
Appeal Decision

Site visit made on 15 October 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 10th November 2020.

Appeal Ref: APP/T0355/W/19/3243583

Garages 1-12 off Milton Close, Horton SL3 9PP

- 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 Charles (Windsor & District Housing Association (Radian Group)) against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/02195, dated 6 August 2019, was refused by notice dated 25 October 2019.
 - The development proposed is described as 'demolition of existing garages and replacement with 2 no. 3 bed affordable houses, landscaping and parking'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As part of the appeal, the appellant has submitted additional and amended plans: shadow diagrams in response to the Council's third reason for refusal; and a revised drawing to update the proposed site sections to reflect amendments to the design of the proposed dwellings which were made before the Council reached its decision. As these drawings do not change the proposed development, no prejudice would arise from my accepting them. I have therefore determined the appeal based on these drawings.

Main Issues

3. The main issues are:
 - i) whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - ii) the effect of the proposal on the openness of the Green Belt;
 - iii) whether the proposal would be acceptable in respect of flood risk, having regard to the Framework and Planning Practice Guidance (PPG);
 - iv) the effect of the proposal on the living conditions of neighbouring occupiers in respect of outlook and light; and
 - v) whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development, including effect on openness

4. The Framework attaches great importance to Green Belts and sets out that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 requires substantial weight to be given to any harm to the Green Belt. While the appellant may disagree with the site's inclusion in the Green Belt, the drawing up and review of Green Belt boundaries is a matter for the plan-making process, not for individual decisions.
5. LP Policy GB1 sets out that within the Green Belt, approval will only be given, save in very special circumstances, for specified types of development. These include residential development in accordance with LP Policy GB3, which sets out a general presumption against new residential development except where it meets specific criteria, including infilling within recognised settlements.
6. The supporting text to Policy GB3 defines infilling as building on undeveloped land within the existing built up area of a settlement. The appeal site contains a row of garages and is therefore previously developed land (PDL). Consequently, the proposal cannot be infilling for the purposes of Policy GB3, and nor does it meet any of the other criteria of that Policy. It therefore does not meet criterion A)3) of Policy GB1. Furthermore, although it is PDL, the site is not a 'designated major developed site' for the purposes of criterion A)4), and it does not meet any of the other exceptions in Policy GB1.
7. Framework paragraph 145 sets out that new buildings are inappropriate in the Green Belt with some exceptions. These include limited affordable housing for local community needs under policies set out in the development plan, and limited infilling or the partial or complete redevelopment of PDL which would not have a greater impact on the openness of the Green Belt than the existing development.
8. The appellant states in the description of development and supporting documents that the proposed dwellings would be affordable housing. However, these will not bind the occupation of the dwellings unless secured by a legal mechanism, such as planning conditions or obligations. While the appellant has indicated willingness to enter into a section 106 agreement, there is no such agreement before me. Nor has any other mechanism been put forward to secure the proposed dwellings as affordable housing.
9. The Inspectorate's Procedural Guidance is clear that the appellant must make sure that any legal agreement is submitted in sufficient time for it to be taken into account in the appeal decision. There is no compelling evidence before me that there are any exceptional circumstances which would make it appropriate to impose a condition to require such an agreement to be entered into.
10. Although the appellant is a housing association which intends to operate the dwellings as affordable housing, planning permission runs with the land, not the appellant. Therefore, in the absence of a s106 agreement or other mechanism, neither the appellant or any future landowner would be compelled to offer the proposed dwellings as affordable housing, nor could provision in perpetuity be ensured. Consequently, as the dwellings would not be secured as

affordable housing, the proposal would not comprise limited affordable housing in respect of Framework paragraph 145f).

