



Appeal Decision

Site visit made on 14 December 2022

by A. Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 JANUARY 2023

Appeal Ref: APP/Z3635/W/22/3296881

Kantara, Pharaohs Island, Shepperton TW17 9LN

- 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 Mrs J O'Leary against the decision of Spelthorne Borough Council.
 - The application Ref 21/01299/FUL, dated 6 August 2021, was refused by notice dated 14 October 2021.
 - The development proposed is for the erection of replacement dwelling following demolition of existing dwelling and outbuildings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs J O'Leary against Spelthorne Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - if the development is inappropriate development, the effect of the proposed development on the openness of the Green Belt;
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposed development would comply with national and local planning policy in respect of flood risk; and
 - whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposed development.

Reasons

Whether Inappropriate Development

4. The appeal site comprises a parcel of land on the western tip of Pharaohs Island. It is occupied by a dwelling with associated garden area and small outbuildings. A reasonably high number of properties exist within the rest of the island. These are of a varied scale and design, some contemporary.
5. The existing property is reasonably simple in its design and appears to have been altered and extended over time. Nevertheless, the existing property appears modest in its highly prominent setting at the tip of the island and assimilates with the built form around it.
6. National Green Belt Policy in the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development. There are, however, certain exceptions. One of those, at paragraph 149, is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Policies GB1 and EN2 of the Spelthorne Core Strategy and Policies Development Plan Document (2009, DPD) broadly conform to the general thrust of national Green Belt policy, setting out that new buildings are inappropriate in the Green Belt, but allow for the rebuilding of dwellings where the proposal does not significantly change the scale of the original building.
7. Whilst there is no dispute that the replacement building would be in the same use, there is disagreement as to whether it would be materially larger. I note that within its officer report, the Council generally considers floorspace increases of up to 30% to be reasonable and proportionate relative to the size of existing properties. This figure is not documented within any policy or guidance that is before me. As such, there is some uncertainty as to the basis for applying this percentage. Accordingly, whilst I have taken this figure into consideration, I afford it only limited weight.
8. It is clear from the evidence before me that the proposed development would result in a footprint greater than that of the existing building and therefore cover considerably more of the site than is currently the case. The single-storey projections to the north, east and south would also extend further into the site than any part of the existing building. The Council calculates an overall internal floorspace increase of 56.7 sqm relative to the existing building. Notwithstanding the limited weight afforded to the Council's 30% figure, the replacement dwelling would increase substantially relative to the existing dwelling and would be materially larger than it.
9. Consequently, I conclude that the proposed development does not fall into an exception listed within paragraphs 149 or 150 of the Framework. As such, the proposed development is inappropriate development in the Green Belt which is, by definition, harmful and should not be approved except in very special circumstances. The development conflicts with the relevant provisions of the Framework, which in summary seek to prevent inappropriate development in the Green Belt. This is in a similar vein to the objectives of DPD Policies GB1 and EN2.

Openness

10. The Framework indicates that openness is an essential characteristic of the Green Belt and a fundamental aim of Green Belt policy is to keep land permanently open. The openness of the Green Belt has a spatial 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.
11. In this case, the site is highly visible. The openness of the Green Belt is readily apparent within the immediate area through the existence of mature trees and grassland. Nearby properties are typically large and detached, set within large garden plots. This all contributes to a strong, open and verdant character.
12. The replacement building would be highly visible from the riverbank and from neighbouring properties. Notwithstanding the existence of other buildings within the surrounding area, and that the proposed development has been designed with sensitivity to prevailing built forms, materials and detailing, including a reduced roof ridge level, it nonetheless introduces additional built development to the site.
13. The Council calculates an internal floorspace increase of 56.7 sqm relative to the existing building. As a matter of fact and degree, the proposed building is larger than the original and thus has a greater impact on the openness of the Green Belt, both physically and visually. This would be the case irrespective of the proposed removal of ancillary outbuildings on the site.
14. Overall, I conclude that despite not conflicting with any of the purposes of the Green Belt, the proposed development would fail to preserve openness. The adverse effects would be moderate.

Character and appearance

15. DMP Policy EN2 sets out a desire to protect the distinctive character of Plotland areas within the borough, which includes the Thames-side environment of Pharaohs Island. The policy requires that the proposed rebuild and extension of structures within the Plotland areas should be: compatible in size with the traditional plotland dwellings and with the scale of adjoining properties; set in from the flank boundaries to maintain gaps in the river frontage; be single-storey with a low profile roof; and must not project towards the river further than the existing building or adjoining properties.
16. Many properties within the area have clearly been replaced or altered relative to their original appearance and scale, including through the introduction of flat roofs, timber cladding and other dark materials. This includes both properties within Pharaohs Island and along the nearby riverbanks, and those properties which lie outside the boundary of Spelthorne, in Runnymede. Although sites outside the borough boundary are subject to a separate planning policy context, these nonetheless form part of a varied character and appearance within the surrounding area.
17. The proposed dwelling would be of a contemporary design, heavily glazed and clad in timber cladding. It would form a single-storey structure, with a reasonably low-profile roof. It would maintain gaps between buildings within the river frontage. Although single-storey elements of the structure would project beyond some parts of the established dwelling, this would be to a

marginal degree and not beyond other existing features within the site, including outbuildings, hard landscaping and jetties. It would retain the overall building line of neighbouring properties.

18. Overall, I find that the proposed dwelling would have a design, scale and siting that would assimilate to an acceptable standard with the varied surrounding context, and its siting would satisfactorily reflect the prevailing layout of the Plotlands area.
19. Consequently, I conclude that the proposed development would have an acceptable effect on the character and appearance of the area, in accordance with the relevant provisions of DPD Policies EN1 and EN2, which in summary to ensure high quality design in development.

Flood risk

20. The appeal site is located within Flood Zone 3b, which forms the functional floodplain. Planning Practice Guidance advises that Flood Zone 3b comprises land where water must flow or be stored at times of flood.
21. DPD Policy LO1 seeks to ensure the effectiveness of the more frequently flooded areas (Zone 3b) of the floodplain by not permitting any additional development, including extensions. This is in a similar vein to the Framework, which seeks to ensure that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.
22. A Flood Risk Assessment (FRA) was submitted in support of the scheme. At the time of the original decision, the Environment Agency (EA) had not responded to the Council's planning application consultation. However, a response was received on 20 October 2021, after the decision was made. This set out an objection to the proposed development on the basis of the originally submitted FRA and that it did not adequately assess the flood risks posed by the development. Actions for overcoming those objections were set out within the letter.
23. From the evidence before me, it is clear that the appellant has worked to make progress and overcome many of the outstanding queries raised by the EA, some of which appear to have been concluded. Nevertheless, some aspects do not, according to the most recent letter from the EA, dated 6 April 2022. This includes a request for details in respect of flood water flow into the cantilevered/voided areas of the development. Moreover, the letter sets out that agreed details are expected to be incorporated into a detailed FRA. I note that the appellant responded to this letter by email. However, I have no substantive evidence before me to indicate that the EA are satisfied in that respect. Furthermore, an email dated 8 August 2022 from the EA responds to the appeal consultation and sets out that it supports the Council's reason for refusal in respect of flood risk.
24. Accordingly, it has not been satisfactorily demonstrated that the proposed development would not increase flood risk on the site and elsewhere, contrary to the relevant provisions of DPD Policy LO1, which seeks to reduce flood risk, and the relevant provisions of the Flooding Supplementary Planning Document (2012). The adverse effects in respect of flood risk would be significant.

Other considerations

25. The appellant has set out that the use of permitted development rights forms a fallback position, noting caselaw¹. Specifically, they set out examples at La Casita², Willow Hayne and Pine View, where the Council has accepted fallback positions of using permitted development (PD) rights, some for developments larger than the proposed development. Nevertheless, I have seen no substantive evidence, such as a successful certificate of lawful development, to convince me that the appellant could reasonably implement a similarly harmful scheme under their PD rights.
26. I note that the appellant has tested the use of PD rights at the appeal site previously through the submission of a certificate of lawful development and Notification of Prior Approval³ and that these were refused. Whilst the appellant argues that the outcome of these applications related to issues in respect of the principal elevation of the property, they nevertheless fail to provide convincing evidence that a similarly harmful scheme could be pursued under PD. I therefore afford this consideration only limited weight in favour of allowing the appeal.
27. I also note that several nearby properties have been subject to extensions and alterations over time. Be that as it may, I have only limited information of those schemes before me. In any case, the individual circumstances and context of each site are different. I have assessed the proposed development based on the evidence before me and my observations on site. I therefore afford this consideration only limited weight.
28. I acknowledge that the site is not located in protected land, including a conservation area. I also note that the proposed development would meet a number of other planning objectives. These considerations are essentially neutral in my assessment of the appeal. I afford this consideration minimal weight.
29. The benefits in respect of high-quality design, high sustainability credentials, biodiversity net gain and flood mitigation are noted. I also note the appellant's argument that the existing property is no longer fit for purpose. However, any benefits of the scheme would inevitably be limited by reason of the scale and nature of the proposed development. Furthermore, there is no substantive evidence before me to indicate that the improvement of the site in these respects would be inherently reliant on the proposed development and that an alternative, less harmful scheme, could not achieve these aims. I therefore afford these considerations limited weight.

Green Belt Balance and conclusion

30. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, there are adverse impacts on openness here. Substantial weight should be given to the harm to the Green Belt. Very special

¹ North Wiltshire District Council v Secretary of State for the Environment and Clover (1993) 65 P. & C.R. 137; Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009] Civ 333; Mansell v Tonbridge & Malling BC [2017] EWCA Civ 1314; Mansell v Tonbridge & Malling BC [2016] EWHC 2832; R v Secretary of State for the Environment and Havering BC [1998].

² LPA Ref 18/01156

³ LPA Ref 22/00244/CPD and 22/00259/PDH

circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.

31. For the reasons given above, the cumulative weight attached to the other considerations does not clearly outweigh the substantial harm to the Green Belt and the significant harm in terms of flood risk. Consequently, the very special circumstances necessary to justify the development do not exist. The proposed development would not therefore accord with the Green Belt protection aims of the Framework or DPD Policies GB1 and EN2 of the Framework. The proposed development conflicts with the development plan taken as a whole.
32. I conclude that the appeal should be dismissed.

A. Price

INSPECTOR