



Appeal Decision

Site visit made on 4 May 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 13th June 2022

Appeal Ref: APP/T0355/W/21/3287327

Land at Binfield Paddocks, Twyford Road, Binfield, Bracknell RG42 5QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Craig Harrod of CTH Engineering against Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/02543/OUT, is dated 17 August 2021.
 - The development proposed is construction of M4 Noise Abatement and Landscaped Screening Bund.
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Decision

1. The appeal is dismissed and planning permission is refused.

Applications for Costs

2. An application for costs has been submitted by Mr Craig Harrod against Royal Borough of Windsor and Maidenhead. This application is the subject of a separate decision.

Preliminary Matters

3. As an appeal against non-determination, the Council did not issue a decision. Nonetheless, the Council has submitted a draft decision notice and associated officer report as part of this appeal, so these have informed the main issues.
4. Since determination of the appeal application, the Borough Local Plan (2013 – 2033) (Local Plan) has been formally adopted by the Council, and now forms part of the Council's development plan. Given that the appellant has had opportunity to comment, I am satisfied that I can determine this appeal with regard to the latest development plan policies, without prejudice to the main parties. I have proceeded on this basis.

Main Issues

5. The main issues are:
 - the effect of the proposal on the biodiversity of the appeal site; and
 - whether the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework 2021 (the Framework), including the effect upon the openness of the Green Belt.

Reasons

Biodiversity

6. The appeal site comprises an area of undeveloped grassland, which is bordered in part by an area of dense woodland. Given this location, the appeal site (or land in close proximity to the appeal site) could provide suitable habitats for a range of protected and/or priority species, including bats, badgers, reptiles, hedgehogs and nesting birds.
7. Whilst the appellant has said there is no evidence of there being a reasonable likelihood of species being present, no further evidence has been submitted to support this supposition. I am therefore unable to properly consider any potential impact of the development on the biodiversity of the site, nor can I assess whether any particular measures could be taken by the appellant in order to mitigate against any identified impact. A precautionary approach is therefore needed.
8. Circular 06/2005¹ (Circular) is clear that the presence of protected species should usually be established before planning permission is granted "*otherwise all relevant material considerations may not have been addressed in making the decision*". The Circular goes on to say that "*the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances*". There is no evidence before me to suggest there are any such exceptional circumstances in this instance. Without knowing the effect the proposal may have on protected species, it is not possible to demonstrate that these could be adequately mitigated. The fact that this is an outline application does not alter this position.
9. In the absence of any substantive evidence before me on which I can conclude otherwise, the proposal would conflict with Policy NR2 of the Local Plan, which seeks to ensure new development properly safeguards the biodiversity of a development site, including any protected species. It would also conflict with the provisions of the National Planning Policy Framework, which places a great emphasis on the protection of biodiversity.

Inappropriate Development

10. The Framework is explicit that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, highlighting that the essential characteristics of Green Belts are their openness and permanence. The Framework goes on to say that inappropriate development is, by definition harmful to the Green Belt, and should not be approved except in very special circumstances.
11. The Framework lists a number of exceptions which would not be inappropriate. These include engineering operations provided they preserve the openness of the Green Belt. It is common ground between the parties that the proposed bund would comprise an engineering operation. Whether or not the development would be inappropriate therefore hinges on its impact on its openness.

¹ Paragraph 99, Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

12. The appeal site comprises a parcel of land within a large field used for farming, and is surrounded on all sides by a variety of hedgerow, vegetation and woodland. Whilst the site borders the M4 motorway to the north-west, the prevailing landscape in and around the appeal site is green, broadly flat and undeveloped. As a result, both the appeal site and the surrounding area are characterised by a strong degree of openness.
13. The proposal would introduce a noise abatement and landscape screening bund which would run along its north-western and north-eastern boundaries. It would measure approximately 3 metres in height, 10 metres in width and 170 metres in length. Visually, I am satisfied that the bund would integrate properly with its surroundings, as the proposed landscaping would ensure that the green credentials of the appeal site would be preserved. Nonetheless, given the flat topography of land in and around the appeal site, in spatial terms, the introduction of any additional land mass would invariably result in some loss of openness. Whilst any associated harm would be limited, given that the proposed engineering operation would not preserve the openness of the appeal site in a spatial sense, it would be deemed inappropriate.
14. On this basis, the development would conflict with the provisions of the Framework, which requires development within the Green Belt to preserve its openness. The development would also conflict with Policies SP1 and QP5 of the Local Plan, which reflect the content of the Framework's Green Belt provisions.

Planning Balance

15. As per the Framework, given that the development would constitute inappropriate development within the Green Belt, by definition, it would be harmful. Substantial weight must be attributed to this harm. I also attach substantial weight to the potential harm arising to the biodiversity of the appeal site, due to the lack of ecological information.
16. Set against these harms, there would be significant benefits of the bund. These would include noise abatement, landscape screening, the protection and safeguarding of grazing livestock, and potential biodiversity and environmental improvements. Together, these benefits also attract substantial weight. Nonetheless, they would not be sufficient to outweigh the harm attributed to both impact on biodiversity, and harm by reason of inappropriateness. As such, very special circumstances have not been demonstrated to justify the proposal in this instance.

Other Matters

17. Noise abatement and screening bunds are clearly prevalent along the M4. Whilst the examples cited by the appellant do demonstrate their acceptability in certain circumstances, even within the Green Belt, in this case, the benefits of the scheme would not outweigh the combined harm arising from both inappropriateness and impact on biodiversity.

Conclusion

18. The development would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, that would outweigh this finding. Therefore, and for the reasons given, the appeal is dismissed and planning permission is refused.

James Blackwell

INSPECTOR