
Appeal Decision

Site visit made on 30 June 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2022

Appeal Ref: APP/T0355/W/21/3288055

Waltham Farm, Shurlock Road, Waltham St Lawrence, Reading RG10 0HN

- 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 David Lee against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/00427, dated 11 February 2021, was refused by notice dated 1 June 2021.
 - The development proposed is extension of existing fishery/fish breeding pond and relocation of existing stock fencing.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the determination of the original application, the Council adopted the Borough Local Plan 2022. The parties will have had an opportunity to address any implications of the adoption in their statements submitted with the appeal.

Main Issues

3. The main issues are:
 - (a) whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and any other harm relating to flood risk, biodiversity, and protected species; and
 - (b) whether any harm by reason of inappropriateness, or any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate Development in the Green Belt

4. The Metropolitan Green Belt (the Green Belt) washes over the site. Policy QP5 of the Borough Local Plan 2022 and the Framework are clear that the Green Belt will be protected from inappropriate development. Paragraph 150(b) of the Framework sets out that certain forms of development, such as engineering operations in this case, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

5. The proposal would comprise engineering operations around 1000m² in footprint and 1.2m in depth. This would generate significant amounts of excavated spoil around 1200m³. There is no baseline evidence before me demonstrating that it would be feasible to use this spoil as part of the proposal, through landscaping or otherwise, and how any changes in levels would preserve the openness of the Green Belt. Consequently, I am unable to conclude that the proposal would be not inappropriate in the Green Belt.
6. There is a need to consider the use of planning conditions that might otherwise make the proposal acceptable by securing further details. However, it would not be suitable to use planning conditions to secure further details where there are fundamental questions about whether the use of spoil on site is feasible or not in respect of landscaping and effects on openness. This is because there would be too much uncertainty about whether the planning condition could ever be complied with, or whether the planning permission could ever be implemented.
7. Overall, there is insufficient evidence to determine that the proposal would not harm the openness of the Green Belt, or that it would comprise not inappropriate development under Paragraph 150(b) of the Framework. Paragraph 147 of the Framework makes clear that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework goes on to establish that substantial weight is given to any harm to the Green Belt.

Flood Risk

8. The site is within Flood Zones 2 and 3 and Policy NR1 of the Borough Local Plan 2022 is clear that proposals will only be supported where an appropriate site-specific flood risk assessment has been carried out and demonstrated that development is located and designed to ensure that flood risk from all sources of flooding is acceptable in planning terms. This includes the requirement to avoid causing new or exacerbate existing flood risk elsewhere.
9. As already set out earlier in my decision, the proposal would comprise engineering operations around 1000m² in footprint and 1.2m in depth. This would generate significant amounts of excavated spoil around 1200m³. It is not clear whether such works would lead to a loss of flood plain storage causing new or exacerbate existing flood risk elsewhere. Consequently, in the absence of a site-specific flood risk assessment, I cannot conclude that the risk of flooding would be acceptable.
10. The appellant contends that the proposal is a water compatible form of development, something not disputed by the Council, and that they are adept at managing flooding and drainage on their land. Nonetheless, the proposal still needs to demonstrate compliance with all aspects of flood risk policy, including assessing the implications for flood risk elsewhere and the production of a site-specific flood risk assessment.
11. The appellant also contends that the redistribution of spoil could be achieved under permitted development rights, however there is no lawful development certificate demonstrating that this would be the case. Nonetheless, based on the evidence before me, the spoil is a by-product of development requiring planning permission and the associated effects need to be assessed accordingly.

12. As already set out earlier in my decision, there is a need to consider the use of planning conditions that might otherwise make the proposal acceptable by securing further details. However, it would not be suitable to use planning conditions to secure further details where there are fundamental questions about whether the use of spoil on site is feasible or not in respect of flood plain storage and flood risk elsewhere, especially in the absence of a site-specific flood risk assessment. This is because there would be too much uncertainty about whether the planning condition could ever be complied with, or whether the planning permission could ever be implemented.
13. The appellant raises matters relating to the fence line and impermeable surfaces in relation to flood risk. However, these do not go to the heart of the flooding dispute under the appeal, which looking at the evidence before me, principally relates to reprofiling of the land. Consequently, these matters have not been determinative under this main issue.
14. Overall, there is insufficient evidence that the proposal would have an acceptable effect on flood risk. Consequently, it would conflict with Policy NR1 of the Borough Local Plan 2022, which among other things seeks to manage flood risk so that it is acceptable and consistent with the provisions set out within Paragraphs 159 to 169 of the Framework. Flooding can have serious implications for those subjected to it. Consequently, I give this matter substantial weight.

Biodiversity and Protected Species

15. The site includes a large fishing lake and wet grassland habitat set within the Wet Meadow Local Wildlife Site (LWS). Policy NR2 of the Borough Local Plan 2022 is clear that proposals should demonstrate how they maintain, protect, and enhance the biodiversity of application sites including features of conservation value, and follow the mitigation hierarchy to avoid, mitigate or as a last resort compensate.
16. The proposal would result in the loss of 1100m² of grassland habitat which is around 15% of the total grassland within the site boundary and around 1% loss of grassland within the LWS as a whole. Consequently, without evidence demonstrating how the proposal corresponds with the mitigation hierarchy and sustains the existing value of the grassland habitat, it is not possible to determine that the proposal would be acceptable.
17. Whilst the proportional loss of the grassland within the LWS as a whole would be small, this does not justify non-compliance with the mitigation hierarchy.
18. Guidance¹ is clear that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

¹ Paragraph 99 of ODPM Circular 06/2005

19. It also states that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.
20. Finally, it requires decision makers to bear in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.
21. The proposal would result in significant works within known water vole habitat and on a site where water vole records exist. The combination of the presence of water vole habitat in conjunction with water vole records within the site leads me to the conclusion that there is a reasonable likelihood of the species being present and being affected by the proposal. Consequently, in the absence of water vole surveys it is not possible to determine that the proposal would have an acceptable effect on water voles. Whilst I note the water vole records are somewhat aged, it is the combination of factors that leads me to my conclusion.
22. The ecology reporting from the appellant demonstrates the site does not include suitable great crested newt habitat and there are no records of great crested newts within 500m of the site. Furthermore, there is limited connectivity between the site and surrounding ponds, and so the potential for great crested newts to be present is considered low. The combination of a lack of great crested newt habitat, lack of great crested newt records and limited connectivity with other potential habitats, leads me to the conclusion that there is not a reasonable likelihood of the species being present and being affected by the development.
23. The Council has not substantiated its claim that there is an extensive terrestrial habitat for great crested newts within the vicinity of the site. Nor have they provided policy or guidance demonstrating that surveys of water bodies within 200m of the site should be undertaken in the circumstances of this case. Consequently, these matters carry limited weight in my assessment.
24. Whilst I note the appellant's assessment of percentage habitat changes, biodiversity net gains have not been substantiated by way of a recognised metric calculation. Therefore, measurable biodiversity net gains have not been demonstrated in accordance with Paragraph 179(b) of the National Planning Policy Framework. Accordingly, I cannot conclude that the contended enhancements to the pond would result in a measurable net gain in favour of the proposal. In any event, achieving biodiversity net gain in isolation would not overcome the need to follow the mitigation hierarchy and this is made clear in guidance².
25. The ecology report does not address the impact of fencing on ecology. However, the level of impact is limited compared to the excavation works, and this matter has not been determinative of this main issue.

² Planning Practice Guidance; Paragraph: 024 Reference ID: 8-024-20190721

26. Overall, whilst the proposal would be acceptable in relation to great crested newts, there is insufficient evidence to determine that the proposal would not harm grassland biodiversity or water voles. Consequently, the proposal would conflict with Policy NR2 of the Borough Local Plan 2022, which among other things requires proposals to demonstrate how they would maintain, protect, and enhance the biodiversity of application sites. These provisions are consistent with Paragraphs 174 to 180 of the Framework. The cumulative effects of biodiversity and protected species harms, and the international importance of the latter, means I give this matter substantial weight.

Other Considerations and Very Special Circumstances

27. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
28. In accordance with my assessment of biodiversity and protected species, I have determined that measurable biodiversity net gain has not been demonstrated and therefore carries limited weight in the assessment of other considerations.
29. Similarly, in accordance with my assessment of flood risk, it has been determined that there is no baseline evidence before me demonstrating that it would be feasible to use the spoil as part of the proposal. Consequently, it has not been demonstrated that soft landscaping and any other enhancements therein could be secured on site without harming flood risk. Accordingly, this matter has carried limited weight in the assessment of other considerations.
30. I note the contention that similar excavation and land raising works on a site adjacent, which helped create features associated with improving the LWS. However, the full details of the planning permission and associated evidence are not in front of me. Consequently, in the absence of a site-specific flood risk assessment, I cannot draw any firm conclusions about the potential increases in surface water and any potential benefits that might be derived from the proposal in this case, or other such benefits relating to the management of the appellant's land.
31. Whilst I appreciate the appellant's proposal seeks to achieve financial sustainability, there is limited evidence demonstrating the proposal is necessary to sustain a rural enterprise. Consequently, I am unable to give these potential benefits any more than limited weight.
32. I have found that the other considerations in this case would be limited and would not clearly outweigh the identified Green Belt harm which carries substantial weight, and any other harm identified under the main issues relating to flood risk, biodiversity, and protected species, which also carry substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist.
33. Overall, the proposal would conflict with Policy QP5 of the Borough Local Plan 2022 and fail to accord with Paragraphs 147, 148 and 150(b) of the Framework, which among other things seek to control inappropriate development in the Green Belt.

Other Matters

34. The administration of the LWS's designation is not a matter for me to engage with under this appeal.
35. Whilst I note the planning history at the site, the full details of these other planning applications and subsequent planning permissions are not in front of me. Consequently, it is not clear what weight should be given to them, or what parallels can be drawn between the excavation works in each case, among other things.
36. Any planning conditions suggested by the Council and Environment Agency are provided without prejudice to the case being considered under the appeal and there is no evidence that they would pass the relevant tests in any event.

Conclusion

37. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR