



Appeal Decision

Site visit made on 15 March 2022

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 03 MAY 2022

Appeal Ref: APP/Z3635/W/21/3268858

No 1, The Creek, Sunbury-on-Thames, TW16 6BY

- 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 Anthony Brindley against the decision of Spelthorne Borough Council.
 - The application Ref 20/00643/FUL dated 30 June 2020, was refused by notice dated 14 August 2020.
 - The development proposed is described as the replacement of existing 1920s single storey dwelling with new single storey 4 bed dwelling on amended footprint.
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Decision

1. The appeal is dismissed.

Background

2. The appeal concerns development that has been carried out on a long, narrow plot of land sloping down to the River Thames. The site was originally occupied by a single storey, timber framed house built around the 1920s and surrounding garden. A low retaining wall and narrow mooring platform separated the bottom of the garden from the river, accessed by a short flight of steps. A small, single-storey brick building had more recently been added near the entrance of the site.
3. The house was in a poor state of repair when the site was purchased by the current owner in 2017 and he therefore demolished it. Planning permission was granted on a partly retrospective basis in April 2018 for a replacement, single storey dwelling and external works, including a garage, walls and a platform adjacent to the river¹. This permission was granted subject to 14 conditions, including removal of the right to build extensions or outbuildings under the Town and Country Planning (General Permitted Development) (England) Order 2015.
4. However, the development was not completed according to the approved plans. An application to vary Condition 3 (approved drawings) to regularise the amended footprint, roof design, fenestration, flood voids, walls, steps, erection of boathouse and other alterations, was refused on flood risk grounds². The current full application seeks to achieve a similar outcome to the proposed variation and was refused for the same reason.

¹ 17/01464/FUL (18 April 2018) – ‘erection of a 4 bedroom detached dwelling following demolition of the existing building. Erection of a detached garage, brick boundary walls and extension of the existing concrete retaining wall and platform along the south-eastern site boundary’.

² 19/00845/RVC (decision notice dated 25 October 2019)

5. Crucially for determination of this appeal, permission 17/01464/FUL expired on the 18 April 2021 and the existing development on the site is unlawful. The consequence of this is that I am unable to treat the existing development nor lapsed planning permission as fallback positions.
6. As the original house was demolished in 2017 and the current one is unlawful, the courts have held that the proposal can no longer be a 'replacement' dwelling. I have therefore assessed the proposal as an entirely new development and both parties have had the opportunity to update their cases on this basis. Notwithstanding this, given that there has clearly been a house on the site for a long period, and in the interests of certainty, I have also assessed the appeal on the basis that the proposal is a replacement dwelling.
7. Both parties have also been given the opportunity to update their cases with reference to the revised National Planning Policy Framework (2021) (the Framework) and the emerging Spelthorne Local Plan (2020-2035).
8. The local plan is the Spelthorne Borough Core Strategy and Policies Development Plan Document (2009) (the DPD). Where relevant, I have also taken into consideration the more up to date national policies in the National Planning Policy Framework (2021) (the Framework).

Main issues

9. The appeal site is in the Metropolitan Green Belt and the main issues are therefore:
 - whether or not the proposal would be inappropriate development in the Green Belt including its effect on openness and the purpose of the Green Belt,
 - whether or not the proposal would comply with planning policy that seeks to steer new development away from areas at the highest risk of flooding,
 - the effect of the proposal on flood risk,
 - the effect on character and appearance of the area and river setting, and
 - if the development is inappropriate in the Green Belt, 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 development.

Reasons

Whether or not inappropriate development

10. Saved Policy GB1 of the DPD and paragraph 149 of the Framework preclude new buildings in the Green Belt, with several exceptions. Although none have been recommended to me by either party, I consider it possible that exception (e) for limited infilling in villages could apply to the dwelling element. This is because the site is tightly flanked on both sides by housing and I am content that the area could legitimately be described as a village. On this basis, and despite the lack of evidence from the main parties, a new dwelling may not be inappropriate development in the Green Belt.

11. The Council conclude that this is acceptable because the boat house and garage could be legitimately built using permitted development rights. However, the rights conferred in Class E, Part 1 of Schedule 2 of the Town and County Planning (General Permitted Development) (England) Order (2015) are for buildings incidental to a dwellinghouse. As the original house has been demolished and the new house is unlawful, there is no dwellinghouse to which these rights can now apply. I must therefore assess the boat house and garage as new buildings in the Green Belt.
12. Although not put to me, an argument could be made that the boat house is a facility for outdoor recreation and that the exception in paragraph 149 (b) of the Framework applies. Given its diminutive size and inconspicuous location, I am content that it does not harm the openness and it is therefore not inappropriate development.
13. Neither party has addressed how the exceptions to the preclusion on new buildings in the Green Belt relate to the garage and it is not clear to me that any are applicable. In the absence of this, I must conclude that it is inappropriate development in the Green Belt.
14. The high walls, terracing and hardstanding constructed around and within the site are development in their own right. Policy GB1 of the DPD allows for '*appropriate engineering and other operations*'. Paragraph 150(b) of the Framework allows '*engineering operations*' as long as they preserve openness and do not conflict with the purposes of including land within the Green Belt. The physical presence of built forms may affect openness, which can also have a visual element.
15. Based on the photographic evidence provided and from what I saw on my site visit, the high walls around the site that are clearly discernible by residents of The Creek introduce a physical and visual barrier that reduces the openness of the Green Belt when compared to the largely undeveloped site in 2017. The additional internal walls and terraces also appears to add built volume and visual barriers across the site and, although less visible in the public domain, can still be seen when the site is viewed by users of the river, further adding to a visible loss of openness.
16. The predominance of hardstanding across the entire site and substantial walled terracing is in stark contrast to the original, gently sloping grassed plot dotted with mature trees and has a strongly urbanising effect on the site, in conflict with the purposes of including the land in the Green Belt, namely that of assisting the countryside from encroachment. The appellant has explained that the original steps and single retaining wall were crumbling and required replacement, but this does not account for the scale and extent of the engineering operations that exist on the site now. For these reasons, I conclude that the scale and form of the engineering operations does not preserve the openness of the Green Belt and they are therefore inappropriate development.
17. Notwithstanding the fact that the proposal is now necessarily for a new building, for the avoidance of doubt I have also considered the outcome if the house was a replacement structure. To be clear, this is replacement of the original, now demolished, house. Policy EN2 of the DPD requires that the rebuilding and extension of dwellings in the Green Belt should not significantly change the scale of the original building. The more recent policy in paragraph 149(d) of the Framework allows replacement of existing dwellings in the Green

Belt as long as they are not materially larger than the one it is replacing. 'Materially larger' is not defined, but case law has established that it is essentially a question of fact and degree.

18. I have not been provided with a definitive figure for the increase in footprint if the house was a replacement. I have had regard to the undisputed estimates from interested parties and figures relied upon by the Environment Agency (EA) from the appellant. These appear to me to be generally consistent with the plans and photographic evidence. Taken together, I conclude that the new house is at least 100 m² larger than the original house, which was no more than about 200 m² in area, and it is therefore at least a third larger. For this reason, I am satisfied that the house is both materially larger in both footprint and volume, and significantly changes the scale of the original building. If the house is a replacement, then it is materially larger and inappropriate development in the Green Belt. The significant additional volume harms the openness of the Green Belt in spatial terms, albeit this would be modest in comparison with an entirely new house.
19. I am mindful that this is a different interpretation to that reached by the Council regarding the effect of the engineering operations or a replacement dwelling on the Green Belt. In part this is because the lapse in permission 17/01464/FUL means that I am approaching this as a new development and viewing the site in its totality rather than as incremental increases.
20. A new house and boat house are potentially not inappropriate development in the Green Belt. Notwithstanding this, given the significant and harmful loss of openness caused by the extensive engineering operations and garage, I conclude that the development as a whole amounts to inappropriate development in the Green Belt. Even if the house is a replacement, it would be materially larger and therefore also inappropriate. For these reasons, the proposal is contrary to Policy GB1 of the DPD and paragraphs 149 and 150 of the Framework, the harm from which I am directed by paragraph 148 of the Framework to give substantial weight.

Sequential test

21. It is not in dispute that the site is in Flood Zone 3b or the functional flood plain. The Council advocates a sequential approach to steer new development away from areas at the highest risk of flooding in its Flooding Supplementary Planning Document (July 2012) (SPD). Although not policy, this guidance is adopted and I therefore afford the SPD significant weight as a material planning consideration. Paragraph 162 of the Framework states that a sequential approach should be used in areas known to be at risk from flooding. A sequential test for a new dwelling has not been provided and it has not otherwise been demonstrated that the development meets the requirement to steer new development away from areas at the highest risk of flooding.
22. The SPD refers to granting planning permission for replacement buildings in Flood Zone 3. The supporting text to Policy LO1 of the DPD implies a degree of flexibility in the requirement for a sequential test because of a lack of alternative land beyond Flood Zone 3 in the borough. With this in mind, I concur with the parties that a degree of pragmatism would be appropriate if the development was for a replacement house and that the lack of sequential test would be acceptable.

23. A sequential test for a new house has not been provided, in conflict with paragraph 162 of the Framework and the Council's SPD. However, if the development was assessed as a 'replacement dwelling' the absence of the sequential test would be acceptable.

Flood risk

24. Policy LO1 of the DPD sets out how Spelthorne Council is seeking to reduce flood risk and its adverse effects on people and property. I have taken each relevant section of this policy in turn below.
25. Part (b) states that all developments with floorspace over 100 m² should have an appropriate sustainable drainage scheme, which is reflected in a similar requirement in paragraph 167(c) of the Framework. Although calculations are provided in the Flood Risk Assessment³ (FRA), no evidence is before me to explain how sustainable drainage on the site has been provided and it is therefore not clear that this policy requirement has been met.
26. The choice between applying parts (c) and (d) of Policy LO1 depends on whether the site is 'undeveloped' or not. Given that without the demolished house there would still be the modern, single storey building near the entrance set in a garden, I have proceeded on the basis that the site is 'developed' and applied part (d). This requires that the storage capacity in Flood Zone 3b is maintained by not allowing any additional development, including extensions. The proposal for a house, garage, boathouse and engineering operations is therefore in conflict with part (d) of the policy.
27. Even if the house was a 'replacement', Policy LO1(d) does not allow additional development in Flood Zone 3b, including extensions. Given that the footprint of the new house is significantly larger than the demolished one the requirements of this policy have not been met. Policy LO1(f) only allows for re-development of sites in Zone 3b for 'less vulnerable' uses, which does not apply to a dwelling house according to Table 2 of the Planning Practice Guidance (PPG)⁴.
28. The PPG is clear that flood resistance and resilience measures should not be used to justify development in inappropriate locations⁵ and I have therefore not taken account of the list of potential measures in the FRA.
29. Paragraph 167(a) of the Framework additionally requires that the most vulnerable part of the development is located in the area of lowest flood risk unless there are overriding reasons. It has not been explained why the dwelling is not at the topographically highest point of the site. This policy is therefore not satisfied.
30. Paragraph 167(e) of the Framework also requires that safe access and escape routes are included as part of an agreed emergency plan. The FRA recommends that these should be at least 10.89 mAOD. Land beyond the site is about 11 mAOD, but it is not explained how occupants would safely reach this higher ground and, given that this is a dwelling in the functional floodplain, I consider this an important omission. It is recommended in the FRA that occupants of the site make their way to Flood Zone 1 to the north and west, but the emergency routes illustrated in Figure 19 of the FRA are for residents of

³ Flood Risk Assessment WFR-FRA-2020/03/Q45_RevB (2 January 2021)

⁴ Paragraph: 066 Reference ID: 7-066-20140306, Revision date: 6 March 2014

⁵ Paragraph: 059 Reference ID: 7-059-20140306. Revision date: 6 March 2014

the town of Sunbury some distance to the east and it is not clear to me how these could be accessed from the appeal site during a flood event. I am not satisfied that safe access and escape routes have been provided.

31. There is a general requirement in paragraph 167 of the Framework that the flood risk should not be increased elsewhere, which brings me to the contended issue of flood water storage on the site and diversion of water from the development.
32. Void space has been created below the house to provide storage for flood water. Notwithstanding that the void spaces are not clearly shown on the plans, the openings cannot meet the required 1% annual probability flood with a 35% allowance (10.61 mAOD) because the finished floor levels are 9.55 mAOD and the top of the voids are necessarily below this. There is therefore a significant loss of floodplain storage from the house if viewed as a new structure.
33. In the absence of a volumetric comparison for the site as a whole, it is not possible for me to have confidence that the substantial earthworks and terracing have also not removed floodplain storage. Taking the above points together, I lean to the view that there would have been a significant loss of floodplain storage if comparing the as-built development to the original site with no house.
34. The appellant refers to compensation for the loss of floodplain storage, but it is not satisfactorily explained in the information before me where this is or the volume provided. Notwithstanding this, in the absence of an assessment of volumetric loss, it is not possible to confirm whether or not sufficient compensatory storage has been provided.
35. Although I do not have a basis in policy before me, I appreciate that a degree of pragmatism could be applied to finished floor levels and void space in the context of 'betterment' if this was a replacement house. However, in its latest letter⁶, the EA queries whether the replacement building does in fact represent betterment in terms of floodplain storage because there appears to be a substantial additional volume of material above the original finished floor level of 9.3 mAOD that is not clearly compensated for by the void space or other new storage. A volumetric comparison for the site assuming a replacement house has not been provided, the house as built is larger than that referred to in the FRA and questions remain over whether the void space has been constructed according to the recommendations in the assessment. Based on the plans and calculations provided by the EA, I conclude that the volume of material introduced to the floodplain is unlikely to have been compensated for and the development does not represent 'betterment' when compared to the original site.
36. The buildings, high walls, earthworks and internal fencing will all potentially impede the flow of flood water. No information has been provided by the appellant to demonstrate how this has been accounted for or that these structures would not impede drainage or deflect water to surrounding areas.
37. I note the appellant's contention that the EA withdrew its objection in an email of 10 February 2021. However, this was in the context of the site being a

⁶ WA/2020/128067/02-01 (26 July 2021)

replacement house, which this arguably no longer is, and, in any event, these comments are superseded by its letter of 26 July 2021.

38. Additional development is not appropriate in Flood Zone 3b, particularly for a vulnerable use such as a dwelling house. Notwithstanding this, the development has removed flood plain storage, which will increase the flood risk elsewhere, and it has not been demonstrated that appropriate escape routes have been provided. The proposal is therefore in conflict with Policy LO1 of the DPD and paragraph 167 of the Framework.

Character and appearance

39. Interested parties have raised concerns regarding the effect of the development on the character and appearance of the area and river setting, specifically the size and style of the house, and the lack of greenery.
40. The appeal site is part of a 'Plotlands Area', which is dominated by detached bungalows on long, narrow plots that on this side of the lane slope down to the river. These originated as weekend and holiday bungalows in the 1920s and 1930s. Given the distinctive character of these areas, the Council has a specific policy (EN2) to protect them. However, this policy only refers to replacement and extension of dwellings and is therefore not directly applicable. I have therefore applied the more general criteria in Policy EN1 regarding the design of new development.
41. The local houses are almost all single-storey, filling the width of the narrow plots. They are highly variable in size and although the new house is undoubtedly one of the largest, I did not find this excessively so. The plot is unusually large and the proportions of the building are also not out of character in this respect. While some of the houses still retain much of their original character, I observed that many had been extended and modernised with a variety of architectural styles and finishes on show. Although the appeal site is unusual in style and finish, given the lack of consistency locally, I do not find this to be harmfully so.
42. However, the plots in the area are dominated by greenery and trees, which make a positive contribution to the character and appearance of the area. This is particularly the case along the river, which has retained its highly attractive green setting from the gardens flanking both sides. The appeal site is unique in displaying almost no greenery and presenting a series of prominent, stark, linear, brick and plastered terraces towards the river. This is entirely out of keeping with the surrounding area and harms the setting of the river.
43. Although I have not found conflict with Policy EN1 of the DPD in relation to the scale and design of the house, there is significant harm to the landscape features that contribute to the setting of the river and views along it, in conflict with Policy EN9 of the DPD.

Other considerations

44. The latest measure of housing delivery for Spelthorne Borough Council was only 69%. However, the presumption in paragraph 11 of the Framework is disengaged by the application of policies in the Framework that protect areas at risk of flooding and the Green Belt. There would be some social benefit from adding to the local housing supply but as this is only one dwelling, this is of limited weight. Similarly, the development on the site has some associated

economic benefits, including supporting local facilities and services, but given the quantum of development on the site, I do not afford this benefit significant weight.

45. The appellant views the site as previously developed land and, although not explicitly put to me, there would be support for its redevelopment in paragraph 119 of the Framework. Even if it did meet the definition in the glossary of the Framework, the benefit of redeveloping such a small site would be limited.

Other matters

46. Interested parties have also raised concerns in relation to the effects of the development on light pollution, damage to trees, parking, living conditions of the neighbours and biodiversity. If this was an entirely new application, it would have been appropriate for me to come to a view on these matters. However, the case is unusual in that the lapse of an extant planning permission during the appeal means that neither the Council nor appellant have addressed these matters in detail in their statements. I have found that there are clear reasons to dismiss the appeal on the grounds of harm to the Green Belt, flood risk and the character and appearance of the area. I have not therefore considered it necessary to pursue these other issues as part of this decision.
47. It has been brought to my attention that an enforcement case was opened by the Council in relation to unauthorised walls, piers and a planter just outside the current site boundary. A parallel application to regularise the development was dismissed at appeal on the grounds of harm to the Green Belt and flood risk. As it relates to an area beyond the site boundary, I have not considered this matter further.
48. The appellant has described the ill feeling between him and his neighbours. For the avoidance of doubt, I have had regard to all of the submissions, including those from interested parties, and have come to my decision based on the planning evidence before me.

Planning balance and conclusion

49. The original house was demolished in 2017 and the site does not benefit from an extant permission, meaning that the house can no longer be assessed as a replacement dwelling. Even if compelling evidence had been submitted by either of the main parties that the dwelling and boat house were not inappropriate development in the Green Belt with reference to other exceptions in paragraph 149 of the Framework, the garage, walls, terraces and other engineering operations, comprise inappropriate development in the Green Belt, harm its openness and conflict with at least one of the purposes. In other words, when the proposal is considered as a whole, it most certainly amounts to inappropriate development in the Green Belt. This is a matter to which I afford substantial weight in the planning balance.
50. A sequential test has not been provided and it has not been demonstrated that local and national flood risk policies have been satisfied. I have also identified harm to the setting of the River Thames.
51. For the avoidance of doubt, I have also applied the policies to a replacement dwelling. The house is materially larger than the original and is therefore inappropriate development in the Green Belt, and, in addition to the substantial engineering operations, would harm its openness. A sequential test may not be

required in these circumstances, but it has not been demonstrated that the requirements of local and national policies with regard to flood risk have been met. The harm to the setting of the River Thames is still applicable. The planning balance for this scenario remains broadly similar to that above.

52. On balance, and for the reasons outlined in this decision, I conclude that the harm by reason of inappropriateness, and the other identified harm, is not clearly outweighed by the other identified considerations so as to amount to the very special circumstances necessary to justify development. The proposal would conflict with the local development plan when read as a whole. There are no other considerations that would lead me to determine other than in accordance with development plan for the area. Therefore, the appeal should be dismissed.

B Davies

INSPECTOR