storage of flood water in the flood plain and its significant benefits in terms of safety in the event of flooding. It would reduce flood risk overall. I note that, on the basis of the fallback position, the Environment Agency did not object to the proposal.
20. On the basis of the fallback position, the increase in flood risk elsewhere from the appeal proposal is justified, and there would be no conflict with LP policy F1 and the Framework.

Other considerations

21. The Framework advises that inappropriate development in the Green Belt should not be approved, except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
22. I have already found the completion of the PD scheme to be a realistic prospect and weighed its impact on flood risk against this proposal. In terms of the effect on openness, the appeal proposal, while being taller than the bungalow, would concentrate its mass over a compact footprint and its siting would provide greater gaps across the relatively narrow plot than the PD scheme. The roofs of the appeal scheme would be hipped and their eaves low. The PD scheme by contrast, would have a greater volume, footprint and floor area than the appeal proposal. While it would be only single storey, the PD scheme would tend to close the gaps to the sides of the plot.
23. The difference in the effects on openness between the proposed and fallback schemes is finely balanced. However, in my assessment, the PD scheme would have a greater impact on openness than the appeal proposal. This reflects the conclusion of the Council. Balanced against the moderate harm to openness and the reduction in flood storage from the proposal, the fallback position

provides substantial weight in favour of the proposal and justifies the limited conflict with LP policies GB1, GB2, GB3 and the Framework.

24. Overall, the benefits of the appeal scheme over the fallback position clearly outweigh the totality of the harm I have identified and amount to the very special circumstances necessary to justify inappropriate development in the Green Belt.

Conditions

25. I have considered the conditions suggested by the Council against the advice in the Planning Practice Guidance. I have imposed a condition specifying the approved plans to provide certainty. A materials condition is necessary to ensure the satisfactory appearance of the development. Given the size of the proposal, this should be resolved before commencement to ensure effectiveness. In the interests of protecting the openness of the Green Belt and to reduce the loss of flood plain storage, a condition restricting permitted development is necessary. A condition securing the minimum floor level of the development to mitigate the risks from flooding is reasonable and necessary.

Conclusion

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Patrick Whelan

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; 1039/15/2 Existing Floor Plan and Elevations; 1039/15/3 Existing Roof Plan; 1065/16/1B Proposed Planning.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) The level of the finished ground floor of the dwelling shall be no lower than 41.4m above Ordnance Datum.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements under Classes A and B, and no building, enclosure or container under Class E as provided for within Schedule 2, Part 1 of that Order shall be constructed.

End of schedule of conditions