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## Appeal Decision

Site visit made on 20 January 2020

**by Ben Plenty BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 February 2020**

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**Appeal Ref: APP/T0355/W/19/3240117**

**Lowater, Church Lane, Bisham, Marlow SL7 1RW**

- 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 and Mrs Wingrove against the decision of Council of the Royal Borough of Windsor and Maidenhead.
  - The application Ref 19/00083, dated 11 January 2019, was refused by notice dated 5 August 2019.
  - The development proposed is for a replacement 4-bedroom dwelling with a garage and summerhouse, following demolition of the existing buildings.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The Appellants have provided a further image, reference TP(00)33, within their final comments. This shows the relationship of the proposal to the adjacent listed church and gate. As this provides additional detail to the proposal in support of existing arguments, I will take this further image into account in my decision. I am satisfied that no party would be prejudiced by my doing so.
3. A revised site plan<sup>1</sup> was submitted to the Council during consideration of the application. This reduced the red-lined boundary and moved it away from the river and rotated the summerhouse. A site plan is not listed in the Council's Decision Notice, it is therefore not explicit which version of site plan was refused. However, this change is minor with limited scope to affect interested parties. I have therefore dealt with the appeal on the basis of the amended plan which does not materially change the substance of the proposal and would not prejudice any party.
4. I have made a minor adjustment to the address to reflect the details stated on the Appeal form and the Council's Decision Notice for clarity.

### Main Issues

5. The main issues are:
  - whether the proposal would be inappropriate development in the Green Belt;
  - the effect on the openness of the Green Belt;

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<sup>1</sup> Revised site plan reference: TP(00)05 01 WP - 22 July 2019

- whether the proposed dwelling would preserve or enhance the character and appearance of the Bisham Conservation Area (BCA) and the setting of local heritage assets,
- whether the proposal would be subject to flood risk, and
- if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

## **Reasons**

### *Inappropriate development*

6. The site is within the Green Belt. The Development plan for the district includes the Royal Borough of Windsor and Maidenhead Local Plan 2003 (LP). Saved Policy GB1 of the LP, states that approval will only be given for new buildings in the Green Belt in limited circumstances. Saved policies GB2(A) and GB3 allow for the replacement of existing buildings. This is provided that development would not have a greater impact on the openness of the Green Belt or be materially larger to the scale of development on site.
7. The National Planning Policy Framework (The Framework) explains that the Government attaches great importance to the Green Belt. Paragraph 145 establishes that a new building would be inappropriate unless it meets a listed exception. Furthermore, the Framework explains that substantial weight is to be afforded to any harm. Paragraph 145(d) of the Framework states that a replacement building would be inappropriate unless it would not be materially larger than the one it replaces.
8. The existing building has its eaves at single-storey level. It includes three bedrooms at first floor, within its relatively large roof apex. The building also includes a single-storey section to its side and a front projecting element that includes a double garage. There is also a large, mostly flat roofed, rear extension. Accordingly, the existing dwelling presents a comparatively low-level building. This presents a baseline in terms of floor-area and volume, which I must then consider the proposal against.
9. The Council and Appellants have advanced floor space and volume calculations to undertake a comparison exercise. The Appellant has provided further revised volume and floor-space calculations within the appeal submission. These use the Council's method of calculation. They indicate that the volume would increase by around 24% and the floorspace by around 45%. Although, these figures are significantly less than those quoted in the officer report they nevertheless appear to be accurate. Furthermore, the Council has not questioned them. Accordingly, I will accept them as uncontested. However, the figures illustrate that the volume and especially floor-area would be increased by a sizeable amount. Consequently, in quantitative terms, the proposal would substantially increase the volume and floorspace of built form in comparison to the existing dwelling.
10. The existing dwelling is visible from Marlow Road due to its proximity to the junction. The Appellants' silhouette comparisons, within the Design and Access Statement, compare the existing and proposed development. This shows the design accommodating a fragmented roof and a contextual design with a

relatively modest prominence. However, the proposal would include two-storey elements that would be prominent additions in the street and increase the visual impact of the development. Furthermore, the garage and front boundary wall would be a wide and obtrusive addition to the mass. The combined effect of development would consequently result in a building that would have a substantially greater presence in the surrounding area than the existing dwelling.

