



Appeal Decision

Site visit made on 23 September 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal Ref: APP/R5510/W/19/3225923

**Watercress Beds, Blenheim Bedrooms Ltd, Springwell Lane, Harefield
WD3 8UX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Andrew Travers (Blenheim Bedrooms Ltd) against the Council of the London Borough of Hillingdon.
 - The application Ref 24597/APP/2018/2452, is dated 26 June 2018.
 - The development proposed is the installation of a biomass boiler and ancillary equipment within an existing building.
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Decision

1. The appeal is dismissed and planning permission is refused.

Main Issue

2. Although the Council failed to determine the current proposal within the prescribed period, it has provided an officer report which clarifies that, were it still able to have determined the planning application, it would have refused it for one reason. Having considered this reason, I consider that the main issue is:
 - the effect of the proposal on the living conditions of the occupants of nearby properties, with particular regard to emissions.

Reasons

3. The appeal site is a large, broadly triangular, parcel of land. The River Colne bounds its eastern side and beyond this there are a mixture of terraced and flatted residential properties which are accessed off Springwell Lane. The site accommodates a collection of buildings which, on the evidence before me, appear to have been associated with a former garden nursery business. This includes two, relatively large, single storey buildings set in a yard area towards the centre of the site.
4. This proposal seeks full planning permission for the installation of a biomass boiler and an associated flue within one of the buildings in the yard area. This would be a relatively small wood gasification boiler (Vitolingo 250-S) that the appellant states would be used for domestic heating at the appeal site.

5. The Council's evidence¹ shows that this particular type of combustion can result in the emission of gases and particles which can be harmful to human health. It raises concern that such emissions could reach nearby residential properties under certain climatic conditions. However, the appeal site is not within or adjacent to an Air Quality Management Area or a Clean Air Zone. In addition, although the site falls within a smoke control area that covers the entire Borough, the proposed boiler appears to be on the DEFRA exemption list for burning unauthorised fuel (wood in this case) in such areas. I have no substantive evidence to show that the appellant would use anything other than this type of fuel.
6. Moreover, as well as specifications, the appellant has submitted a Renewable Heat Incentive Emissions Certificate for the proposed boiler. This indicates that its make/model, as well as the fuel to be used, would meet air quality requirements for domestic boilers. Consequently, I consider that the level of gas emitted by this proposed domestic boiler, including Particulate Matter and Nitrogen Oxide, is unlikely to exceed limits set out within relevant legislation, such as the Air Quality Standards Regulations 2010. Conditions could also be imposed requiring details of the exact height of the flue and any pollution abatement technology which would be incorporated. These would meet the tests set out at paragraph 55 of the National Planning Policy Framework (the Framework) and would further ensure that emissions do not unacceptably harm living conditions at nearby dwellings.
7. I appreciate that appearing on the identified DEFRA exemption list does not necessarily mean that harmful emissions to sensitive receptors are acceptable. Nevertheless, taking all of the above into account, in this particular circumstance, I am not persuaded that the emissions associated with the proposed domestic boiler would compromise the health of nearby residents or result in harm to their living conditions in terms of odour.
8. For the reasons given, I conclude that the proposal would not adversely affect the living conditions of the occupants of nearby properties, in terms of emissions. It would therefore accord with Policy OE1 of the Hillingdon Local Plan: Part 2 – Unitary Development Plan Saved Policies and Policy DMEI14 of the emerging Hillingdon Local Plan: Part 2 – Development Management Policies with Modifications. Amongst other things, these seek to ensure that proposals do not have a detrimental impact upon sensitive receptors in terms of the emission of dust, odour or other air pollutants.

Other Consideration

9. I have found that a domestic boiler at the appeal site would not cause unacceptable levels of emissions. However, on the evidence before me, including a relatively recent appeal decision², there appears to be a complex history of multiple uses at the site which includes commercial uses. This previous appeal decision did not clarify the lawful use at the appeal site.
10. There is therefore uncertainty as to whether there is indeed a lawful residential use at the appeal site. This is not a matter for me to consider in an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act)

¹ Document entitled 'The Potential Air Quality Impacts from Biomass Combustion' (2017)

² Appeal decision Ref. APP/R5510/C/17/3184266

and it is therefore necessary for me to take a precautionary approach in reaching my decision.

11. In these circumstances, it would be inappropriate for me to grant planning permission for a domestic boiler when I cannot be certain that it would be operated for domestic purposes. It is, however, open to the appellant to apply to the Council to have this matter resolved under section 191 of the Act by applying for a Certificate of Lawfulness. Any such application would be unaffected by my determination of this appeal.

Other Matters

Conservation Area

12. The proposal is within the Springwell Lock Conservation Area (CA). The Council raise no objection to the scheme's impact on the historic environment. Nonetheless, I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of this CA. The significance of this designated heritage asset appears to derive from the historic use of its waterways and the buildings associated with this.
13. The only change to the external appearance of the appeal building would be the addition of a flue. Given the size and positioning of this feature, it would not be unduly prominent within the streetscene or wider area. Neither would the emission of smoke from the flue detract from the visual qualities of the area. Consequently, I am satisfied that the proposal would preserve the significance and the character or appearance of the CA.

Green Belt

14. The appeal site falls within the Metropolitan Green Belt. The Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate, unless for one of a limited number of specified exceptions. One such exception is at paragraph 145 (c) of the Framework which states that the extension or alteration of a building may not be inappropriate provided that it does not result in disproportionate additions over and above the size of the original building.
15. The height, bulk and mass of the proposed flue would be limited. Consequently, it would not represent a disproportionate addition to the original building. The proposal would therefore meet the above mentioned exception at paragraph 145 (c) of the Framework and would not be inappropriate development in the Green Belt. Accordingly, it should not be regarded as harmful to the openness of the Green Belt or indeed in terms of the purposes of including land within it. Under these circumstances, it is not necessary for the appellant to demonstrate that 'very special circumstances' exist.

Noise

16. I note that the Council also raises concern in terms of noise and disturbance to neighbouring residents. In my view, the positioning and size of the proposed domestic boiler would be unlikely to significantly harm living conditions in this regard. However, the exact decibel level that it would produce has not been provided. If I had been minded to allow the appeal, it would have therefore been necessary for me to go back to the parties to seek further clarification on

this matter. However, as I am dismissing the appeal for a substantive reason, I have not taken the matter further as it is not determinative to my decision.

Other Comment

17. Any concerns regarding the Council's behaviour whilst it processed and determined the planning application fall outside of the remit of this decision.

Planning Balance

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination must be made in accordance with the development plan unless material considerations indicate otherwise.
19. I have found that a domestic boiler at the appeal site would not result in harm to the living conditions at surrounding properties in terms of emissions. It would also integrate effectively with the historic environment and would not cause harm to the Green Belt. I have therefore found that a domestic boiler would accord with the Council's development Plan.
20. However, based on the complex history at the appeal site and the evidence before me, I cannot be certain that there is a domestic use at the site. Given this uncertainty, it would be inappropriate for me to grant permission for a domestic boiler when I cannot be certain that it would be operated for domestic purposes. This forms an important material consideration which attracts significant weight in my assessment.
21. The above factors lead me to conclude that, whilst in accordance with the development plan, there is a material consideration which indicates that this scheme should not be permitted.

Conclusion

22. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

M Heron

INSPECTOR