11. The proposal would involve complete redevelopment of PDL however, so Framework paragraph 145g) is relevant. This requires an assessment of the impact of the proposal on the openness of the Green Belt. It has been established that when applying the concept of openness to the particular facts of a case, a number of factors are capable of being relevant, and that openness might have a spatial as well as a visual aspect. The Supreme Court has held that a consideration of openness in any given case is a matter for the decision maker and may or may not include a consideration of the visual aspect of openness. For the purposes of this appeal, I have considered both the visual and spatial aspects of openness.
12. The existing row of garages extends along most of one side of the appeal site. Gaps between dwellings provide views from Milton Close across the site to dwellings behind, however due to their low height and the presence of boundary walls, the garages are not seen in these views. Only parts of the end garages can be glimpsed from the access road. Consequently, although within a settlement and partially occupied by buildings, the site appears relatively open in the context of the tight-knit residential development around it.
13. The proposed dwellings would be considerably taller and bulkier than the existing garages. Due to their scale and siting, they would be seen from Milton Close, particularly between Nos 16 and 18, and from neighbouring properties. As a result, the views across the site would be interrupted by built form and its open appearance would be diminished. Consequently, the proposal would reduce the openness of the site, both spatially and visually, compared to the existing situation.
14. In the context of this residential area the reduction in openness of the Green Belt would be relatively minor. Nevertheless, the proposal would have a greater impact on that openness than the existing development. Therefore, it would not comply with the first bullet point of Framework paragraph 145g) and would conflict with LP Policy GB2 criterion A). For the reasons set out above, the proposal would not contribute to meeting an identified affordable housing need and as such the test of 'substantial harm' in the second bullet point of paragraph 145g) is not relevant to this proposal. The proposal would not fall within any of the other exceptions in Framework paragraphs 145 or 146. Accordingly, it would be inappropriate development in the Green Belt.
15. The Council has cited in its refusal emerging Policy SP5 of the Borough Local Plan (BLP), which seeks to prevent inappropriate development in the Green Belt, which it aligns with the exceptions listed in national policy. While the BLP is currently being Examined, and as such has reached an advanced stage, no details have been provided of any objections to this Policy. I can therefore afford it only limited weight. In any event, as I have found that the proposal would not meet any of the exceptions in the Framework, it follows that it would not comply with Policy SP5.

Flood risk

16. Framework paragraph 155 is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph 157 requires a sequential test to be applied, with

paragraph 158 setting out that the aim of that test is to steer new development to areas with the lowest flooding. It follows that development should not be allocated or permitted if there are reasonably available sites appropriate for development in areas with a lower risk of flooding, and that the strategic flood risk assessment (SFRA) will provide the basis for applying this test.

17. The proposal is for more vulnerable development, and although the site is in an area of low risk of surface water flooding, it lies predominantly within Flood Zone 2 in respect of fluvial flooding. Although the ground level is above that of a nearby modelled flood level, there is no detailed modelling of the site before me. Nor is there any substantive evidence that the site's inclusion in Flood Zone 2 in the SFRA or the Environment Agency's (EA) flood maps has been successfully challenged. Consequently, there is no compelling evidence before me that the site falls within a lower flood zone, as the appellant implies. Nor does the absence of flooding, including during recent high rainfall events mean that the site will not flood in future. Therefore, the sequential test must be applied.
18. The appellant's site search apparently includes the whole borough and references various documents, but the submissions do not include any details of specific sites considered. Therefore, it is not clear whether all allocated sites, non-allocated sites with planning permission and windfall sites have been considered, as recommended by the EA's standing advice. Nor are any reasons given as to why particular sites were considered unsuitable or unavailable, other than in relation to their size.
19. The PPG sets out when applying the sequential test, a pragmatic approach on the availability of alternatives should be taken. However, it is unclear why the appellant's search was limited to sites of similar size and proposed use to the appeal site, or why other larger sites would be fundamentally unsuitable just because they had capacity for more than the 2 dwellings proposed. For example, there is no substantive evidence before me justifying why the proposal could not be delivered as part of a comprehensive development. Therefore, this approach to the site search has not been justified.
20. It is perhaps understandable, given the appellant's stated intentions, that the site search was framed to look at sites for affordable housing. However, I have found that it would not be restricted in that way. Even if it were, there is no objective assessment before me that demonstrates that the proposal could not be delivered as part of a larger site, or that it would not be financially viable on any alternative site.
21. There is therefore no compelling evidence before me to demonstrate that all reasonably available sites appropriate for the proposed development, in areas with a lower risk of flooding, have been robustly considered. Accordingly, the proposal does not pass the sequential test. It is not therefore necessary for me to apply the exception test. Accordingly, the proposal would not be acceptable in respect of flood risk, having regard to the Framework and the PPG.

Living conditions

22. The outlook from the ground floor windows of neighbouring properties is limited by their relatively short rear gardens, existing boundary walls and outbuildings. However, due to the low height of the garages on the appeal site, the outlook from their first-floor windows is largely unrestricted.

23. The proposed dwellings would have hipped roofs and be of a similar height to those around them, but would nonetheless be considerably taller than the existing garages. They would be sited close to the boundaries of the site, and the proposed 2-storey side walls would extend across most of the width of the rear gardens of Nos 16 and 18, and across a significant part of the rear boundary of 'Redwoods'. Consequently, due to their scale and siting, the proposed dwellings would be dominant and overbearing features when seen from the rear windows of those neighbouring properties, and therefore would significantly and harmfully reduce their outlook.
24. The existing garages would be removed, and the walls reduced in height by an unspecified amount, however any retained or replacement boundary treatments would still need to be high enough to provide privacy for the existing and proposed dwellings. As such, these works would not offset the adverse impacts of the proposed dwellings in terms of outlook.
25. In respect of daylight, the appellant's submissions suggest that the proposed dwellings would not obstruct a 25-degree line drawn from certain windows of neighbouring properties. However, the proposed dwellings would be directly in front of windows in the rear of Redwoods and No 18 which are not assessed, and which are more likely to be affected than those that were assessed. The lines are also inconsistently applied in relation to which part of the window they are taken from. Nor has it been shown that existing outbuildings or retained walls restrict daylight to such a degree that the proposed dwellings would have no greater impact. Consequently, I cannot be certain that the proposal would not adversely affect daylight to neighbouring properties.
26. The appellant's shadow diagrams demonstrate that the proposed dwellings would increase shading of the garden and rear of Redwood in the mornings and to the rear of Nos 14 and 16 Milton Close in the afternoon at certain times of year. However, it would not result in significantly greater shading than already results from the existing walls, garages and outbuildings, and those properties would still benefit from sunlight during other times of day. Consequently, the proposal would not significantly adversely affect the living conditions of neighbours in respect of sunlight.
27. Accordingly, the proposal would result in significant harm to the living conditions of neighbouring occupiers in respect of outlook, and likely further harm in respect of daylight. I have not been directed to any relevant LP policies on living conditions, however the proposal would conflict with the Framework requirement to achieve good design, including a high standard of amenity for existing and future users.

Other considerations

28. The Council confirms that it cannot currently demonstrate a 5-year supply of housing land, however neither main party has provided details of the extent of the shortfall. The proposal would contribute to housing supply in an existing settlement and make efficient and effective use of a small windfall site and PDL. It would provide internal accommodation designed to Lifetime Homes standards, and would result in economic benefits through construction and occupation.
29. However, due to the flood risk of the site and the harmful impact of the proposal on the Green Belt, it has not been demonstrated that it is a suitable

site for the proposed development. As such, the proposal does not benefit from the substantial weight afforded to use of suitable PDL by Framework paragraph 118. Consequently, even in the context of a shortfall in housing supply, the benefits of only 2 dwellings would be limited, and therefore carry limited weight.

30. The removal of the derelict garages would improve the appearance of the site, however as little of them is publicly visible, I afford this limited weight. The appellant suggests that the proposed dwellings would be energy efficient and incorporate solar panels, however no details are shown on the submitted drawings and as such this carries minimal weight.

Green Belt balancing

31. The proposal therefore represents inappropriate development and would harm the openness of the Green Belt, to which I attach substantial weight having regard to Framework paragraph 144. I also afford substantial weight to the adverse impacts of the proposal in terms of flood risk, and significant weight to the harm to the living conditions of neighbours, given the importance the Framework attaches to these two matters.
32. Against this harm, the benefits of providing 2 dwellings, which would not be secured as affordable housing, would be limited. Consequently, I find that the other considerations in this case do not clearly outweigh the totality of the harm that I have identified. The very special circumstances necessary to justify the development therefore do not exist. As such, the proposal would conflict with LP Policy GB1.

Planning Balance and Conclusion

33. I have found that the proposal would conflict with LP Policies GB1 and GB2. In the absence of a 5-year housing land supply, Framework paragraph 11d) provides that the policies which are most important for determining the application are out-of-date. Policies GB1 and GB2 are not wholly consistent with the Framework in terms of the exceptions and openness tests contained within them, and as such I afford the conflict with these policies significant, but not full weight.
34. However, the proposal also conflicts with Framework policies that protect the Green Belt and areas at risk of flooding, and these provide a clear reason for refusing the development proposed. Therefore, the 'tilted balance' in Framework paragraph 11 d) ii. is not engaged. There is also further conflict with the Framework in respect of the living conditions of neighbours.
35. Overall, therefore, taking account of the above considerations, including the benefits of the development, I find that material considerations do not indicate that planning permission should be granted for the proposal, which conflicts with the development plan and the Framework. The appeal is therefore dismissed.

L McKay

INSPECTOR