11. The submitted evidence illustrates that the proposal disaggregates the first-floor elements and thus separates the mass to some extent. However, the contextual analysis drawing (TP(00)33) demonstrates that the first-floor element would encroach into a currently open area to the south. This would place additional bulk onto the site in an area which is more exposed and therefore more sensitive to change. Accordingly, when viewed from the highway, river and parts of the sports ground, the proposal would appear as a substantially larger building than is currently evident on site. Accordingly, the proposed dwelling would be materially larger than the existing building in both quantitative and qualitative terms.
12. Furthermore, the Council has stated that the proposal includes land that is beyond the established residential garden. Policy GB5 of the LP, seeks to prevent extensions to private gardens that would harm the open or rural character of the countryside. The Appellant has provided evidence that the extended garden is part of the established residential use. However, the Council considered this as part of a Certificate of Lawfulness<sup>2</sup> in 2017 which was refused. Nevertheless, the description of development of this proposal does not propose a change of use. It is therefore inconclusive as to whether a material change of use is required or has already been established. However, as I am dismissing the appeal for other substantive Green Belt reasons this matter has not been explored further.
13. As it has not been demonstrated that the proposal would be any of the exceptions listed in Paragraph 145 of the Framework. It would therefore amount to inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt.

#### *Effect on openness*

14. Paragraph 133 of the Framework identifies that the fundamental aim of the Green Belt is to prevent urban sprawl and keep land permanently open. The openness of the Green Belt has both spatial and visual dimensions. The proposed dwelling would be located within a group of buildings including the church and a school. The proposal would be relatively exposed but would be read alongside existing buildings.
15. The site is bounded by a highway, two dwellings, a sports ground and the River Thames. There is tree and hedge planting on the front and southern boundary. However, there are some sizeable gaps providing distant views including over the sports ground. Accordingly, the site is relatively open to public views and the existing dwelling can be viewed from most sides. Having found the proposed dwelling to be materially larger than the existing dwelling, the proposal would also have a demonstrably harmful effect on the openness both spatially and visually. However, being adjacent to existing built form and in

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<sup>2</sup> Certificate of Lawfulness: 17/01643/CPD

replacing an existing building, the impact on openness would be partially reduced.

16. As such, the proposal would result in moderate visual harm to the openness of the Green Belt. The harm to the openness would be in addition to the harm that I have found to the Green Belt by it being inappropriate development.

#### *Character and appearance*

17. The appeal site consists of a dwelling which sits on a comparatively large parcel of land. The site consists of the immediate grounds to the dwelling and a slightly dislocated parcel of land adjacent to the River Thames. The site is relatively flat and gradually slopes down towards the river. Although vacant, the dwelling is relatively modern and functional in design. As such, the site makes a neutral contribution to the character and appearance of the area.
18. The proposed dwelling is of contemporary design. It would consist of a relatively large ground floor area. It would include two first-floor elements that reinforce a parallel alignment of connected buildings pointing towards the river. Although, of non-traditional form, the proposal would consist of traditional materials that would visually connect the building to the local area. It would include the creation of a front boundary wall, set behind proposed planting.
19. The site is within BCA and is adjacent to the grade II\* listed All Saints Church and its grade II listed Lych Gate. The Framework recognises that great weight should be given to a heritage asset's conservation when considering the impact of development on its significance. Any harm to its significance requires clear and convincing justification. Substantial harm, to a designated asset should be refused consent unless it can be demonstrated that it is necessary to achieve substantial public benefits.
20. The statutory requirements<sup>3</sup> entail that special attention be paid to the desirability of preserving or enhancing the character and appearance of a conservation area. The significance of BCA appears to derive from the extent of historically interesting buildings, especially associated with the Abbey. There is a multitude of red and orange brick buildings in the conservation area. The surviving Abbey buildings are some of the most important in the conservation area. The appeal site was originally part of the grounds associated with the Vicarage but appears to have been severed for some time. Also, parties agree that the existing dwelling on site makes a neutral contribution to BCA.
21. The front elevation of the garage would be set back into the site, with the first floor set back further still. The proposed frontage planting, and the recessive nature of the development, would reduce its overall impact on the local setting. The contemporary design and traditional materials of the proposal would complement the local character. Accordingly, I find that the proposed design is a well-considered reaction to the context of the site. Consequently, the proposal would make a positive contribution to the conservation area.
22. I also have a statutory duty<sup>4</sup> to have special regard to the desirability to preserve the setting of a listed building. The Framework identifies significance as 'the value of a heritage asset to this and future generations' and is derived 'not only from its physical presence, but also its setting'. It explains that

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<sup>3</sup> Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>4</sup> section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990

elements of a setting may make a positive or negative contribution to its significance or may be neutral. Therefore, the question is whether change within their wider 'setting' would result in a loss of (or degrading to) their 'significance' as a heritage asset.

23. The church is significant due to its age, historical interest and local historical ties. The appellants' heritage assessment<sup>5</sup> records that the building is significant as it was a phased development from the mid 12<sup>th</sup> century. The Assessment also explains that it has strong historic connections to the local community and the Hoby family, who resided in the local Abbey. Furthermore, the significance of the Lych Gate derives from its age and association with the church. The proposal would be within the setting of both features, being located within the arrival space of the church. However, the proposal would be set back from the highway and would be comparatively subdued. Also, from the river, the relationship between the site and church is incidental only. As a consequence, the proposal would have a neutral impact on the setting of the listed buildings. Therefore, the proposal would preserve the setting of the both the church and Lych Gate.
24. The proposal includes the removal of a monterey cypress and a weeping birch. The Appellants' original tree report<sup>6</sup> considered these to be category B and C respectively. The proposal includes the replacement of these trees with two standard trees and three heavy standards as compensation for the loss. The weeping birch is a poor specimen and makes little positive contribution to the street. The Monterey cypress is rated as having high vigour and good physical and structural condition. It is located close to the front boundary of the site, adjacent to the highway and stands in a comparatively isolated view. Accordingly, this tree makes a positive contribution to the area.
25. Furthermore, the site is within a designated area of Special Landscape Importance. Saved policy N1 of the LP states that within such areas the Council will resist development that would result in the loss of tree cover. However, the tree comments<sup>7</sup> provided in support of the appeal illustrate that the Council appears to have previously held the monterey cypress in relatively low regard. Furthermore, these comments state that the tree is liable to disease and may be suffering early stages of Coyneum Canker. The tree consultant has therefore revised his assessment of the trees longevity to 20 years. The Council has not challenged this comment, or the further justification provided by the Appellant on this subject. The loss of the monterey cypress would result in moderate harm to the character and appearance of the conservation area. However, the proposed replacement planting would adequately off-set the loss of these trees.
26. Subsequently, the proposal would complement the character and appearance of the area. The proposed dwelling would therefore accord with saved policies LB2, CA2, N1, N2, N6 and DG1 of the LP. These seek development to not adversely affect the setting of a listed building, to preserve or enhance the character of a conservation area, to not affect the setting of views within special landscape areas, to conserve the setting of the River Thames, to allow for the retention of trees where practicable and be compatible with the existing

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<sup>5</sup> Heritage Collective, Heritage Statement December 2018

<sup>6</sup> Crown Tree Consultancy 3 December 2018

<sup>7</sup> Crown Tree Consultancy 19 September 2019

street facade respectively. The proposal would also accord with the Framework which seeks development to be sympathetic to the local character.

### *Flood risk*

27. Saved policy F1, of the LP, explains that development will not be permitted in areas liable to flooding unless it can be demonstrated that the proposal would not impede the flow of water, reduce the capacity of the flood plain or increase the risk of flooding. This policy is generally consistent with the Framework which seeks development to be made safe for its lifetime without increasing flood risk elsewhere<sup>8</sup>. Furthermore, the Planning Policy Guidance (The Guidance) identifies a risk-based approach to development and seeks to keep development out of medium to high flood risk areas (Flood Zones 2 and 3).
28. The site is largely within Flood Zone 2, with a small section close to the river in Flood Zone 3b. I have considered the original Flood Risk Assessment<sup>9</sup> (FRA), the appellants' addendum Statement<sup>10</sup> and the Environment Agency's (EA) representations<sup>11</sup>. The FRA explains that the footprint of the proposal would increase, but that existing hardstanding would be replaced with permeable surfaces to increase absorption. EA objected to the proposal as the FRA had failed to assess the impact of climate change or demonstrate that it could mitigate flood plain storage. The Appellants' addendum report explains that the proposal would be partly on higher ground thereby pulling away from the higher risk area. Consequently, net flood storage would result in a gain following development.
29. The proposed dwelling would be located away from the highest areas of flooding and would provide a net gain of development removed from Flood Zone 3a. It would therefore not increase flood risk elsewhere. Consequently, EA recognise the benefit offered to flood storage betterment due to the net gain and has consequently withdrawn its objection. It considers that the proposal would now comply with saved policy F1 of the LP subject to the imposition of a condition. I see no reason not to accept these conclusions, which I find to be considered and reasonable. Furthermore, I have no evidence before me to contradict these findings.
30. Consequently, the proposal would accord with saved policy F1 of the LP, which seeks development that would not reduce the capacity of the flood plain. The proposal would also satisfy the Framework which seeks development to avoid areas at risk of flooding and ensure that flood risk is not increased elsewhere.

### *Other considerations*

31. The Appellant refers to the fall-back position conveyed by permitted development rights. The officer report refers to the capability for the dwelling to benefit from an increase of its floor-area of 61%. However, it is not in evidence that this is subject to a certificate of lawfulness. Furthermore, its qualitative effect is not illustrated. Therefore, the fall-back position has not been shown to be less desirable. Also, there is no clear or reasonable possibility that such development would be undertaken. Accordingly, I have given the fall-back position limited weight.

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<sup>8</sup> National Planning Policy Framework: paragraph 155

<sup>9</sup> Flood Risk Assessment, Dr Paul Garrand January 2019

<sup>10</sup> Flood Risk Assessment addendum, Dr Paul Garrand 4/10/19

<sup>11</sup> Environment Agency letter 30 December 2019

32. The Design and Access Statement refers to examples of local replacement dwellings. These show acceptable development that include an increase in either floor area or volume. However, they are referenced without geographic or contextual analysis and therefore can only be afforded limited weight. In any event, whilst a consistent approach to decision making is important, each case must be considered on its own merits.

*Whether there would be Very Special Circumstances*

33. Paragraphs 143 and 144 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
34. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in moderate harm to the openness of the Green Belt. Paragraph 144 of the Framework requires substantial weight to be given to any harm to the Green Belt.
35. On the other hand, the other considerations I have identified, are of limited to moderate weight in favour of the proposal. As such the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist. Accordingly, the proposal fails to adhere to the local and national Green Belt policies I have already outlined.
36. Consequently, the proposed dwelling would be contrary to saved policies GB1, GB2(A) and GB3 of the LP, which seeks to resist development in the Green Belt unless it meets a listed exemption; that would have a greater impact on openness than the existing development; and that would be materially larger to the scale of development on site. However, the opposing views in regard to the extent of the residential garden is inconclusive. However, I am unconvinced that saved policy GB5 of the LP is relevant to the proposal.

**Conclusion**

37. For the above reasons the appeal is dismissed.

*Ben Plenty*

INSPECTOR