



Appeal Decision

Site visit made on 11 June 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2019

Appeal Ref: APP/Z3635/W/19/3222411

Land to the east side of Moor Lane, Staines-upon-Thames TW19 6EG

- 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 Adam Abu Warda against the decision of Spelthorne Borough Council.
 - The application Ref 18/01372/FUL, dated 14 September 2018, was refused by notice dated 11 January 2019.
 - The development proposed is described as the erection of a barn to provide accommodation for farm animals, and the erection of 2 metre high fencing around the proposed site.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I note that there is an enforcement case relating to use of the appeal site and that this is now the subject of a separate appeal (Ref APP/Z3635/C/19/3225626). However, the two appeals relate to two separate, unrelated issues and I have dealt with this appeal on this basis.
3. The Council and the Environment Agency (EA) submitted appeal statements after the usual deadline. The statements contained material relating to the main issues of the appeal. The EA's statement included details which were different to its original advice submitted before the Council determined the planning application and the Council's statement reflected that change. I therefore considered that to not accept the evidence would prevent me from reaching a fully informed decision and would be contrary to the interests of natural justice. So that the appellant was not prejudiced by this, an opportunity was given to provide final comments on the issues raised in the statements, which I have also considered in my decision. I have determined the appeal on this basis.
4. The appellant submitted amended elevations with the appeal, showing a reduced height of the barn and two roof lights in each of its north and south elevations. In considering whether to accept the amended details, I have had regard to the 'Wheatcroft Principles', including in relation to whether the changes materially alter the nature of an application and whether the amendments indicate that the development is in substance different from that for which the application was made. I am also mindful that accepting amendments at the appeal stage could potentially deprive parties of the opportunity to comment on the amendments and therefore prejudice their interests.
5. However, the amended elevations reduce the height of the barn and provides detail as to the number, size and location of the roof windows which the original

elevations indicated were to be provided. Because the changes reduce the height of the development and provide further detail, I am satisfied that they would not lead to any additional harm or effects that were not foreseen when the Council determined the planning application.

6. The amendments also do not materially alter the nature of the planning application to the point that it is so changed that it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Furthermore, the Council was given the opportunity to comment on the amendments in their appeal statement and interested parties were also able to view and comment on the amended elevations. Consequently, I am satisfied that by accepting the amended elevations would not prejudice the interests of interested parties and have therefore determined the appeal on the basis of the amended details.
7. The National Planning Policy Framework (the Framework) was revised in February 2019. However, as the Framework's policies that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Main Issues

8. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt;
 - The effect of the development on the character and appearance of the surrounding area; and
 - Whether the development would be suitably located in relation to flood risk.

Reasons

Inappropriate development

9. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to certain exceptions, including for agricultural buildings. Saved Policy GB1 of the Spelthorne Borough Local Plan 2001 'Saved' Policies and Proposals (the SBLP) – covering development in the Green Belt – is broadly consistent with the Framework's provisions relating to protecting green belt land.
10. The appeal proposal is described as the erection of a barn to provide accommodation for farm animals and also involves the erection of fencing around the site. The evidence before me indicates that the appellant intends to use the barn to keep various animals and associated items including animal feed, machines and tools. The fence would secure the site and ensure that the animals were safely contained. The barn would also have the appearance of an agricultural building.
11. Although non-agricultural uses could have caused some contamination of the site, I have little substantive evidence that remediation works, which could be secured by a planning condition if planning permission were granted, would not be possible. While the barn would be sizeable, I have little evidence which indicates that it would not be used for agricultural purposes nor that the site could not accommodate the keeping of animals to the extent envisaged by the appellant after some tidying and site preparation. I also observed on my visit that the site

does not appear to be incapable of being in agricultural use and much of the surrounding area is rural countryside where agricultural uses and the moving of animals to surrounding land would not be unusual.

12. From the evidence before me, I am satisfied that the proposed development would involve an agricultural building. Consequently, and for the above reasons, I conclude that it would not be inappropriate development in the Green Belt as it would constitute a building for agriculture. As the proposal does not constitute inappropriate development, it should not therefore be regarded as harmful to either the openness or to the purposes of the Green Belt, following the Lee Valley judgment¹. I therefore find that it would not conflict with SBLP Saved Policy GB1. The proposal would also not be inconsistent with the Framework's provisions protecting Green Belt land.

