



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: 7 October 2019

Appeal Ref: APP/T0355/W/19/3228145

Willows Riverside Park - The Moorings, Maidenhead Road, Windsor SL4 5TR

- 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 Bobby McGhee of Haulfryn Group Ltd against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/02344, dated 7 August 2018, was refused by notice dated 9 November 2018.
 - The development proposed is upgrading and renewal of existing services including replacement of existing electric hook-up and water points, replacement of existing mooring bollards with mooring rings, upgrading of black and grey water drainage system with installation of bespoke drainage system and replacement of existing storage sheds to provide for covered wheelie bin storage.
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Decision

1. The appeal is allowed and planning permission is granted for upgrading and renewal of existing services including replacement of existing electric hook-up and water points, replacement of existing mooring bollards with mooring rings, upgrading of black and grey water drainage system with installation of bespoke drainage system and replacement of existing storage sheds to provide for covered wheelie bin storage, at Willows Riverside Park - The Moorings, Maidenhead Road, Windsor SL4 5TR in accordance with the terms of the application, Ref 18/02344, dated 7 August 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. I have taken the description of development in the banner heading above from the application form having removed elements that are not development. Although different to that on the decision notice and the appeal form, no details have been provided to indicate any change was agreed.
3. The National Planning Policy Framework (Framework) states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the plan with the Framework (paragraph 48).
4. While the Royal Borough of Windsor and Maidenhead Local Plan (Borough Local Plan 2013 - 2033 Submission version (emerging plan) has been submitted for

examination, I am not aware of any unresolved objections or the exact stage it has reached. Consequently, it carries limited weight in my decision.

Application for costs

5. An application for costs was made by Mr Bobby McGhee of Haulfryn Group Ltd against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; and
- The effect of the proposal on the character and appearance of the area.

Reasons

Whether Inappropriate Development

7. The appeal site is situated in the Green Belt. The Framework outlines that the construction of new buildings, other than in connection with a small number of exceptions, should be regarded as inappropriate in the Green Belt (paragraph 145). Inappropriate development according to the Framework is harmful to the Green Belt and should not be approved except in very special circumstances.
8. One of the exceptions is where development is for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces (paragraph 145). Another exception is engineering operations provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it (paragraph 146).
9. Policy GB1 and GB2 of The Royal Borough of Windsor and Maidenhead Local Plan (LP) sets out the exceptions to inappropriate development and includes engineering operations and replacement buildings. This is providing they maintain the openness of, and do not conflict with the purposes of, including land in the Green Belt. The LP predates the publication of the Framework and the relevant policies are not entirely consistent with the Framework. I give this conflict considerable weight.
10. Policy SP5 of the emerging plan states that proposals will be permitted in the Green Belt where they are consistent with the exceptions listed in national planning policy. In addition, they should be of high quality design and protect ecological value. For replacement buildings it requires them to be in the same use, not materially larger than the one it replaces and to be sited on or close to the position of the existing building.
11. The term 'building' is not defined in the Framework. The Town and Country Planning Act 1990 defines a building as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. Therefore, the proposed mooring rings, bin stores and service boxes would fall within that definition.

12. The proposed mooring rings are of a comparable size to the existing ones while existing bollards and posts are far taller. The number of proposed rings would be fewer than the combined number of existing rings, bollards and rubbing posts to be removed and would be positioned in a similar location along the riverside. Consequently, the rings would not be materially larger than the existing structures they would replace. While I note comments regarding the safety aspect of rubbing posts, I consider the rings would serve the same overall purpose. As such, they would not be inappropriate development as defined in the Framework.
13. While the proposed bins stores would be taller than the existing sheds to be replaced, their width, depth and volume would be less. Although for a different kind of storage, they would still be used for storage associated with boats at the site. I see no reason to reach a different finding from the Inspector on the previous appeal¹ where it was considered that replacement bin stores would not amount to a materially larger building. Therefore, they would not be materially larger than the existing buildings they would replace and would not be inappropriate development as defined in the Framework.
14. The proposed service boxes themselves may be larger than the existing electric hook up service boxes. Nevertheless, the overall number of them would be reduced from 25 to 15. Moreover, 6 of the new boxes would be located within the proposed bin stores and project only 30mm from them. Therefore, they would not be materially larger than the existing buildings they would replace and would not be inappropriate development as defined in the Framework.
15. As a result of my findings above there is no need for me to consider the effect of these buildings on the openness of, or purposes including land within, the Green Belt.
16. With regard to the other developments a consideration of the effect of them on the openness of the Green Belt and the purposes of including land within it is needed before being able to conclude whether they are inappropriate development or not. The Framework indicates that openness is an essential characteristic of the Green Belt. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect.
17. There would be trenches running along the path and extending further into the site for services and drainage. I consider these and the other works associated with the drainage system such as the pumping stations would be engineering operations. The majority of these works would be located below ground with manholes at ground level and above ground works located in existing buildings. The works relate to the servicing of the mooring facility for leisure and residential boats and would be largely hidden.
18. I see no reason to reach a different conclusion to the previous Inspector when considering the engineering operations, in that there would be no conflict with the Green Belt purposes and that they would preserve its openness.
19. Therefore, all elements of the proposal would not be inappropriate development within the Green Belt as defined in the Framework and the relevant parts of Policies GB1 and GB2 of the LP and Policy SP5 of the

¹ APP/T0355/W/17/3185357

emerging plan. Therefore, there is no need for the appellant to demonstrate very special circumstances exist.

Character and Appearance

20. The existing rings, bollards and posts are of a more random distribution and form than the proposed rings. Rather than having an urbanising effect, the regular layout and form of the proposed rings would give a more consistent and tidy appearance. Moreover, the proposed rings would lay flat when not in use, as the existing ones do, as opposed to the taller bollards and posts. There would be fewer rings than existing features to be replaced. Given their small size they would be less prominent in views within the site, from the river and the path along the opposite side of the bank.
21. Service boxes and facilities would be of typical design, similar to the existing ones. Their prominence would be reduced by being located partly within, or adjacent to, the bin stores. There would also be fewer of them. As such, they would represent an improvement to the character and appearance of the area.
22. There are already a variety of structures at the site and the caravan park of different sizes and appearance. The bin stores would be of a greater height than the existing ones and of a different material and colour. There is no evidence that the size of bins is proposed to be changed or that they are not of sufficient capacity. There would still be a need for some ropes and cabling along the riverbank and the scheme would not remove all domestic paraphernalia. Nevertheless, bins that are currently stored in the open would be within the stores. This would represent a visual improvement by housing.
23. The engineering works would primarily be below ground or contained within existing buildings. The digging of trenches would involve works near trees subject to a Tree Preservation Order (TPO). While it has been put to me that TPO trees have previously been removed at the site, no removal is proposed in this scheme. I saw some young trees on site and note comments on the potential for works to prevent further tree growth. Nonetheless, the scheme proposes to use airspade and hand digging where necessary to create the trenches. Moreover, the Council are satisfied that subject to conditions, the development is acceptable in regard to impacts on landscape features. There is no compelling evidence to lead me to an alternative conclusion.
24. The site already has permission to be used for leisure and residential boats and there is a residential caravan park adjacent. I am aware of an ongoing enforcement appeal² at the site. Nevertheless, the appeal scheme does not propose to increase the number, or alter the type, of boats moored at the site. Therefore, in relation to comings and goings this scheme would not result in any significant change in the character of the site.
25. It has been suggested that the proposed features would need frequent repairs. However, there has been no firm evidence presented to me in this regard and overall the scheme would improve the appearance of the site.
26. The decision notice does not refer to any LP or emerging policies in relation to character and appearance. As such, I have assessed the proposal against the requirements of the Framework. It would accord with the Framework where it

² APP/T0355/C/19/3224014

states that development should be sympathetic to local character and the surrounding built environment (paragraph 127).

Other Matters

27. Third parties have queried the need for the works, the condition of existing features, that some existing features would remain and the potential for alternative schemes. However, I have found the scheme to be acceptable and therefore no further justification is required.
28. The proposal would involve works in an area currently used for fishing by residents of the caravan park. Nonetheless, large areas would be retained with much of the works being the replacement of existing features or below ground works. Moreover, issues relating to rights of access and services at the caravan park are not within my jurisdiction. The licence at the caravan park would be a private matter between the parties involved. Similarly, this would be the case for damage to property.
29. I am aware that there are ongoing enforcement matters at the site. These are outside of this appeal and I have considered the scheme on its own merits. There has been a previous appeal at the site and I have generally concurred with the previous Inspector where relevant to this appeal.
30. The site is within flood zone 2 and 3a. Given the location of the site adjacent to the river, that the appeal scheme is at an existing site for mooring and that it largely replaces existing features, I see no reason to differ from the Council in considering the sequential test set out in the Framework is passed. Planning conditions can ensure that bin stores are fixed to the ground and that other recommendations made in the Flood Risk Assessment are adhered to.
31. Concerns were raised regarding other flooding matters such as the loss of groundwater storage, the existing chemical toilet, trenches preventing future flood prevention works and rubbing posts being lifesaving fixtures. Nonetheless, the Environment Agency are satisfied that subject to conditions the proposal is acceptable and provide advice regarding obtaining a permit variation. Furthermore, the Lead Local Flood Authority raise no objection to the scheme. I have reached the same finding.
32. Where stable excavations are required, the Factual Report on the Ground Investigation indicates these should either be suitably supported, or side slopes should be battered back to a safe angle of repose works. In addition, these works would be some distance from the caravans and there is no firm evidence of riverbank erosion.
33. My attention has been drawn to potential increased risk from fire, dirt, smell and pests from the bin stores. The Council have not raised any concerns and there is no substantive evidence to lead me to a different finding.
34. There is limited evidence to suggest that were the drainage system installed and maintained correctly that it would result in any failures and subsequent pollution impacts at or near the site. This is also the case in relation to the capability of the current drainage system to accommodate the additional flows.
35. Given the nature of the proposed works it would not lead to addition impacts on the privacy of nearby residents or on and parking pressures. A condition is

imposed regarding details of plant in relation to noise. Any disruption during the works would be for a temporary period only.

36. Boats would be attached to services by standard marine attachments. I saw that there are already cables and ropes at the site and there is no clear evidence that the proposal would lead to additional trip hazards.
37. The Council's Ecologist has not questioned the contents of the details submitted by the appellant. The site is considered to be of low ecological value and that trees that may be of value to breeding birds or bats are retained. There has been limited information provided to indicate otherwise.
38. The accuracy and timing of information provided in the application has been questioned. However, I consider there is sufficient information for me to be able to reach conclusions on the relevant matters. Moreover, no relevant statutory consultees have requested additional details, other than those that can be addressed via planning conditions. The marketing of the moorings is not a matter for this appeal.
39. Third parties have referred to the Royal Borough of Windsor and Maidenhead Traveller's Plan Consultation and Travellers' Local Plan and that the scheme may reduce the number of available spaces for boaters. However, these are not before me in full. In any event, there is no definitive evidence that the scheme would lead to a reduction in the number of moorings.

Conditions

40. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.
41. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
42. I have imposed a condition requiring a programme of works. This would prevent the proposed and existing structures both being in place if other aspects of the scheme were not completed. The information is required prior to the commencement of the development as the timing of the bollard and hook up works may be dependent on other parts of the scheme.
43. A condition is imposed requiring details of the insulation and maintenance of the pumping station plant in order to protect living conditions of nearby residents. To reduce risks from flooding conditions are imposed in relation to the level of services and requiring agreement of the bin fixings.
44. A landscaping condition is imposed requiring tree protection methods, protective fencing and restoration to be agreed in order to prevent harm to the character and appearance of the area and ensure trees are protected. The details are required before the commencement of the development as initial works may affect the existing trees. The suggested condition requiring the retention and replacement of trees is not required as none are proposed to be removed. The trees are also subject to a TPO.

45. The Framework states opportunities to incorporate biodiversity improvements in and around developments should be encouraged. The Council's Ecologist considers the site to be of low ecological value. The trees that may be of value to breeding birds or bats are to be retained. Therefore, a condition relating to biodiversity enhancements is not necessary. A condition is imposed requiring a Construction Environmental Management Plan in order to prevent harm to biodiversity. This is required prior to the commencement as it would relate to some of the initial works.
46. A condition requiring the works to be carried out in accordance with the recommendations made in the Factual Report on the Ground Investigation is required to reduce risks from pollution and ground instability.
47. I have not imposed a condition requiring an archaeological written scheme of investigation as there has not been any clear evidence presented to demonstrate it is necessary.

Conclusion

48. I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

Stuart Willis

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: Proposed Layout Sheet 1 of 3 drawing ref 3703-310 Rev P; Proposed Layout Sheet 2 of 3 drawing ref 3703-311 Rev N; Proposed Layout Sheet 3 of 3 drawing ref 3703-312 Rev N; Pump Station detail drawing ref HAD1049; Proposed Service Box and Water Stand Pipe drawing ref 3703-273; Existing Metal Storage Shed drawing ref 3703-275 Rev A; Proposed Timber Bin Enclosure drawing ref 3703-270 Rev B; Proposed Service Box Within Timber Bin Store Enclosure drawing ref 3703-271; Site Location Plan drawing ref LPD/116/WRHB/LP1; Topographical Survey drawing ref 21250_06_170_01.1
- 3) No development shall commence until a programme of works has been submitted to and agreed in writing by the local planning authority. This shall include the timings for the proposed works and removal of the existing features. The programme shall be implemented as agreed.
- 4) A scheme for the insulation and maintenance of the plant to be installed in the proposed pumping stations hereby approved shall be submitted to and approved in writing by the local planning authority prior to their installation. The scheme shall be implemented as approved prior to the beneficial use of the pumping stations and maintained in accordance with the approved details.
- 5) The level of services shall be set no lower than the current level, as outlined in section 5.1 of the Flood Risk Assessment (FRA) dated October 2018, V2-0, Thomas Mackay.
- 6) Details of how the bin storage sheds would be securely fixed to the ground shall be submitted to and agreed in writing by the local planning authority prior to their installation. The scheme shall be implemented as approved and the bins maintained in accordance with the approved details.
- 7) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping and tree protection. The scheme shall include details of the following:
 - the methodology for the installation of the underground utility apparatus, including any necessary tree protection;
 - a scheme of supervision for the arboricultural protection measures;
 - the location of equipment, materials and machinery;
 - the restoration of the land where the new underground services are to be laid; and
 - an implementation programme.

The development shall be implemented in accordance with the agreed scheme.

8) No development shall take place (including ground works and vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.

- Risk assessment of potentially damaging construction activities;
- Identification of "biodiversity protection zones";
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- The location and timing of sensitive works to avoid harm to biodiversity features;
- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communication; and
- Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

9) The development shall be carried out in accordance with the recommendations of the Factual Report on the Ground Investigation.