
Appeal Decision

Site visit made on 11 September 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Appeal Ref: APP/T0355/W/19/3230780

R/O 20 Ray Street, Maidenhead, Berks SL6 8PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr T Dhunay against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/00276, dated 10 October 2018, was refused by notice dated 5 April 2019.
 - The development proposed is construction of 2 houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposal is for a Permission in Principle. This consent route has two stages, the first stage establishes whether a site is suitable in principle, and the second stage, the technical details consent, is where the detailed development proposals are assessed. The appeal proposal is at the first stage and therefore I have considered the principle of the scheme. As the appeal does not relate to technical details, I have taken the submitted plans to be illustrative only.
3. An amended sequential test was submitted as part of the appeal, in addition to the one provided during the application. While not before the Council at the application stage, it was submitted at the outset of the appeal and therefore parties have had the opportunity to comment. It provides additional information. However, it does not fundamentally change the scheme and the overall design and position of the scheme has not altered from that originally submitted and upon which consultation took place. Against this backdrop, no injustice would be caused to any appeal party or third party if I were to take this document into account. I have considered the appeal on that basis.

Main Issues

4. The main issues of the appeal are;
 - Whether the proposed development would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - The effect of the proposal on highway safety, with particular regard to on-street parking.

Reasons

Flooding

5. The National Planning Policy Framework (Framework) states that inappropriate development in areas at risk of flooding should be avoided. This is achieved by steering development to the lowest flood risk areas through the application of a sequential test. Consequently, planning applications, such as the appeal proposal, are required to apply a sequential test to establish whether there are other reasonably available sites for the proposed development in areas with a lower probability of flooding. It also states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment.
6. Policy F1 of The Royal Borough of Windsor and Maidenhead Local Plan (LP) relates to flooding. This states that development will not be permitted for new residential development in areas subject to flooding unless it can be shown that the development would not impede the flow of flood water, reduce the capacity of the flood plain and would not increase the number of people or properties at risk of flooding.
7. The site is within flood zones 2 and 3(a) in the Council's Strategic Flood Risk Assessment. According to the Environment Agency flood maps, the site is entirely within flood zone 3. The Environment Agency have commented that the Flood Risk Assessment submitted is not acceptable. This includes in relation to making an allowance for climate change and loss of flood plain storage.
8. The application was accompanied by a sequential test considering all of the sites contained within the Council's Housing and Economic Land Availability Assessment (HELAA) across the whole of the Borough. Nonetheless, no other potential sites appear to have been considered. It is also unclear what range of sites have been included in the amended sequential test. While it has been stated that agents, planning consultants and landowners have informed the approach, there is limited information as to how.
9. Several single unit sites have been discounted. However, from the details before me I cannot be sure whether these could accommodate 2 dwellings. Moreover, the 2 units proposed could be provided with a combination of single unit sites.
10. Planning permission for 2 dwellings at Thrift Wood Farm and other sites have been discounted on non-flooding related issues. Although it would be for a different type of housing, the Thrift Wood Farm site is located within flood zone 2 and is therefore sequentially preferable. While this site does not feed into the Council's current 5 year housing supply, from what has been presented to me neither does the appeal site.
11. On the basis of the information before me, I cannot be certain whether other reasonably available sites at a lower risk of flooding that are similar to the appeal site have been considered. Moreover, there is no compelling evidence that the sites that have been looked at are not sequentially preferable. Therefore, the proposal does not pass the sequential test and there is no need to consider flood risk any further, including the exception test.

12. Therefore, the proposal would not comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. The proposal would be contrary to Policy F1 of the LP where it seeks, in part, to resist new residential development in flood areas unless sufficiently justified.
13. It would also fail to accord with the Framework where it states that development should be steered to areas with the lowest risk of flooding and should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Highway Safety

14. Planning Practice Guidance states that the scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage. Moreover, it is not possible for conditions to be attached to a grant of permission in principle and planning obligations cannot be secured at that stage.
15. While illustrative details have been provided for the access and parking arrangement, these are not to be considered at this first stage. At the Technical details consent stage information relating to parking spaces for the dwellings proposed and any loss of existing parking spaces at the site would be provided. Whether these matters are acceptable, conditions need to be imposed or planning obligations required would be considered at that time.
16. While third parties have raised concerns over emergency vehicle access to the site, the Council have not raised any such concerns. From the information before me I see no reason to reach a different finding.
17. Based on the circumstances of this case, there is no compelling evidence that the proposal would lead to unacceptable impacts on highway safety. It would therefore comply with Policies P4 and T5 of the LP and the Framework. These, in part, require developments to accord with adopted car parking and highway design standards.
18. It would also accord with the Framework where it states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

19. Even if I were to consider that the Council do not currently have a 5 year supply of housing land, the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Areas at risk of flooding are an example of such areas and the proposal is contrary to the relevant policies of the Framework in regard to these.
20. I have considered the appeal in the context that the government seeks to significantly boost the supply of housing, utilise previously developed land and seeks the efficient use of land. It also recognises that smaller sites can make

an important contribution to this. Being for only 2 dwellings the contribution of this development to the supply and mix of housing in the area would be minimal, as would any economic benefits resulting from the construction period and spending of future occupiers.

21. There are no refusal reasons in relation to considerations such as the character and appearance of the area, living conditions, the function of the public house or the accessibility of the site to services and facilities. However, the lack of harm is a neutral factor that does not weigh in favour of the development.

Conclusion

22. While the proposal would not result in unacceptable impacts on highway safety, the policy conflict with regard to flooding is determinative.
23. Therefore, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR