The Planning Inspectorate

Appeal Decision

Site visit made on 20 May 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2019

Appeal Ref: APP/L5810/W/19/3222984
Land near Sunnyside Reservoir, Lower Hampton Road, Sunbury on Thames TW16 5PR

- 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 Mr David Taylor against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref DC/SGS/18/3910/OUT, dated 29 November 2018, was refused by notice dated 24 January 2019.
- The development proposed is to replace three derelict storage buildings and associated hardstanding with one four bedroom detached house.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved for future consideration except for access. A plan showing a site layout has been provided. Although it does not explicitly state this, in the context of the outline application, I have treated all aspects of it as illustrative save for the access arrangements.

3. Since the appeal application was determined, the National Planning Policy Framework has been updated. As policies relevant to this appeal have not significantly changed, I have had regard to the revised National Planning Policy Framework (the 'revised Framework'), published in February 2019, in the determination of this appeal.

4. The appellant has submitted a Unilateral Undertaking to deliver an affordable housing contribution in the event that the appeal is allowed. The Council has confirmed that this satisfactorily addresses the second reason for refusal. Though I have limited details in this regard, I shall proceed on this basis, although it would be necessary to consider this matter further in event that I were to allow the appeal.

Application for costs

5. An application for costs was made by Mr David Taylor against the Council of the London Borough of Richmond-upon-Thames. This application is subject of a separate Decision.

Main Issues

6. The main issues are:

- whether the site is within the Green Belt;
- whether the proposed development is 'inappropriate development' within the Green Belt and its effect on openness, having regard to the revised Framework and policies in the Development Plan; and
- if the development is deemed inappropriate, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

7. There is a dispute between the parties about whether the appeal site is in the Green Belt. The site did not form part of the Green Belt when it was under the jurisdiction of Spelthorne Borough Council. The Council maintain that the site has formed part of the Green Belt since 1995 when the Richmond Unitary Development Plan (UDP), was adopted to coincide with the change in administrative boundary. The Green Belt designation was purportedly amended to include the majority of land formerly owned by Thames Water. At that time, the Proposals Map covering the whole Borough, in the UDP, included a new 'dogleg' of supposedly additional Green Belt designation. This 'dogleg' included the appellant's land.

8. The appellant cites that no proof of consultation or a policy existed to support the inclusion of the appeal site within the additional Green Belt land at that time. Conversely, there appears to be no proof that any previous owner of the site engaged in the process to resist the inclusion of the site within the Green Belt. The appellant also highlights that there were other detailed maps in the now superseded UDP (Maps 3 and 4) that showed the site as outside of the Green Belt, although given their scale, age and format, whether this is unequivocally so is questionable.

9. The 2005 Richmond UDP contained Policy ENV2 which stated 'no change' was to be made to the then existing areas of Green Belt designation. The Proposals Map showed the site as within the Green Belt although accompanying Map 2 showed the area excluded from the Green Belt.

10. The appellant notes that the Council produced the Hampton Village Planning Guidance[1] and adopted it in June 2017. Whilst the map included within that document showed the appeal site as excluded from the Green Belt, it was not a document produced for the purpose of considering the extent of the Green Belt boundary or any amendment thereto.

11. Both of the former UDPs have been superseded by the Richmond-Upon-Thames Local Plan (Local Plan) (2018)[2]. The Proposals Map accompanying the recently adopted Local Plan shows the appeal site within the Green Belt.

12. Whilst there appears to be a lot of conjecture as to what may or may not have happened during the preparation of the former UDPs, and some unfortunate

[1] Hampton Village Planning Guidance – Supplementary Planning Document (adopted June 2017)
[2] London Borough of the Richmond Upon Thames Local Plan (adopted July 2018)

inconsistencies in the relevant supporting maps have persisted despite this, it is clear that the Proposals Maps accompanying the relevant Development Plan documents consistently showed the site as within the Green Belt.

13. I note that the appellant acquired the site in 2016 and may not have been made aware of the site's status in relation to the Green Belt. I also note the appellant's participation in the recent Local Plan examination process. The examining Inspector noted the longstanding disagreement about whether the appeal site was included within the Green Belt and indicated that, "*It is for the Council to ensure that these designations are accurately depicted on its policies map and it must be noted that the policies map is not of itself under examination for soundness. Consequently, it must remain for the Council to satisfy itself that the established [Green Belt] boundary, which of itself is not affected by this Plan, is accurately identified on the policies map with due regard to the history of the site and its iterations within the plan production process".*

14. As such, and particularly given the involvement in this process by elected councillors, the Council has presumably actioned this and satisfied itself that the Policies Map was sufficiently accurate in order to adopt the plan, as it did in July 2018. Had the Inspector intended to recommend that the appeal site was excluded from the Green Belt, the report would have specified this. It did not and no modification was made to the extent of the Green Belt. Therefore, in so far as there is any conflict between superseded Development Plan documents and the current Development Plan, that conflict must be resolved in favour of the current Plan as it is the more recent document which has passed through the examination and has been adopted by the Council.

15. I note that the appellant has sought legal opinion on the suggested "*erroneous assertion"* and "*Wednesbury*"[3] unreasonableness of the Council that the site is in the Green Belt. However, it is beyond the scope of an individual planning application or appeal to consider if proper process was followed in respect of the soundness and making of a Development Plan document. Once a plan is adopted or made it should not be necessary to revert back to an Inspectors' or Examiners' report to clarify the process of its preparation, the meaning of the plan, its policies or any of the supporting maps within it. I have not been made aware of any legal challenges to the adoption of the Local Plan insofar as is relevant to the appeal site's inclusion within the Green Belt.

16. I note that the appeal site is within close proximity to a construction site to the north of 'Birkholme', which is within the adjoining borough of Spelthorne. That site is currently being developed for housing purposes. Both sites are closely associated with an area of mixed character and both adjoin existing housing. Whilst the construction site north of 'Birkholme' is particularly close to the appeal site and the delineation of the Green Belt in this regard may appear rather arbitrary, this does not alter the policy position which is clearly materially different for the respective sites.

17. Regardless of the above, I must reach a decision having regard to the current policy landscape in respect of the Green Belt. As such, I therefore conclude that the site is within the Green Belt and should be assessed against Local Plan

[3] The public law definition of "Wednesbury" unreasonable meaning a decision that is so unreasonable that no reasonable authority would ever consider taking it.

Policy LP13 and Policy 7.16 of the London Plan 2016, and the provisions of the revised Framework.

Inappropriate development and openness

18. Paragraph 143 of the revised Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In accordance with the Framework, local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt.

19. Policy LP13 of the Local Plan indicates that the Green Belt will be protected and retained in predominantly open use. Inappropriate development will be refused unless 'very special circumstances' can be demonstrated that clearly outweigh the harm to the Green Belt. The Policy provides for limited categories of development that may be supported where they are not inappropriate and help to secure the objectives of improving the Green Belt, or where they are inappropriate and are considered exceptional, such as in the case of essential utility infrastructure.

20. Paragraph 145 of the revised Framework regards that, subject to specific exceptions, the construction of new buildings as inappropriate in the Green Belt. Exceptions to this include: the replacement of buildings within the same use class, the partial or complete redevelopment of previously developed land provided that it would not have a greater impact on the openness of the Green Belt than the existing development; limited infilling in villages and limited affordable housing for local community needs under policies set out in the development plan.

21. Whilst Local Plan Policy LP13 reflects similar aims in terms of the protection of the Green Belt, it is more prescriptive than the revised Framework, thus limiting the weight which can be ascribed to it. As such, I have given substantial weight to the revised Framework which contains a wider range of exceptions to the definition of 'inappropriate development'. As the main thrust of the appellant's argument is that the site is not within the Green Belt, there is little evidence in relation to whether the proposal accords with any development types that may be considered 'not inappropriate'.

22. A fundamental aim of Green Belt policy is to safeguard the countryside from encroachment and maintain essential characteristics by keeping land permanently open. A previous Inspector found that the appeal site has the appearance of being largely undeveloped and "green and spacious"[4] despite the existence of the somewhat overgrown containers and two small garages towards the rear of the site. The existence of these structures may suggest that the site is 'previously developed land' although I am unable to reach a satisfactory conclusion in this regard on the basis of the limited details before me. Even if the appeal site were considered to be 'previously developed' by virtue of the existing storage buildings, the revised Framework requires that the proposal must not have a greater impact on the openness of the Green Belt than the existing development.

23. The existing buildings on site are single storey and are modest in size. From the undisputed evidence before me, their collective total floor area is in the

[4] APP/L5810/W/18/3195762

region of 200 sqm. Despite the existence of the low lying buildings, the site is distinct in character from the residential development to the rear as it is generally vegetated and enclosed by a visually permeable fence. As such, the appeal site currently contributes a degree of openness to the wider area and the buildings are not prominent or conspicuous in the street-scene.

24. The indicative plan shows that the proposed dwelling would be positioned to the front and centre of the site. The existing buildings would also be demolished. However, whilst it may be possible to erect a dwelling without it causing harm to the openness of the area, I am unable to fully assess this aspect as the application is made in outline form with layout and appearance reserved for a subsequent reserved matters application. In effect, the application would need to contain details of scale and layout to enable me to reach a conclusive judgement on whether the proposal would harm the openness of the area.

Other considerations

25. Paragraphs 143-145 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and 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. Given the appellant's assertions that the site is not within the Green Belt, it is not claimed that 'very special circumstances' exist.

26. I note the appellant's references to the perfunctory exchange at pre-application stage and Freedom of Information requests pertaining to the appeal site and the Green Belt boundary. These aspects are more appropriately addressed in the separate costs decision. In any case, the findings in relation to the behaviour of either party do not affect my findings on the main issues.

27. The appellant highlights that the site is well located between Sunbury and Hampton and within convenient distance of a range of facilities and public transport links. The appeal site's location does not offend any other Development Plan policies and its accessibility is a minor benefit weighing in favour of the proposal.

28. The appellant refers to the Government publication entitled, 'Fixing our Broken Housing Market' which promotes the delivery of housing of all tenures. The appellant also highlights that the proposal would deliver a dwelling on a windfall site and would be a self-build dwelling. The provision of an additional dwelling would inevitably give rise to social and economic benefits, although as the proposal is only for a single dwelling, the scale of these benefits would, by implication, be very modest.

29. The Council has not identified any other harm such as to the living conditions of neighbouring residents. Notwithstanding the outline form of the proposal, the appellant also cites an intention to create an individual yet sympathetic interpretation of a 'contemporary villa' and the Council has not indicated that there would be additional harm to the character and appearance of the area in this regard.

30. I note the appellant's reference to occurrences of fly tipping at the appeal site. Whilst the appeal proposal may prevent such occurrences, I am not persuaded that it would be the only way of improving the appearance of the site or preventing fly tipping.

31. The appellant has highlighted his willingness to pay the Community Infrastructure Levy (CIL) payment commensurate with the scale of the proposal. Provided no exemptions are claimed, the CIL payment would be required should the appeal be allowed in any event. As such, this factor does not weigh in favour of the proposal.

32. I appreciate that the proposal would be capable of delivering the requisite vehicle and cycle parking provision and could also deliver an electric vehicle charging point to accord with other policies of the Development Plan.

33. I note that an affordable housing contribution would be secured by means of planning obligation. This is a positive matter to weigh in the overall planning balance, although the affordable housing financial contribution would be relatively limited in the context that only one dwelling is proposed.

Planning Balance

34. For the above reasons, I conclude that I have insufficient information relating to whether or not the erection of a dwelling would be 'inappropriate development' within the Green Belt or whether it would be harmful to its openness. In the absence of being able to conclude on these matters and against named policies, it has not been possible to balance any of the other considerations against the potential conflict with the Green Belt policies of the Development Plan and the revised Framework.

Conclusion

35. For the reasons above, and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls

INSPECTOR