Character and appearance

13. Although in close proximity to the M25, the site is located within a relatively rural environment, with only limited built form in the surrounding area. I have little substantive evidence relating to previous structures on the site, such as a security cabin, and although the site currently contains some hard standing, vehicles and other items, I observed on my site visit that it has a relatively undeveloped character. The various shrubs and trees within and surrounding the site means that it is also experienced as a verdant plot which relates to its generally undeveloped surroundings and contributes to the rural appearance of the surrounding area.
14. The amended elevations show the barn with a reduced height of 3.4 metres. This lower height would reduce the dominating effect that the originally proposed 5.8 metre high building would have had. However, at 24 metres long and 10 metres wide, the barn would continue to have a significant scale and presence. Situated in a corner of the site, the barn would also be visible from the surrounding area, including particularly from the bridleway and Moor Lane.
15. Despite the height reduction, the development would involve the erection of a sizeable building that would have a significant and imposing effect on the public realm. Accordingly, it would appear as an incongruous feature that would be out of character.
16. The fence would enclose the site and provide a clear boundary to the footpath and bridleway. However, the 2 metre high galvanised palisade metal fence with triple splayed heads would appear more akin to high security commercial fencing than agricultural boundary treatment. It seems to me that the palisade fencing is therefore more likely to be found in built-up industrial areas and its use at the site would appear out of place given its more rural setting. Consequently, the appearance of the fence, which would be highly visible from the public realm, would be experienced as an intrusive and dominating feature that would harm the rural character and undeveloped appearance of the site and surrounding area. Its proposed colour finish does not lead me to a different conclusion.
17. There are some metal fencing and barriers nearby, such as at the site entrance and where the bridleway meets Moor Lane. However, these elements are relatively small and are not characteristic of the boundary treatment in the surrounding area, which generally involves either hedges or limited fencing such as wooden post and rail structures. Their presence does therefore not alter my views.

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404.

18. I observed on site that the area on the other side of the motorway is relatively built-up and has an industrial nature. The appellant's examples of buildings and boundary treatments in that area do not therefore relate to the character and appearance of the appeal site and its surroundings. Consequently, the examples are not directly comparable. I also have only limited details regarding the other developments referred to by the appellant and, hence, I am unable to draw a comparison between them and the appeal proposal. I therefore attach limited weight to the examples before me and have determined the appeal on its merits.
19. I recognise that the appellant indicates that the fence is required to secure the site from vandalism and thefts and ensure that animals are safely contained. The keeping of animals on the site would also not be out of character. Be that as it may, this does not justify development that would harm the character and appearance of the surrounding area and it seems to me that a less visually intrusive form of fencing could enclose the site sufficiently.
20. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area. I therefore find that it conflicts with Policy EN1 of the Core Strategies and Policies Development Plan Document (2009) (CSPD). Amongst other aspects, it requires development of a high design standard which respect and contribute positively to the character of the area.

Flooding

21. The appellant's Flood Risk Assessment Rev B (FRA) identifies the site as being land that meets the 1 in 20 year (5%) Annual Exceedance Probability (AEP) flood event threshold. Confirming this, the EA's appeal statement sets out that the site is within the 1 in 20 year (5%) AEP.
22. Although the EA flood map, provided by the appellant, shows the site as being within Flood Zone 3, it does not differentiate between Flood Zone 3 (also known as 3a) and 3b. Accordingly, it is not particularly helpful in ascertaining which Flood Zone the site is within. However, the evidence before me indicates that the draft Strategic Flood Risk Assessment 2018 (SFRA 2018) defines functional floodplain, Flood Zone 3b, as land which has a 1 in 20 year (5%) AEP, such as the site.
23. The evidence before me concerning the SFRA 2018 points me to a discrepancy between its mapping not showing the site within Flood Zone 3b and its written definition of what constitutes Flood Zone 3b. Notwithstanding that, on the basis that the appellant and EA indicate that the site has a 1 in 20 year (5%) AEP, it is clear to me that the site is within Flood Zone 3b according to the written definition in the SFRA 2018. However, the evidence before me indicates that the document is still in draft form, and it seems reasonable to me to use information from draft documents with some caution, particularly where an inconsistency is apparent. I therefore place only moderate weight on the SFRA 2018.
24. The evidence before me shows that the 2006 SFRA also uses the 5% AEP flood event threshold as one of three criteria in identifying land as Flood Zone 3b. The other two criteria are: land where the flow of water is not prevented by flood defences or permanent buildings or other solid barriers from inundation during times of flood; and land which provides a function of flood conveyance (i.e. free flow) or flood storage, either through natural processes, or by design (e.g. washlands and flood storage areas). Land must meet all the criteria to qualify as Flood Zone 3b according to the 2006 SFRA.
25. There are flood defences near the site. However, the evidence before me, including Exhibits AW1-3 of the appellant's final comments (dated 1 July 2019) and appendix EA5 of the EA's appeal statement, indicates that they do not provide flood

- protection or prevent the flow of water at the site during a 5% AEP event. Figure 5 of the FRA also confirms that the site falls within a 1 in 5 (20%) AEP event, despite the presence of the defences, and I have little evidence that other defences will be created in the future.
26. It seems to me that the flood defence situated on the site's southern boundary protects land to the south rather than the site itself. I also have little substantive evidence regarding the actual level of protection afforded by the "raised defence that surrounds the site and offers some protection", as detailed in Exhibit 13 of the appellant's appeal statement. While the FRA lists various structures and defences, it also sets out that the site is afforded minimal protection by natural river embankments. Accordingly, the site meets the second criteria of the 2006 SFRA.
 27. The site is not identified on the maps before me as a designated or formal Flood Storage Area. However, the EA sets out that it is not only land that is formally identified as a Flood Storage Area that can be functional floodplain and provide flood storage. In this case, the evidence before me indicates that the site has a high probability of flooding and is therefore likely to provide a function of flood conveyance in the form of free flow and natural flood storage capacity during times of flood. It is this which is the third criteria in the 2006 SFRA, not specifically only formally identified or designated Flood Storage Areas. Accordingly, the site also meets the third criteria.
 28. The 2006 SFRA is clearly older than the more recent draft and the appellant queries whether it is out of date. However, the appellant's FRA does not query the relevance of the 2006 SFRA, and I have little substantive evidence which suggests that it is no longer relevant, particularly as the 2018 version is only in draft form. In any event, the evidence before me indicates that the site is within Flood Zone 3b in relation to the definitions in both the 2006 and 2018 SFRAs.
 29. The EA changed its advice following its response on the planning application because, it says, it overlooked some vital information in its initial response. As unfortunate as this may be, their appeal statement represents its most up-to-date position and I therefore place significant weight on it.
 30. I note the Council, in providing limited information on flood risk at appeal stage, describes the site as being within a "1 in a 100 flood zone" and the submitted image of their online mapping tool shows the site as being within Flood Zone 3a. However, I do not know what information that online map is based on and it conflicts with the other evidence before me which shows that the site is within the 1 in 20 year (5%) AEP and which indicates that it is within Flood Zone 3b. The Council's appeal statement does also not refute the EA's position that the site is functional floodplain within Flood Zone 3b. It also seems reasonable to me that strategic information, such as that contained in the SFRAs, should be utilised to refine and ascertain site-specific flood risk where necessary.
 31. Since the planning application was refused, the appellant introduced voids into the building and the EA subsequently indicated, in its response to the Council dated 29 January 2019, that the voids would be likely to be a feasible solution and could prevent a loss of floodplain storage. However, although the voids may therefore provide a technical solution to loss of flood storage that would arise from the erection of the building, planning policy and guidance are clear that certain types of development are inappropriate within Flood Zone 3b and should not be permitted. This includes: CSPD Policy LO1 stating that the Council will not permit any additional development in Zone 3b; the Council's Supplementary Planning Document 'Flooding' (2012) (Flooding SPD) identifying that the only appropriate uses in Flood Zone 3b are water compatible development and essential

infrastructure; Planning Practice Guidance setting out that less vulnerable development², which this appeal proposal is categorised as, in Zone 3b should not be permitted³; and the Framework stating that inappropriate development in areas at risk of flooding should be avoided.

32. The Framework and the Flooding SPD respectively refer to development in areas at risk of flooding being 'necessary' and 'justified', and that such development should be designed to avoid the adverse impacts of flood water, made safe for its lifetime and not increase flood risk elsewhere. However, I have little substantive evidence that the development is necessary or justified. In this context, the voids do not therefore indicate that the development is acceptable with regards to flooding.
33. For the above reasons, I conclude that the proposed development would not be suitably located in relation to flood risk. I therefore find that it does not comply with CSPD Policy LO1 and that conditions could not overcome this conflict. The proposal would also be inconsistent with the Flooding SPD and the provisions of the Framework in relation to planning and flood risk.

Other matters

34. I note the appellant's frustration regarding the conflicting and inconsistent advice on flood risk from the Council and EA; only receiving some information from the EA after the Council's decision on the planning application; and their attempts to discuss changes to the development in order to overcome the concerns of the Council and EA. However, these issues regarding conduct are not determinative as to the acceptability of the appeal proposal and I have determined it on its merits and the plans and evidence before me.
35. It has been put to me that the proposed development would contribute to sustainable communities and sustainable farming development objectives, and have a positive environmental impact and enhance biodiversity. However, given the conflicts I have identified with the development plan, the Framework and local and national guidance, I find that the proposal does not adequately address the environmental objective of sustainable development as set out in paragraph 8 of the Framework. I also have little substantive evidence which indicates that it would enhance the environment and biodiversity.
36. I note interested party concerns such as in relation to access, public footpath accessibility and the effect of the proposed development on the environment and the nearby Site of Special Scientific Interest. However, given that I am dismissing the appeal on the basis of the main issues that I have set out above, it has not been necessary for me to consider these matters in greater detail.

Conclusion

37. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR

² Paragraph: 066 Reference ID: 7-066-20140306. Revision date: 06 03 2014.

³ Paragraph: 067 Reference ID: 7-067-20140306. Revision date: 06 03 2014.