

---

# Appeal Decision

Site visit made on 23 November 2021

**by Stephen Wilkinson BA BPI DIP LA MBA MRTPI**

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

**Decision date: 22<sup>nd</sup> December 2021**

---

**Appeal Ref: APP/T0355/W/20/3259258**

**Little Croft, Bisham Road, Bisham, Marlow, SL7 1RL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Ms Ruth Taylor against the decision of Royal Borough of Windsor and Maidenhead.
  - The application Ref 20/00064, dated 10 January 2020, was refused by notice dated 6 April 2020.
  - The development proposed is replacement dwelling.
- 

## Decision

1. The appeal is dismissed.

## Procedural Matters

2. Given the status of the Council's emerging local plan and that it hasn't been cited in its reasons for refusal, I accord its policies only limited weight.
3. Since the Council issued its original decision and the parties sent in their statements the National Planning Policy Framework (the Framework) has been revised.

## Main Issues

4. The main issues are:
  - Whether the appeal scheme would be inappropriate development in the Green Belt, including the effect the proposals would have on openness
  - The effect the proposals would have on the character and appearance of the area
  - Whether or not the loss of a non designated heritage asset would impact on the character or appearance of the Bisham Conservation Area (CA)
  - The effect of the proposals on the living conditions of neighbouring occupiers
  - Whether or not the appeal scheme would increase flood risk
  - The effects of the proposals on biodiversity with particular regard to the protection of bats
  - Whether very special circumstances exist to warrant an exception to policies which require the protection of the Green Belt.

## Reasons

### *Background*

5. Underpinning an important part of the appellant's case is the potential impacts of a permitted Lawful Development Certificate (LDC) for 3 single storey rear extensions to the main property, replacement of the thatched roof by slate and a large single storey triple garage and workshop located at the rear of the garden. A sworn affidavit signed by the appellant indicates their intention to develop this scheme in the event that the appeal is dismissed. For the appellant this represents a fall back position allowing comparison with the appeal scheme.

### *Green Belt*

6. The Framework identifies the protection of the Green Belt as a core planning principle. It says one of the fundamental aims of the Green Belt is to keep land permanently open, and openness is one of its essential characteristics. Moreover, checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment are among the 5 purposes it says the Green Belt serves. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. The appeal site in common with surrounding residential properties is designated Green Belt. The site like those in the surrounding area comprises a detached residential property surrounded by its garden.
8. The appeal scheme would involve the complete redevelopment of the property with a detached 2 storey property. This would in part, occupy the footprint of the existing property although with a slight re-orientation away from the existing. The scheme would maintain its overall ridge line. However, the key difference between that proposed and existing is the single storey rear extension which would cover a large part of the rear garden. The proposed scheme would be considerably larger than the existing house and would adversely impact on the openness of the site within the Green Belt.
9. The appellant cites the LDC permitted scheme as the basis of comparison for the purposes of Paragraph 149d) of the Framework which would allow a replacement building providing it is in the same use and not materially larger than the one it replaces. Together the LDC and original building would have a volume and floor area of around 9% and 5% greater than the appeal scheme. Although the appellant through the affidavit has stated an intention to go ahead with the LDC, this is not the same as having an existing building for comparison purposes given the exigencies of Paragraph 149d). I regard the existing building as a baseline position for comparison purposes only.
10. In reaching this decision, I have taken full account of the 'Final' comments from the appellant and for this reason the proposed scheme cannot claim the benefit of this exception as it would be materially larger than that existing.
11. Furthermore, the appellant states that the appeal scheme would also have the benefit of the first limb of Paragraph 149g) of the Framework which could allow the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. I acknowledge that the site is previously developed land but

explicit within this section is reference to comparison of the proposed development with existing. The LDC scheme together with the existing property does not represent a baseline position as an aid to comparison.

12. Whilst 'fall back' positions can be deployed as an argument designed to inform planning decisions, in my view the Framework's advice is clear in respect of Paragraph's 149d) and 149g) that the comparison of proposed developed has to be with existing development which represents a baseline position. Whilst the affidavit is clear in stating the owner's intention, it does not compensate for development which is not there. The proposed building would be far larger than that existing and would result in greater impact on openness.
13. For these reasons, when comparing both the volume and floorspace of the proposed scheme in comparison with that existing on site, I conclude that the scheme does not fall within the exceptions defined by both Paragraph 149d) and 149g) of the Framework.

#### *Character and appearance*

14. The area surrounding the appeal site comprises large detached properties of varied character in spacious gardens. Many of these along Bisham Road comprise chalet style properties with rooms in the roof space served by dormers.
15. The scale of the proposed building would strike a discordant note into the area due to the depth of the extension given the established character and appearance of the area. Whilst many of the surrounding properties have been extended these are limited in scale when compared to the original property and do not encroach so much into their rear gardens. The proposed extension would diminish the garden area when compared to surrounding properties.
16. The depth of the extension together with its height and limited separation distance to the boundary with Compleat Cottage to the north, would present a long wall and roof outline. This would be a discordant and intrusive form of development which would have an overbearing impact on this property. In contrast the implementation of the LDC would have less impacts.
17. Although Compleat Cottage, has a 2 storey rear extension, I do not know the detailed planning history of this site. However, the extension is proportionate to the scale of the rear garden which has greater breadth than the appeal site.
18. For these reasons, I conclude the appeal scheme conflicts with Policy DG1, H10 and H11 of the Local Plan which seek to ensure that new development and extensions are of a size and scale in accordance with the character of existing development. The proposed scheme would not be of a design that reflects the character of surrounding development. Furthermore, the new Framework places a clear emphasis on the importance of design and the scheme would be contrary to Paragraph 134 of the Framework which requires development to raise design standards.

#### *Conservation Area*

19. The appeal site lies within the Bisham Conservation Area (CA). The settlement pattern within the CA is determined by its position in the flood plain of the River Thames and Bisham Abbey.

20. The northern end of the CA where the appeal site is located has few important features, is located away from the river frontage and cannot be readily viewed from surrounding countryside due to the extent of surrounding development. The site's immediate context is determined by a row of detached properties along the road which date from the twentieth century although opposite the site there are early twentieth century properties including the Bridge House, set within extensive grounds.
21. The appeal site was built in the period 1925-32 and reflects a cottage style in terms of its size/ plot ratio, fenestration, white render and thatched roof. It has a high degree of visibility in the street scene given the railings to its frontage. These features result in this single dwelling having significance which in turn impacts positively on the character and appearance of the CA.
22. As part of their case, the appellant identifies that many of the neighbouring properties have been re built or extended and that the proposed scheme would be consistent with these new designs. Furthermore, they consider that greater harm would result to the CA from the implementation of the LDC which would significantly alter the form of development on site with the extensions, triple garage and the replacement of its thatched roof with slate.
23. Whilst I accept that many of the properties in the local area (included in Appendix H of the Heritage statement) have been either redeveloped or extended, it is unclear whether these were non designated heritage assets. Furthermore, it is clear that apart from a few exceptions most of the works to these properties were permitted before the adoption of the Council's local plan in 2003.
24. Whilst I accept that the harm caused by the loss of the building would be less than substantial, I am not persuaded by the appellants argument that all the public benefits cited are sufficient to outweigh the harm which would result. The potential savings arising through flood risk and compensation and reductions in carbon emissions are limited in scale as public benefits and the reference to public health standards is more of a private benefit. Together these would not outweigh the loss of the existing building and the extent of harm to the CA.
25. If the appellant intends to pursue the LDC, the proposed changes would only partially diminish the contribution that the building makes to the CA. The large triple garage in the rear garden would not be readily seen from the road, the extensions would have limited depth and the replacement roof material would not alter the overall size and orientation of the building on the site. The extent of harm to the CA resulting from implementation of the LDC would not be as great as the loss of this building on the character and appearance of the Bisham CA.
26. Although the Framework requires balance in assessing how development would affect non designated heritage assets it is the implications arising from the loss of this asset for the CA which is at the heart of this main issue. Accordingly, I conclude that the proposed redevelopment of the site involving the loss of the non designated heritage asset would in turn adversely impact on the character or appearance of the area with particular regard to the Bisham CA. The proposals would therefore conflict with Policies CA1 and CA2 of the Borough Plan and Paragraph 202 of the Framework. These policies seek to ensure that development should safeguard or enhance designated heritage assets, respect

local character and to ensure that development in conservation areas will only be permitted where it will preserve or enhance its character or appearance.

27. The proposals would result in less than substantial harm to the significance of a designated heritage asset. Whilst the appellant identifies a range of public benefits I consider that only the flood compensation and carbon reduction are public benefits which resonates beyond the other private benefits cited. The scale of these would not outweigh the harm that would occur to the character or appearance of the Bisham CA.

### *Living Conditions*

28. The extension to the appeal scheme would have a series of glazed patio style doors allowing access onto a terrace raised about 1m above the existing level of the garden.
29. Both the extent of glazing and the height of the terrace would afford views over the existing fence into the rear garden of the neighbouring property, Caesbury (formerly known as, Cushna Gap), given the limited separation distance to the boundary fence. This would result in overlooking and a loss of privacy to this property.
30. Whilst the appellant argues that a distance of 8m would be acceptable this would infringe the Councils design guidance which require a minimum distance of around 12m. It would erode the sense of privacy which residents would normally expect to enjoy in their rear gardens.
31. The appellant has concerns over the height of the existing patio at Caesbury which results in overlooking to the appeal site. However, its extent is not as great as the appeal scheme. The proposed scheme would lead to a considerable amount of the neighbour's rear garden being overlooked leading to a lack of privacy. Given the degree of vantage which would be afforded by the rear extension this could not be readily remedied through additional screening.
32. Whilst there are first floor flank windows in the existing rear addition to Compleat Cottage these are set well away from the boundary with the appeal site and does not result in problems of overlooking.
33. Finally, I conclude that the appeal scheme would be in conflict with Paragraph 130f) of the Framework which requires development to have a high standard of amenity for existing occupiers.

### *Flood Risk*

34. The site is located in the functional flood plain of the River Thames (flood zone 3b). Evidence from both the appellant and an interested party highlight recent flood events at the site.
35. Flood risk has determined, in part, the design of the scheme, which requires ground floor levels of at least 28.3m above Ordnance Datum (0.3m above finished floor levels of the existing property (FFL)). The scheme includes undercroft details demonstrating how waters could flow through the whole site.
36. Policy FR1 requires that new development in areas of flood risk should be restricted to an area of around 30sm. unless it can be demonstrated that water

flow will not be impeded, capacity would not be reduced and there would be no increase in properties being at risk of flooding.

37. The scheme was accompanied by a FRA<sup>1</sup> which was subsequently updated following the Councils decision and which the EA stated that it had no objections. Although the Council regards the voids under the scheme as a form of mitigation by design and not compensation, as they would require proper maintenance, this matter could be adequately addressed through the imposition of a suitably worded planning condition as suggested by the EA.
38. For these reasons, I conclude that the appeal scheme would not conflict with Policy FR1 of the adopted plan and Paragraph 167 of the Framework subject to the imposition of the condition.

### *Biodiversity*

39. Both parties acknowledge that the area around the appeal site is suitable for foraging and commuting by Bats, a protected species. The appellant included ecological surveys with both the application and the appeal highlighting that Bats are not present within the roof and eaves of the existing property.
40. Whilst the Council maintains its objection because no emergence survey has been carried out in accordance with BCT<sup>2</sup> guidance, I am satisfied that two surveys have satisfactorily established that Bats are not present on site.
41. For these reasons the appeal scheme would not be in conflict with Paragraph 180 of the Framework and paragraphs 98 and 99 of Circular 06/2005.

### *Very special circumstances*

42. The appellant identifies a number of matters which they consider, in combination, are sufficient to establish the very special circumstances required to justify the appeal scheme in the Green Belt. Foremost amongst these matters is the permitted LDC scheme. This is a legitimate matter to consider for the purposes of this issue.
43. Volumetric and floorspace calculations indicate that the implementation of the LDC scheme would be around 9% and 5% less than the appeal scheme. In this regard alone, it would have less impact on the openness of the Green Belt than the implementation of the LDC involving the retention of the existing property. It would therefore not be in conflict with Policies GB1, GB2A and GB3 of the Local Plan.

### **Planning balance and conclusions**

44. For the reasons stated above, I accept that the implementation of the LDC represents very special circumstances which create the case for the appeal scheme's development in the Green Belt. Furthermore, I do not find harm with regard to biodiversity and the flood risk implications of the proposed scheme. Nevertheless, the appeal scheme does not comply with adopted policy in 3 other areas.
45. The appellant identifies that there are only 3 most important policies for the purposes of this appeal. However, of the Council's 6 reasons for refusal I find

---

<sup>1</sup> Flood Risk Assessment

<sup>2</sup> Bat Conservation Trust

- that there are 3 areas where the proposed scheme is in conflict with adopted policies.
46. I recognise that the Local Plan was adopted before the Framework. To carry weight policies must be consistent with the Framework, as explained in Paragraph 219 which amongst, other things, explains that the closer that policies in the plan are to policies in the Framework, the greater weight that may be given to them.
47. I regard the most important policies are those quoted in the Councils reason for refusal. These include policies DG1 H10, H11, N2, CA1 and CA2.
48. Policies DG1 and H10 address a range of design matters which affect development. I consider that these are broadly consistent with Paragraph 130 of the Framework. I also regard the intent of Policy H11 as consistent with Paragraph 130.
49. Policies CA1 and CA2 are both consistent with Chapter 16 of the Framework which amongst other matters, seek to protect designated heritage assets.
50. Policy N2 is concerned with the setting of the Thames. It is a specific policy dedicated to local circumstances which is consistent with Paragraph 174 of the Framework.
51. Given that there is consistency between the Council's adopted policies and those of the Framework, I accord significant weight to the conflict between these policies and the appeal scheme. The public benefits accorded to the scheme are insufficient to outweigh the harms which would result given its impacts on the Bisham CA, the character and appearance of the surrounding area and on the living conditions of neighbouring occupiers.
52. Therefore, whilst the proposal may comply with some elements of local and national policies regarding the Green Belt, flood risk and the protection of biodiversity, it would conflict with other policies included in the development plan and the Framework overall. These conflicts weigh against the scheme as a whole, for the reasons as set out above.
53. Accordingly, the appeal is dismissed.

*Stephen Wilkinson*

INSPECTOR