
Appeal Decision

Site visit made on 1 February 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2022

Appeal Ref: APP/T0355/W/21/3276226

1 The Drive, Ray Street, Maidenhead SL6 8PN

- 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 Mohammed Hanif against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 20/02809, dated 20 October 2020, was refused by notice dated 4 January 2021.
 - The development proposed is a 2 storey house on vacant land.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The name of the appellant was not the same as the name of the applicant. This was subsequently clarified, and the applicant gave authorisation for the appeal to proceed accordingly.
3. New evidence relating to flooding was received under the appeal. Accepting new evidence of such substance would be prejudicial to other interested parties because it would fundamentally change information about how the proposal is being justified in land use terms.
4. Guidance¹ is clear that if an applicant thinks that amending their proposals will overcome the Council's reasons for refusal they should normally make a fresh planning application.
5. The Borough Local Plan 2022 was adopted during the appeal. Parties have been given an opportunity to comment on the possible implications, and these have been considered in making my decision.

Main Issues

6. The main issues are:
 - (a) whether the site's location is acceptable in relation to flood risk; and
 - (b) the effect of the proposal on the character and appearance of the area.

¹ Procedural Guide: Planning Appeals England, Annex M.2

Reasons

Flood Risk

7. The site is in Flood Zone 3a, which is a flood zone with a high probability of flooding². The proposal is for residential development, which is more vulnerable to the effects of flooding³.
8. Any assessment needs to be based on existing flood zone classifications, and there is no evidence that flood relief works in the area have changed these for the purposes of the appeal.
9. The proposal does not meet criteria under Paragraph 168 of the National Planning Policy Framework (the Framework) and is not exempt from either of the sequential or exception tests.
10. Paragraph 162 of the Framework is clear that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.
11. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding. Guidance⁴ is also clear that the aim should be to keep development out of flood zones with a medium or high probability of flooding.
12. In this context, and on the basis I cannot accept new evidence, the appellant has not demonstrated that there are a lack of reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.
13. Consequently, the proposal fails the sequential test and given that both tests must be passed in succession⁵, and notwithstanding representations from the Environment Agency, it is not necessary for me to apply the exception test.
14. Given that the sequential test is central to determining whether the principle of development is acceptable in this case it would not be appropriate to secure such evidence by way of planning condition.
15. Overall, the proposal fails to satisfy the sequential test and would not be in an acceptable location for housing in relation to flood risk. It would therefore conflict with Policy NR1 of the Borough Local Plan 2022 and Paragraph 162 of the Framework, which among other things require the sequential test to be passed.

Character and Appearance

16. The site is directly adjacent to a single storey bungalow, and whilst it sits amongst other two storey dwellings in the surrounding area, the predominant visual relationship is with the single storey bungalow.
17. In this context, the proposal would deliver a two storey dwelling in close proximity. The significant differences in scale would be immediately obvious, becoming jarring and without pleasing transitions in building form. This would harm the character and appearance of the area.

² Planning Practice Guidance, Paragraph: 065 Reference ID: 7-065-20140306

³ Planning Practice Guidance, Paragraph: 066 Reference ID: 7-066-20140306

⁴ Planning Practice Guidance, Paragraph: 018 Reference ID: 7-018-20140306

⁵ Planning Practice Guidance, Paragraph: 035 Reference ID: 7-035-20140306

18. The Council's reasons for refusal are clear that the dispute relates to the scale of the proposal, in particular its height, and not its footprint, landscaping or design in relation to accessibility for disabled people, among other things.
19. Overall, the incongruous relationship with adjacent development would harm the character and appearance of the area and conflict with Policy QP3 of the Borough Local Plan 2022 and Royal Borough of Windsor and Maidenhead Borough Wide Design Guide 2020, which require proposals to be of appropriate scale.

Other Matters

20. The details of other developments nearby are not in front of me, and I cannot make a finding on their relevance to the proposal under the appeal.
21. The appellant has responded to matters not disputed by the Council, such as parking, cycle storage and energy efficiency. Furthermore, there is no evidence of measurable benefits to weigh against the identified harms derived from the main issues. Altogether, these matters have not been determinative under the appeal.
22. Letters submitted in support of the proposal are not indicative of its acceptability, which has been considered in accordance with the main issues.
23. In their original statement, the Council acknowledged that they could not demonstrate a five year housing land supply. Presumably, and following the adoption of the Borough Local Plan 2022, this is no longer the case and Paragraph 11 (d) of the Framework would not be engaged.
24. Even if it was engaged, despite the appellant intending to put the land to good use, it is clear that the presumption in favour of sustainable development would not apply in this case because the application of policies in the Framework that protect areas or assets of particular importance, including areas at risk of flooding, provide a clear reason for refusing the development proposed.

Conclusion

25. For the reasons given above, the appeal is dismissed.

Liam Page

INSPECTOR