
Appeal Decision

Site visit made on 4 February 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2020

Appeal Ref: APP/Z3635/W/19/3239669

Riverbank, The Creek, Sunbury On Thames TW16 6BY

- 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 Tony Brindley against the decision of Spelthorne Borough Council.
 - The application Ref 19/00757/FUL, dated 30 May 2019, was refused by notice dated 23 August 2019.
 - The development proposed is a new low planter, access and boundary walls.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Despite the description of development set out above, I consider the description found on the Decision Notice better reflects the scheme that is before me and that which the Council considered. However, I have omitted reference to the words 'part retrospective', as they do not form part of the description of development. The development proposed is therefore for the 'erection of walls and piers at the entrance to The Creek, walls and piers adjacent to Riverbank and May Cottage, and planter adjacent to entrance to Riverbank'. I observed during my site visit that the planter was complete and part of the entrance walls to The Creek had been constructed. Nonetheless, I have dealt with the appeal on the basis of the revised description outlined above and the development shown on the proposed plans and elevations referenced: L01, L02 Revision A and P01 Revision A.

Main Issues

3. The main issues are: -
 - whether the development would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposed development on the risk of flooding elsewhere; and
 - if the development is inappropriate within the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

4. The National Planning Policy Framework 2019 (the Framework) sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 145 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
5. Whilst referring to the now replaced Planning Policy Guidance 2, the Local Plan¹ reiterates this stance in its explanation behind Saved Policy GB1. This sets out that development will not be permitted which would conflict with the purposes of the Green Belt and maintaining its openness.
6. The policy also lists exceptions to the presumption against inappropriate development, including limited extension, alteration or replacement of existing dwellings, appropriate reuse of buildings, and for agricultural, forestry, engineering and other operations.
7. Paragraph 146 of the Framework sets out that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it [my emphasis]. I shall come onto openness in more detail later, but engineering operations are one of the forms of development listed.
8. The appeal scheme is for brick walls, piers and a planter. These would be situated at the junction of The Creek and Fordbridge Road, alongside a private route leading from The Creek and at the entrance to Riverbank. As the proposals would change the physical nature of the land, they would constitute engineering operations. I note that the Council adopted a similar approach.
9. Paragraph 134 of the Framework clarifies that the Green Belt serves five purposes, including to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment. Given that the appeal scheme would constitute features of a distinctly urban appearance beyond the existing built-up area of Sunbury On Thames, they would contribute to urban sprawl. Accordingly, the proposal would therefore conflict with the purposes of including land within the Green Belt, so would form inappropriate development in the Green Belt.

Openness

10. As set out in paragraph 133 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics thereof are their openness and permanence. The physical presence of built forms may affect openness, which can also have a visual element.
11. The appeal site is arranged in two parts, at the junction of Fordbridge Road and The Creek and a private route leading from the latter. The frontage of

¹ Spelthorne Borough Local Plan 2001.

Fordbridge Road and the entrance to The Creek are marked by mature planting. A grass verge replaces the footpath to the southern side of Fordbridge Road, which terminates to the eastern side of this junction. The private drive, leading to Riverbank and its neighbour, is also marked by hedges to either side and substantial trees to the east. The vegetation is predominantly unmanaged in a natural state. The entrance to Riverbank is marked by similar brick walls, which the proposed planter will abut.

12. Whilst The Creek is a private carriageway, for its residents, and the planter would be some distance down a private driveway, given that the proposals are for built form, they would be clearly discernible to users of both these routes, as well as from within Fordbridge Road. The presence of existing planting or additional or replacement planting would fail to negate the increase in built form and the physical presence of the proposals, notwithstanding other development in the area.
13. For the above reasons, the proposed development would/will result in a harmful loss of openness of the Green Belt in both visual and spatial terms, albeit this would be limited given the scale of the proposals. The appeal scheme would/will therefore be contrary to the main aims of Green Belt policy at local and national levels, which I have set out above.

Flood Risk

14. The main parties concur that the appeal site is situated within Flood Zone 3. However, the Council has clarified that the proposals would relate to the functional floodplain (Zone 3b). Policy LO1(d) of the Core Strategy and Policies Development Plan Document (Adopted 26 February 2009) (the CSPDPD) sets out that the effectiveness of the more frequently flooded area (Zone 3b) of the floodplain, to both store water and allow the movement of fast flowing water, will be maintained by not permitting any additional development.
15. The appeal is supported by a Technical Note, which refers to flood risk. I appreciate that flood water could potentially flow around the proposed planter and between the proposed walls and piers. Despite the volume of the proposed walls, the effect of funnelling flood water in this manner would/will be likely to inhibit the storage and flow of water, which would/will be harmful to people and property elsewhere in the floodplain.
16. I therefore conclude that the proposed development would/will be likely to increase the risk of flooding elsewhere. Hence, the proposal would not accord with Policy LO1 of the CSPDPD. The proposal would also be in conflict with paragraph 163 of the Framework, which requires that flood risk is not increased elsewhere.

Other Considerations

17. Given that they could help stop soil from earth banks washing on to the surface of the carriageway, the appellant has suggested that the proposed walls would/will be an improvement of the unadopted street/private way as defined by a relevant statutory instrument². However, there is no substantive evidence before me to suggest that other methods have been explored or would be

² Schedule 2, Part 9, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

equally effective in addressing this matter. I have therefore afforded this matter limited weight.

18. I have been referred to other brick walls in situ in the vicinity of the site, at a dwelling situated to the northern side of Fordbridge Road. I understand that this was erected following a grant of planning permission in 1980³. Similarly, I note that the property known as 'Faith Cottage', adjacent to the private drive serving Riverbank, has been extended to its rear. I am not aware of the full circumstances of either case but in any event, I must consider the appeal scheme on its own individual merits.
19. I note that the Council has not found harm associated with the proposal in respect of the living conditions of occupiers of neighbouring properties or the safety of users of the highway. Similarly, the appellant has also suggested that the proposal would not be harmful to the character and appearance of the street scene. Moreover, the Council has not identified harm in respect of this matter. The absence of perceived harm in respect of these matters would therefore neither weigh for nor against the appeal scheme.
20. The appellant has referred to the conduct of the Council in the determination of the planning application, particularly the information required to be able to determine the application. This is primarily not a matter for me to consider as part of this appeal and I have considered the individual merits of the appeal scheme in relation to the relevant policies and evidence before me.

Planning Balance and Conclusion

21. Paragraph 47 of the Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
22. The development plan for the area comprises the Local Plan and the CSPDPD, both of which predate the current Framework. However, paragraph 213 of the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework.
23. In terms of Saved Policy GB1 of the Local Plan, it is more prescriptive than the Framework in what it permits and does not include the weighting exercise of harm to the Green Belt against other considerations. This policy is therefore out-of-date, which the Council does not dispute. In light of this, I have assessed the appeal against the guidance in the Framework rather than the Local Plan, as it is the most up to date expression of the national policy position on development in the Green Belt. Meanwhile, Policy LO1 of the CSPDPD is consistent with the Framework as it safeguards land from development that is required, or likely to be required, for current or future flood management. Accordingly, Policy LO1 is up to date and I have afforded it full weight in the determination of the appeal.
24. As one of the policies most important for determining the appeal is out-of-date, in line with footnote 7 to paragraph 11 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly

³ Planning Reference: PLAN S/FUL/80/550.

and demonstrably outweigh the benefits, the tilted balance. However, I am mindful that in light of my findings in relation to the Green Belt and flood risk, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, the tilted balance would not be engaged, and the normal planning balance applies.

25. The appeal scheme is inappropriate development in the Green Belt. This is harmful by definition. The proposal would reduce the Green Belt's openness which gives rise to additional harm. In each case, these harms render the appeal scheme contrary to the aims of both the policies of the development plan, as I have identified them, and the relevant sections of the Framework.
26. The location of the proposal would also be likely to increase the risk of flooding elsewhere, contrary to policies of the development plan and the Framework.
27. Paragraph 144 of the Framework advises that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is 'clearly outweighed by other considerations.'
28. I find that the harm to the Green Belt, and the other harm resulting from the proposal that I have identified, would not be clearly outweighed by other considerations and therefore do not amount to the very special circumstances needed to justify the development.
29. The proposed development would be contrary to the development plan. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR