



Appeal Decision

Site visit made on 19 May 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th May 2020

Appeal Ref: APP/T0355/W/20/3245020

34-36 Laggan Road, Maidenhead, Berkshire SL6 7JZ

- 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 Z Waraich against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/01552, dated 21 March 2019, was refused by notice dated 7 August 2019.
 - The development proposed is construction of 4no. dwellings and associated parking following the demolition of the existing dwellings 34-36 Laggan Road.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal was accompanied by revised plans which were not before the Council when application 19/01552 was determined. In summary, the revisions made alter a front gable feature to the front of the dwelling on Plot 2 to a hipped roof form, and provide for floodable voids beneath the ground floor level of the dwellings on Plots 3 and 4. These minor changes do not materially alter the nature of the scheme from that considered by the Council, and the Council and interested parties have had the opportunity to comment on these plans as part of the appeal process. Because it would not prejudice the interests of any party, I have therefore determined the appeal on the basis of the revised plans: PL201B, PL202B, PL203B, PL204A, PL205B and PL206B.

Main Issues

3. The main issues are (i) whether or not the proposed development would provide a suitable location for housing with particular regard to flood risk, and (ii) the effect of the proposal on the character and appearance of the area.

Reasons

Flood Risk

4. The National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) are clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future) by the application of the Sequential Test. Where, following the Sequential Test, development is necessary in such areas, it should also be subject to the Exception Test. This requires that wider

- sustainability benefits to the community outweigh the flood risk, and that the development will be safe for its lifetime without increasing flood risk elsewhere.
5. Table 1 of the PPG defines Flood Zones. It refers to Flood Zone 2 as land having between 1 in 100 and 1 in 1,000 annual probability of river flooding, or medium probability, while Flood Zone 3 is land with a 1 in 100 year or greater annual probability of flooding, or a high probability. The Environment Agency's (EA's) Flood Map for Planning (Rivers and Sea) shows the location of these Flood Zones, and indicates that Plots 3 and 4 are partially located within Flood Zones 2 and 3.
 6. The vulnerability of different types of development to flood risk is detailed at Table 2 of the PPG. This identifies the proposed development which would result in a net gain of 2 dwellings on the site as a 'more vulnerable' type of development. Table 3 goes on to identify that subject to the sequential approach, this type of development may be appropriate within Flood Zone 2, but that the Exception Test would be required within Flood Zone 3.
 7. The appellant has carried out an analysis of flood risk on the appeal site as part of a Flood Risk Technical Note dated 1 May 2019 (FRTN). This asserts that the Flood Map for Planning extents of flooding are overestimated, and that the 1 in 100 year annual probability of flooding event (Flood Zone 3) does not encroach onto the site. However, the appellant does not dispute that part of the site is within Flood Zone 2.
 8. Accordingly, the Sequential Test approach outlined at paragraph 158 of the Framework is relevant, and for development to be permitted here, there should be no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. In this context, the appellant has provided a Sequential Test document dated May 2019 (ST) which concludes that there are no sequentially preferable sites for the proposed development.
 9. In considering alternative sites, the appellant's ST discounts sites said to be of equal or higher Flood Zone to the appeal site. This was undertaken on the basis of the appellant's identification of the appeal site as falling within Flood Zones 1 and 2 only. Sites within Flood Zone 2 were therefore discounted.
 10. However, although the EA acknowledges the appellant's assessment of flood risk within the FRTN, it comments that this does not alter the designation of the site on the Flood Map for Planning. For the purposes of applying policy within the Framework, the PPG refers explicitly to the location of Flood Zones as being shown on the EA's Flood Map for Planning (Rivers and Sea), and Table 1 explicitly refers to Flood Zones as being shown on the EA's Flood Map for Planning¹. In this context, and notwithstanding the FRTN, I am not therefore persuaded that, for the purposes of the policies within the Framework and the application of the Sequential Test, the site should currently be considered as outside of Flood Zone 3 and that alternative sites which are within Flood Zone 2 only should be discounted.
 11. Even if I were to accept the appellant's classification of flood risk on the site as appropriate, the ST restricts the identification of potential alternative sites to those within the developed area of Maidenhead and areas within a 3-mile radius of the site.

¹ Paragraph: 003 Reference ID: 7-003-20140306 and Paragraph: 065 Reference ID: 7-065-20140306

12. I note the appellant proposes that reference at paragraph 158 of the Framework to reasonably available sites appropriate for the proposed development is taken to mean 'more appropriate' in planning terms than other sites having regard to strategic policy objectives and directives. However, the wording within the Framework makes no mention of sites as being more appropriate, and I have not been directed to support for importing this alternative interpretation of the Framework within the development plan, PPG or any other relevant guidance.
13. I have not been provided with compelling evidence of a specific requirement for the development to be located at Maidenhead to sustain the community or fulfil any other identified need. I acknowledge the appellant's reference to the findings of the Inspector considering the Council's Core Strategy in 2007 that Maidenhead is a more sustainable location for additional development. The Core Strategy was not progressed to adoption, but in any event, these comments relate to a general consideration of settlements as a whole to inform the settlement hierarchy. In this regard, I see no reason that the importance given to Maidenhead as a location for development would determine that sites outside of this area could not also appropriately accommodate development to meet the borough's needs. On the basis of the information before me, I am not therefore satisfied that there is robust justification to exclude areas outside of Maidenhead and its surrounds from the search for potential alternative sites.
14. Moreover, even if I were to accept the appellant's focus on Maidenhead, there is no substantive evidence before me which would point to a specific catchment area for the development proposed on the site. Nor is there an adequate explanation of the basis for the 3-mile radius applied with respect to the specific circumstances of the appeal site and proposal. As a consequence, while it may have been accepted elsewhere that a ST assessment need not be borough-wide, it is not clear from the evidence before me that the applied radius appropriately encompasses the area from which sites would be reasonably comparable to the circumstances of the appeal site, including with regard to their relationship with Maidenhead.
15. I acknowledge that the PPG advises in relation to planning applications that the area to apply the Sequential Test across will be defined by local circumstances and that a pragmatic approach should be taken to the availability of alternative sites. Nevertheless, for these reasons, a number of what might otherwise be reasonable alternative sites for the proposed development could have been excluded. On the evidence before me, I am not therefore satisfied it has been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas at lower risk of flooding. Accordingly, the proposal fails to meet the requirements of the Sequential Test.
16. The appellant has suggested various measures intended to ensure that the development would be appropriately flood resistant and resilient and would not increase the risk of flooding outside of the site, but they would not overcome the failure to meet the Sequential Test. I note the Council's concerns over the suitability of some of the measures proposed by the appellant, but I have not therefore considered this further. It is also unnecessary for me to consider the proposal's compliance with the Exception Test, as that is to be applied only where the Sequential Test has been passed. Compliance with the Sequential Test is a fundamental requirement of the Framework and Guidance.

17. I therefore conclude on this main issue that it has not been demonstrated that the proposed development would provide a suitable location for housing with regard to flood risk. The proposal would therefore conflict with saved Policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations) 2003 (LP) which requires that new development demonstrates that the number of people or properties at risk from flooding would not be increased. There would also be conflict with the requirements of the Framework which seeks to avoid inappropriate development in areas at risk of flooding by directing development away from those areas at highest risk.

Character and Appearance

18. The appeal site accommodates a pair of semi-detached dwellings located at the head of a small cul-de-sac branch of Laggan Road. Laggan Road is characterised by pairs of semi-detached dwellings of similar original appearance fronting the street with fairly generous gardens to their rear. Hipped roof forms and front bay features are typical, although external materials vary.
19. The Council have not raised concerns over the scale or appearance of the dwellings proposed on Plots 3 or 4 on the rear part of the site, and from the evidence before me and my site visit, I see no reason to disagree with this assessment.
20. The proposed pair of dwellings on Plots 1 and 2 would front Laggan Road, and would include a two-storey projection to the front of Plot 2. The arrangement of fenestration at first floor level would also be uneven, and as a consequence the pair would not reflect the often symmetrical composition of other dwellings on Laggan Road. The positioning of the doors towards the centre of the building and lesser width of the dwellings would also contrast with others nearby.
21. However, despite the similar original appearance and scale of dwellings on Laggan Road, extensions and alterations are apparent to many of the dwellings within the street scene. These include two-storey side extensions which vary in scale and design, in some cases to just one of a semi-detached pair, as well as a two-storey front and side extension to 30 Laggan Road close to the appeal site. As a consequence, the street scene and pairs of dwellings are not uniform in their scale or appearance, providing for a degree of diversity and interest.
22. The amended plans submitted as part of the appeal include revisions to the design of the dwelling on Plot 2 to incorporate a hipped roof form over the front projection. This would be more in keeping with the distinctive hipped roof forms of other dwellings on Laggan Road, and given the existing variation present in the street scene, I see no reason that the slightly different appearance of the proposed dwellings on Plots 1 and 2 would fail to harmonise with the street scene. Instead, and subject to the use of sympathetic materials which could be secured by condition, I find that the proposed development would add visual interest which would complement the existing diversity in the street scene while making effective use of the appeal site.
23. For these reasons, I conclude on this main issue that the proposal would not harm the character or appearance of the area and I find no conflict with saved Policy DG1 of the LP. Amongst other things, this policy includes a requirement that the design of new buildings is compatible with the established street

façade and that development does not cause harm to the character of the surrounding area.

Planning Balance and Conclusion

24. The Council indicates that it is not able to demonstrate a 5 year supply of housing. The presumption in favour of sustainable development outlined at paragraph 11(d) of the Framework is therefore engaged. This states that where the policies which are most important for determining the proposal are out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
25. However, 'areas at risk of flooding' are listed at footnote 6 of the Framework as one of the situations where specific policies in the Framework provide a clear reason for refusing the development. I have found that policies within the Framework relating to areas at risk of flooding indicate clearly that development should be restricted. Accordingly, and with regard to paragraph 11(d) of the Framework, the presumption in favour of sustainable development does not apply in this case.
26. Notwithstanding this, I note that the proposal would provide a net gain of 2 dwellings. The Framework seeks to significantly boost the supply of housing to meet needs, and the dwellings would be located within an existing residential area with access to local services and public transport. They would make a modest contribution to the Council's housing supply, but the extent of the benefit is tempered by the small amount of development. While I have found no harm to the character and appearance of the area, I find that the benefits of the proposal are insufficient to outweigh the harm arising as a consequence of flood risk. The proposal would conflict with the development plan as a whole and there are no material considerations which indicate that a decision contrary to the development plan should be reached
27. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR