



Appeal Decision

Site visit made on 2 November 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Appeal Ref: APP/T0355/W/21/3277536

Oakside, Littlefield Green, White Waltham, Maidenhead SL6 3JN

- 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 & Mrs Dean against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 20/01531/FULL, dated 25 June 2020, was refused by notice dated 24 December 2020.
 - The development proposed is erection of detached dwelling following demolition of car repair/maintenance garage (re-submission of 19/00138/FULL).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council have confirmed that the Bat Survey submitted as part of this appeal has overcome the Council's 3rd reason for refusal. I have no evidence before me to reach a contrary view to the Council in this regard and this is reflected in the main issues, which are set out below.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published, and the Borough Local Plan 2013 – 2033 (adopted February 2022) (Local Plan) was adopted. The main parties were provided with an opportunity to comment. Both main parties have made comments on the relevant policies of the new Local Plan and I have taken their comments into account. I have had regard to the 2021 version of the Framework, and the newly-adopted Local Plan, in my decision.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on a protected tree on the site; and
 - if the proposal would be inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether Inappropriate Development

5. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings within the Green Belt is inappropriate. There is a closed list of exceptions to this in paragraph 149 of the Framework. Whilst the appellants have referred to paragraph 145 f) (now paragraph 149 f)) it is clear from their submissions that the intended reference is to what is now paragraph 149 g) which relates to limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
6. Policy QP5 of the Local Plan provides that, amongst other things, the Metropolitan Green Belt will be protected against inappropriate development, and that planning permission will not be granted for inappropriate development (as defined by the Framework), unless very special circumstances are demonstrated. Policy QP5 further provides that, amongst other things, certain forms of development are not considered inappropriate within the Green Belt, as defined in the Framework. Hence, Policy QP5 is consistent with the Framework.
7. It is common ground between the main parties that the site comprises previously developed land, and therefore my assessment continues with respect to openness. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
8. Based on the plans before me, the proposal would remove the consistent line of tall conifers which lie adjacent to the road. Consequently, greater views into the site would be possible than at present, thereby providing a limited positive contribution to openness. However, as the proposed detached dwelling would also be visible from the road, overall these elements of the proposal would have a neutral effect on the openness of the Green Belt in visual terms.
9. The proposal would remove extensive areas of hardstanding and replace it with soft landscaping, but as the hardstanding merely comprises ground-level surfacing its removal would have a negligible effect on the openness of the Green Belt. A number of parked / stored vehicles would also be removed from the site. However, considering the total size of the vehicle storage area, the proposal's positive contribution to openness in spatial terms would be fairly limited.
10. The proposed detached dwelling would have a lesser footprint than the existing building, although this reduction in footprint would not be substantial. Nevertheless, the proposed dwelling would have a considerably larger volume than the existing building, with a larger amount of floorspace, and it would also be approximately 2 metres taller than the existing building. Accordingly, it would be a significantly bulkier building, with a greater mass and scale, than that which exists on site. As such, even taking account of the fairly limited positive contribution to openness arising from the removal of the vehicles, the

proposal would materially reduce the openness of the Green Belt in spatial terms.

11. Therefore, in spatial terms the proposal would have a greater impact on the openness of the Green Belt than the existing development. Consequently, it would conflict with paragraph 149 g) of the Framework. The proposal would therefore constitute inappropriate development in the Green Belt for the purposes of the Framework and Policy QP5 of the Local Plan. Inappropriate development is, by definition, harmful to the Green Belt.

Character and Appearance

12. Apart from Oakside, which is set-back from the road somewhat, and what appears to be a derelict public house further beyond Oakside, there is little built development of note in the immediate street scene surrounding the site. Due to the curve in the road near the site, the frontage of the site is a particularly prominent focal point when approaching the site from either direction. Mature hedgerow adjacent to grass verges next to the road is a noteworthy feature of the street scene in the local area. This contributes to the wider rural character of the area of which the site forms a part.
13. According to the plans before me, the proposal would remove the front row of tall conifers, which lie adjacent to the road. This would considerably disrupt the pleasant rural appearance of this stretch of the road and would undermine the site's contribution to the character of the area.
14. The proposed dwelling would be of a moderate scale with a traditional design which would be an improvement over the existing concrete building on site, which has a utilitarian appearance. As a residential dwelling situated on previously developed land, it would also not be incongruous in terms of its intrinsic residential use.
15. However, although the proposed dwelling would be sited on the footprint of the existing building, the existing building is largely screened from the road, meaning that it has very little presence in the street scene. The proposed dwelling would be positioned close to the verge and in an especially prominent position due to the curvature of the road. Hence, its proposed positioning, combined with the removal of the conifers, would unduly contrast with the mostly undeveloped nature of the street scene. This would significantly diminish the pleasing rural character of the area.
16. The visual improvement to the site when viewed from across the open fields to the south would be a minimal benefit, considering the importance of the street scene to the character of the area, and therefore this factor does not change my findings.
17. A planning condition could be imposed requiring details of proposed boundary treatments, including planting, detailed landscaping, and fencing, but as any new planting would likely take some time to establish, this would not adequately mitigate the harm caused by the proposal to the character and appearance of the area. Although the proposal would remove the existing hardstanding and remove the parked / stored vehicles from the site, these are currently not readily visible from public vantage points and therefore this matter would not off-set the harm caused by the proposal.

18. I therefore find that the proposal would have an unacceptable and significantly harmful effect on the character and appearance of the area. It would conflict with Policies QP1 and QP3 of the Local Plan, which collectively provide that, amongst other things, a development proposal will be considered high quality design and acceptable where it respects and enhances the local, natural or historic character of the environment.

Protected Tree

19. A large oak tree is present on site, near its frontage. This tree is a notable feature in the street scene. The tree positively contributes to the character and appearance of the area and is protected by a Tree Preservation Order.
20. An existing building on site is situated close to this tree and the proposed dwelling would be located slightly further away from the large oak tree than that building is. Nevertheless, as no Arboricultural Impact Assessment or other technical information has been submitted it has not been made clear what the extent of the construction works would be, either around or within, the root protection area of the tree, or what measures would be taken to protect the tree during the construction of the dwelling. As such, there is no certainty that construction works, including any new foundations, would not adversely impact on the health and safety of this important tree.
21. Given the importance of the tree to the character and appearance of the area it would not be appropriate for planning permission to be granted in these circumstances. The use of planning conditions relating to the required information, including details of demolition and construction measures, would not be reasonable, as currently there is no certainty that the proposed development could be implemented without harm to the protected tree.
22. I therefore conclude that I have insufficient information before me to demonstrate that the proposal would not have an adverse effect upon the protected oak tree, in circumstances where its loss would cause significant harm to the character and appearance of the area. Thus, the proposal would conflict with Policies NR2 and NR3 of the Local Plan which collectively provide that, amongst other things, development proposals should protect and retain trees, woodlands and hedgerows.

Other Considerations

23. The Council has referred to Policy IF2 of the Local Plan, which relates to sustainable transport. However, the matter of sustainable transport does not feature in the Council's reasons for refusal. As little substantive evidence is before me which might illuminate any concerns that the Council may have in this regard, I consider that the proposal is acceptable in this respect. However, this is a neutral matter.
24. No concerns have been raised by the Council with respect to matters relating to transport and parking. However, even if I were to likewise reason that the proposal would be acceptable in these respects, these would be neutral factors rather than ones which weigh positively in favour of the proposal.
25. The appellants have referred to a Written Ministerial Statement: Planning for Growth (2011). However, given its age, and the comprehensive treatment of the economic objective in achieving sustainable development in the Framework, I have placed greater weight on the requirements of the

Framework. In this regard, the proposal would provide work for construction and other professionals and the future occupiers of the proposal would be likely to contribute to the economy in the long-term. However, as only one new dwelling is proposed, this matter has been given limited weight in favour of the proposal.

