



Appeal Decisions

Site visit made on 26 November 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal B Ref: APP/T0355/W/19/3223366

Moor Farm, Ascot Road, Holyport, Maidenhead SL6 2HY

- 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 John Frankham against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/02881, dated 2 October 2018, was refused by notice dated 16 January 2019.
 - The development is described as: Barn to be used for the purposes of agriculture and equestrian.
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Appeal C Ref: APP/T0355/C/19/3225461

Moor Farm, Ascot Road, Holyport, Maidenhead SL6 2HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Frankham against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice was issued on 8 March 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a building in the approximate position marked with a blue cross on the attached plan.
 - The requirements of the notice are:
 - i. Demolish / dismantle the building in its entirety.
 - ii. Remove from the land all materials resulting from step (i).
 - iii. Dig up the concrete slab on which the building has been constructed.
 - iv. Remove from the land all materials resulting from step (iii).
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal D Ref: APP/T0355/C/19/3225462

Moor Farm, Ascot Road, Holyport, Maidenhead SL6 2HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Frankham against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice was issued on 8 March 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a building in the approximate position marked with a blue cross on the attached plan.
 - The requirements of the notice are:
 - i. Demolish / dismantle the building in its entirety.
 - ii. Remove from the land all materials resulting from step (i).
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- iii. Dig up the concrete slab on which the building has been constructed.
 - iv. Remove from the land all materials resulting from step (iii).
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal E Ref: APP/T0355/W/19/3223364

Moor Farm, Ascot Road, Holyport, Maidenhead SL6 2HY

- 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 John Frankham against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/02882, dated 2 October 2018, was refused by notice dated 16 January 2019.
 - The development is described as: Barn to be used for agriculture and equestrian.
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Appeal B Decision

1. The appeal is dismissed.

Appeal C Decision

2. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 28 days and the substitution of 4 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Appeal D Decision

3. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 28 days and the substitution of 4 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Appeal E Decision

4. The appeal is dismissed.

Preliminary Matters

5. I have dealt with another appeal on this site which is referred to by the appellant as 'Appeal A'¹. This is the subject of a separate decision letter.
6. The cover of one of the appellant's appeal statements identifies each appeal with letters A – E. In the interests of consistency, I have adopted the same letters to identify each appeal. Appeals B and D concern a building on the west side of the site, hereafter referred to as 'the west barn'. Appeals C and E concern a building on the east side of the site, hereafter referred to as 'the east barn'.
7. The drawings provided for the east and west barn are identical. The Council's reasons for refusing planning permission for each barn are identical, as are their reasons for issuing the enforcement notices. The evidence provided by the main parties in respect of each barn is also essentially the same albeit the

¹ APP/T0355/C/18/3218796

barns are on different parts of the land and the east barn is complete and the west barn was part-built at the time of my visit. In this decision letter I have considered both barns together but distinguished between them where necessary.

8. In Appeal B and D the Council have considered the west barn in its finished form. The appellant considers this brings into consideration a ground (b) appeal (i.e. that the breach alleged has not occurred because the barn is not finished). But section G of the enforcement appeal form for the west barn makes clear the development is the same as that which is the subject of the planning application in Appeal B.
9. Therefore, as the nature of the finished building for the west barn is known, it is pragmatic to treat the deemed planning application in Appeal D as relating to the finished building. There is no value in this case in considering an unfinished building or amending the alleged breach of planning control in Appeal D as, if I were to allow the ground (a) appeal, a further planning permission would then be required to complete the structure.
10. At the final comments stage, the appellant proposed a flood water displacement storage scheme. This would have changed the development which is the subject of all four appeals. Under section 177 of the Town and Country Planning Act 1990 planning permission may be granted only in respect of the matters stated in the enforcement notice and so the deemed planning applications for the enforcement appeals cannot include the flood water displacement storage scheme which was being proposed.
11. For the section 78 appeals, as is set out in the procedural guide for planning appeals², if an applicant thinks amending their proposal will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application. The appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Therefore, the proposed flood water displacement storage scheme was not accepted as an amendment to the appeals and nor was the new evidence submitted to support it.
12. My attention has been drawn to policies of the emerging Local Plan. But I do not know to what extent there are unresolved objections to its policies. It is possible they could be amended or deleted and so I give them limited weight in these decisions.

Ground (a) for Appeals C and D, their deemed planning applications and Appeals B and E

13. In considering whether planning permission should be granted for either barn, the main issues are:
 - whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and any relevant development plan policies,

² Planning Inspectorate, Planning appeals: procedural guide. Published 6 April 2015. Last updated 6 November 2019

- whether the development would be safe from flooding, and
- if the development is inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether inappropriate development

14. The appellant has identified both barns as being for equestrian purposes in connection with an equestrian business carried out at Moor Farm. Policy GB1 of the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations Adopted June 2003) ('the Local Plan') states that within the Green Belt, approval will only be given, save in very special circumstances, for the construction of new buildings for essential facilities for outdoor sport and outdoor recreation, which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
15. Policy GB2 states that permission will not be granted for new development within the Green Belt if it would have a greater impact on the openness of the Green Belt or the purposes of including land in it than an existing development on the site. Whilst both policies pre-date the Framework, in my judgement they are broadly consistent with it.
16. The Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt. There are a number of exceptions to this stated in the Framework including the provision of appropriate facilities for outdoor sport and outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. As set out in the Framework, the essential characteristics of Green Belts are their openness and permanence.
17. The east barn is clearly seen from Ascot Road and the site itself. Whilst not complete, the west barn is clearly seen from the site itself and neighbouring land, particularly to the north and west. Because of their substantial height, length and width, each barn significantly decreases the openness and permanence of the Green Belt.
18. In my judgement, the siting of each barn, at the western and eastern edges of the existing distribution of buildings on the wider site, spreads built development further into the countryside. This does not safeguard the countryside from encroachment and so there is conflict with the purposes of including the land within the Green Belt. Each barn is therefore inappropriate development in the Green Belt, does not comply with Policies GB1 and GB2 noted above or the Framework. Inappropriate development should not be approved except in very special circumstances.
19. My attention has been drawn to Green Belt developments elsewhere which were said to preserve the "overall" openness of the Green Belt. But overall openness is not the test set down in the Framework or the above development plan policies and so I give the effect on "overall" openness limited weight in this case.

Flooding

20. Moor Farm is adjacent to a river. Table 1 in the PPG³ contains different flood zones. These refer to the probability of flooding ignoring the presence of flood defences. The Council's decision notice and enforcement notice for each barn identifies that each barn is in flood zone 3b i.e. that the land on which each barn sits is functional floodplain. However, the Council's Strategic Flood Risk Assessment (SFRA) indicates the land on which each barn sits is flood zone 3a i.e. where there is a high probability of flooding.
21. No information has been provided by the Council to explain why 3b is considered to be the correct flood zone in light of the SFRA and so I consider 3a to be the correct flood zone for each barn in this case. Either way, a site-specific flood risk assessment following a sequential test should support each barn, as confirmed in footnote 50 to paragraph 163 of the Framework.
22. Paragraph 158 of the Framework advises that the aim of the sequential test is to steer development to areas with the lowest risk of flooding, and, development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. In this case, there is no evidence to indicate that there are no sequentially preferable sites where the barns could be located. As such, the sequential test is not passed.
23. The barns are intended to provide storage for hay, feed, bedding, machinery and a workshop, in connection with the equestrian business carried out at Moor Farm i.e. an outdoor sports and recreation use. Table 2 of the PPG contains flood risk vulnerability classifications and identifies that outdoor sports and recreation and essential facilities are 'water-compatible' development. Table 3 of the PPG concerns flood risk vulnerability and flood zone 'compatibility'. This table indicates that water-compatible development is 'appropriate' in flood zone 3a. Nevertheless, to comply with the Framework the development must still first have been subject to a sequential test.
24. The appellant considers a sequential test is not required in this case as the appeal development is 'minor development'. This is specifically defined in footnote 51 of the Framework⁴. No evidence has been provided which satisfies me the appeal development complies with this definition and therefore the sequential test does apply.
25. A flood relief bund was constructed around Moor Farm. This is shown in the SFRA and in the Environment Agency's data provided. A letter from David van Beesten of the Environment Agency, dated 27 February 2002, confirms that Moor Farm is within flood defences. However, this letter significantly pre-dates a visual inspection of the flood defences carried out by the Environment Agency in September 2019.
26. At the time of the above inspection, defects were found in the bund, such as the removal of material from an area of the bund which forms the flood defence. The Environment Agency have since advised that this may affect the

³ Planning Practice Guidance: Flood risk and coastal change

⁴ This includes householder development, small non-residential extensions (with a footprint of less than 250m²) and changes of use; except for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate.

performance of the bund and so, based on the information provided, I am not satisfied the bund provides an appropriate standard of protection for the barns from flooding.

27. The appellant states that storing machinery outside has resulted in weathering and breakdowns. However, the appellant also states the barns are designed to be floodable, with voids incorporated into the bottom of their cladding. There seems little point in building a structure to protect machinery from weathering when that structure is intended to be floodable. The appellant also says the development does not increase the number of people at risk from flooding but this is not the only relevant test of the relevant policy. Policy F1 seeks that development should not increase the number of properties at risk from flooding.
28. My attention has been drawn to previously permitted stables which are said to have resulted in no flooding comments as part of their assessment. But this does not make the developments before me acceptable. Considering all of the above points, I conclude on this main issue that neither barn is safe from flooding. Each barn is therefore contrary to Policy F1 of the Local Plan and the flooding policies of the Framework.

Other Considerations

29. The appellant considers the appeals should be allowed to support the rural economy and rural employment. But no evidence has been provided which satisfies me that dismissing the appeals would result in the loss of employment or cause significant harm to the equestrian business and so I give these considerations limited weight in this case.
30. Without the appeal development the appellant would have to identify alternative solutions for their storage needs. The appellant says this would be outside underneath tarpaulin and that this would be unsightly and result in a structure of a similar size to the barns. There is no evidence this is the case and so I give this consideration limited weight.
31. From the information available to me, including my observations from my site visit, I am not satisfied the content intended for either barn cannot be stored elsewhere, including within other buildings on the site, to which access was not provided at the time of my visit. I am therefore not satisfied the appeal schemes are the only storage options available to the appellant.
32. The appellant considers the appeal schemes conserve the conservation area and preserve the special interest of nearby listed buildings. Whilst this may be the case, these are neutral points and so I give them limited weight.
33. My attention has been drawn to permissions granted for developments elsewhere which are indicated to be similar to the appeal developments. However, I do not know all the circumstances of those cases and so I cannot be satisfied they are comparable to the developments before me in all respects and so I give them limited weight.
34. In accordance with the Framework, I must give substantial weight to any harm to the Green Belt. Whilst there may be factors which weigh in favour of the development, I do not consider the harm to the Green Belt together with the other harm identified above, are matters which are clearly outweighed by other

considerations, including those noted above. I therefore find the very special circumstances necessary to justify the development do not exist.

Ground (g) for Appeals C and D

35. The appellant seeks 6 months to comply with the requirements of the enforcement notices rather than the 28 days specified by the Council. The appellant considers securing contractors is likely to take 2 months and that work can only take place when the weather is appropriate so as not to 'damage' the land. But it has not been explained what this means in this context.
36. Both barns are relatively simple, steel-framed structures. There is no evidence to indicate that appropriately equipped builders could not easily dismantle them, break-up their concrete bases and remove the resultant materials from the land, provided weather conditions allow this to be safely carried out. On the basis of the information provided, I am not satisfied 6 months is required. But the period specified in the notices falls short of what is reasonable and it is necessary to extend the period for compliance specified in each notice to 4 months.

Appeal B Conclusion

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

Appeal C Conclusion

38. For the reasons given above I conclude that a reasonable period for compliance is 4 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal D Conclusion

39. For the reasons given above I conclude that a reasonable period for compliance is 4 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal E Conclusion

40. For the reasons given above the appeal is dismissed.

L Perkins

INSPECTOR