26. The proposal would support the Government's objective of significantly boosting the supply of homes. However, given that only one new dwelling is proposed, this matter has also been given limited weight.
27. The proposal would aim to achieve Code Level 3 of the Code for Sustainable Homes, incorporating a number of measures to save energy and reduce carbon emissions. If the proposal were acceptable overall, a planning condition could be imposed requiring air source heat pumps to be installed. Little details have been provided to quantify the exact sustainability gains in this respect, compared to the operation of the current workshop, and therefore this matter has been given limited weight.
28. The proposal benefits from a fall-back position, in the form of an extant Certificate of Lawfulness for an extension to the existing building (20/00318/CLD). This relates to a single-storey extension to the existing building, of approximately 4 metres in depth. Taking account of *Mansell*¹, I do not doubt the appellants' statements that this fall-back position would be implemented in the event that this appeal is dismissed.
29. The footprint, depth and width of the proposed dwelling would be less than the extended existing dwelling. The respective floorspaces would be almost identical in amount. Nevertheless, the proposed dwelling would be approximately 2 metres taller than the extended existing dwelling. Furthermore, as stated under the first main issue, above, the reduction in hardstanding across the site arising via the proposal would have a negligible effect on the openness of the Green Belt. Consequently, the fall-back position would not be significantly more harmful to the openness of the Green Belt than the proposal. For these reasons, I have given the fall-back position only moderate weight in favour of the proposal.
30. The proposed dwelling is intended to be a self-build unit. There is no reference to a burden of proof in appeal decisions Refs APP/G2435/W/18/3214451 & APP/G2435/Q/18/3214498. My reading of those decisions is that the Inspector was responding to the specific evidence before them, rather than attempting to set out an evidential precedent to be met in future appeal decisions. Therefore I do not think it is strictly correct that any lack of evidence on the Council's part as to whether supply is meeting demand means that it is reasonable to conclude that there is a shortfall. Similarly, the weights given to self-build units in appeal decisions Refs APP/W0530/W/19/3230103 and APP/H1840/W/19/3241879 are case and fact-specific and therefore have little bearing on the proposal before me. This is particularly so, considering that they do not relate to the Royal Borough of Windsor and Maidenhead.
31. Notwithstanding this, whilst there is limited evidence before me relating to any demand for self-build development, and having regard to the Self-build and Custom Housebuilding Act 2015 (as amended), I have also not been provided with evidence which demonstrates that demand does not exist. In this regard,

¹ *Mansell v Tonbridge and Malling BC & Ors* [2017] EWCA Civ 1314

paragraph 62 of the Framework supports self-build development and accordingly I have given this consideration moderate weight in favour of the proposal.

Balancing of Considerations

32. The proposal would be inappropriate development in the Green Belt and would result in a reduction in its openness. These matters carry substantial weight. The proposal would also cause harm to both the character and appearance of the area and potentially to a protected tree, matters to which collectively I accord significant weight. Whilst the proposal would offer a number of discrete benefits, as described above, overall these would amount to no more than moderate weight in favour of the proposal. As such, I find that these benefits do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist. Therefore, the proposal would not comply with the Green Belt aims of Policy QP5 of the Local Plan, or the Framework, and consequently would be unacceptable.
33. The lack of a 5 year housing supply means that the policies which are most important for determining the proposal are out-of-date in accordance with paragraph 11 d) of the Framework. However, part i. of paragraph 11 d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including Green Belt, provide a clear reason for refusing the development. As I have explained, there would be harms to the Green Belt that would not be clearly outweighed. This provides a clear reason for refusing the proposed development. Therefore, the proposal would not benefit from the presumption in favour of sustainable development in this instance.

Conclusion

34. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR