



Appeal Decision

Site visit made on 17 March 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2023

Appeal Ref: APP/R0335/W/22/3298985

Land north of Tilehurst Lane and north of Tile House and Honeysuckle Cottage, Binfield RG42 5JL

- 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 Machray and JPP Land Limited against the decision of Bracknell Forest Borough Council.
 - The application Ref 21/00141/FUL, dated 11 February 2021, was refused by notice dated 9 March 2022.
 - The development proposed is described as Erection of 9no. dwellings, including 2no. affordable dwellings, with associated landscaping and access to Tilehurst Lane (as approved under 18/00758/FUL).
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Decision

1. The appeal is dismissed.

Background & Procedural Matters

2. This appeal scheme incorporates revisions from a similar scheme for 9 dwellings previously considered in at appeal¹. This proposal includes revised drainage proposals and minor changes to some dwelling sizes and site layout. Both parties have referred me to the previous Inspector's findings, which I have had regard to in determining this appeal.
3. Despite the location outside the settlement boundary, there is no objection expressed in relation to the Council's housing strategy. The previous Inspector found the proposal would result in a slight adverse effect upon the character and appearance of the countryside. It was concluded that some development plan policies are out of date in this regard, so the conflict with them attracted reduced weight. I have noted the appellant's further assessment² in this regard and other submissions. The parties do not dispute the Inspector's previous findings in respect of these matters, and I see no reason to disagree.
4. Under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCAA) I must have special regard to the desirability of preserving the setting of listed buildings or any features of special architectural or historic interest they possess. Paragraphs 199 and 200 of the National Planning Policy Framework (2021) (the Framework) require when considering the impact upon the significance of a designated heritage asset, great weight

¹ Appeal decision APP/R0335/W/19/3242594.

² Landscape and Visual Impact Assessment Addendum by Fabrik (January 2021).

should be given to the asset's conservation, and any harm to significance, including from development within its setting, requires clear and convincing justification.

5. I have noted the previous Inspector's assessment and findings in respect of the designated heritage assets³, and made my own assessment having regard to the changes to this appeal scheme, the appellant's previous assessments, the addendum in-light of the changes⁴ and observations at my visit. I share the previous Inspector's findings in respect of the significance of the heritage assets, their settings, the contribution of these to their significance, and the effects of the proposed development.
6. The proposal would result in some limited loss of the sense of openness experienced, which would have a very minor adverse effect on the slight contribution the area of countryside makes to the setting of the Grade II Listed Honeysuckle Cottage. Therefore, it would result in less than substantial harm to its significance. Having regard to their special architectural and historic interest, the proposed development would not be harmful to the setting or significance of the Grade II listed Tile House, the Grade II* listed Binfield Park or its Grade II listed gateposts next to Honeysuckle Cottage.
7. Policies CS1 and CS7 of the Core Strategy Development Plan Document (2008) (the CS) do not reflect the heritage balance set out in the Framework and so the conflict with them does not attract full weight. Having regard to the heritage balance expected in Policy BF2 of the Binfield Neighbourhood Plan (2016) (the NP) and the Framework, the Inspector found the public benefits from the development outweighed the harm to the setting and significance of Honeysuckle Cottage. The parties have adopted this stance and based upon my assessment and the evidence before me, I see no reason to disagree.
8. The previous Inspector did not raise the issue of the sequential test for flood risk and the Council has not expressed an objection in this specific regard. However, since the previous appeal was determined there has been changes to the Framework and Planning Practice Guidance (PPG) in respect of flood risk. This is reflected in my setting out of the main issues and reasoning below. I have allowed the Council and appellant the opportunity to comment on these matters and taken them into account in determining this appeal.
9. Reasons for refusal nos. 2 – 5 on the Council's decision notice relate to the absence of a planning obligation to secure avoidance and mitigation measures for habitats sites, affordable housing, contributions towards highways and transportation infrastructure, community facilities and public open space, and lifetime management and maintenance of Sustainable Urban Drainage Systems (SUDS). The appellant has provided a planning obligation which the Council has confirmed addresses these reasons for refusal. I have had regard to this in setting out the main issues and my determination of this appeal.
10. The Council has sought to provide video/audio evidence via a link to a website in the appeal statement. Paragraph 9.4.7 of the Procedural Guide: Planning appeals – England (2023) is clear that audio or video evidence cannot be accepted and will be returned, but a written summary may be provided.

³ Paragraphs 18 – 28 of decision letter Ref. APP/R0335/W/19/3242594

⁴ Addendum to the Built Heritage Statement and Statement of Case v.1 03 February 2021, by RPS.

Therefore, I have had regard to the Council's written commentary of it in its appeal statement, but not had regard to the recording.

Application for costs

11. An application for costs was made by Machray and JPP Land Limited against Bracknell Forest Borough Council. This application is the subject of a separate Decision.

Main Issue

12. The main issue is whether or not the proposed development is compliant with policies in respect of flood risk.

Reasons

Flood Risk

13. Flood risk mapping confirms parts of the appeal site are within areas of high, medium and low risk of surface water flooding. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk, whether existing or in the future. Paragraph 161 requires the application of a sequential approach to the location of development taking account of the potential and future risk of all sources of flooding, to avoid, where possible, flood risk to people and property.
14. Paragraph 162 of the Framework confirms the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source, and development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. It should be used in areas known to be at risk now or in the future from any form of flooding. If it is not possible for a development to be in areas with a lower risk, the exception test may have to be applied (paragraph 163).
15. Paragraph 7-023-20220825 of the PPG advises that the sequential approach is designed to ensure that areas at little or no risk of flooding are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas. This is because avoiding flood risk through the sequential test is the most effective way of addressing it. This approach reduces the risk of future flooding and places the least reliance on measures like flood defences, flood warnings and property level resilience.
16. The PPG states that even where a Flood Risk Assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The application of the sequential approach helps to ensure that development is steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so, and developers do not waste resources promoting proposals which fail to satisfy the test.
17. The areas of higher and medium surface water flood risk comprise a relatively limited proportion of the site. However, from the plans before me the area of medium risk includes parts of four garden areas, and it overlaps the footprints of three dwellings. This appeal scheme sets out an engineered approach

including raised floor levels, swales, drains, walls, filter drains, a pond, attenuation tank, culverting and flow control devices. This infrastructure would require monthly, bi-annual, annual, 5 yearly, or 'as required' maintenance⁵. However, matters such as flood infrastructure, resistant design measures, and the exception test are matters to be dealt with after the sequential test is passed. Therefore, a sequential test is required, but one is not provided.

18. The appellant informs me their hydrological modelling updates and supersedes the Environment Agency surface water flood risk maps. The neighbouring development under construction to the south incorporates various drainage measures. While based upon the submissions it appears the road would drain to a pond⁶, the swale appears to exit that site in a broadly similar area onto the appeal site as some of the area of medium surface water flood risk⁷. The pre-development hydrological modelling for the proposal seems to indicate there would still be areas at medium risk of surface water flooding in similar locations⁸ on the appeal site.
19. The evidence also suggests that in the post-development scenario there would still be similar flood risk and flows within parts of the site and increased areas of flood risk with allowances for climate change⁹. While precise mapping detail and future flood events cannot be predicted with full certainty, this does not appear to be mitigated by any changes to flood risk patterns envisaged as a consequence of the scheme to the south. Therefore, it is not demonstrated the previously approved scheme and hydrological modelling demonstrate areas of this appeal site are not areas of high and medium flood risk. As there are areas of medium flood risk within the proposed property boundaries, I also cannot agree the sequential approach to the location of the dwellings within the site is demonstrated.
20. There is no objection from the Council's specialist flood risk adviser, and I see no reason the provisions of the drainage management plan and the planning obligation would not ensure the on-going maintenance of SUDS, to address reason No 5 for refusal. The appellant's FRA and drainage assessment¹⁰ explain the approach to addressing many of the previous Inspector's concerns in respect of drainage, such as catchment modelling, and includes precautionary modelling for capacity.
21. The Council's first reason for refusal and evidence does not appear to question the hydraulic modelling, design, or capacity of the SUDS. The planning obligation appears to be comprehensive and provides sufficient safeguards regarding the management and maintenance of the SUDS. SUDS are also the subject of suggested planning condition Nos. 2, 26-28. In the absence of substantive technical reasoning from the Council, I see no reason why reason why reason No 1 for refusal is also not addressed, as the proposal would secure SUDS maintained for the life of the development.

⁵ Tables 4.1 – 4.4 of the Appeal Statement: Surface Water Drainage Management Plan Version No 3 by SLR (May 2022).

⁶ Figure 2.1 of Flood Risk Assessment by Revision A by Evendale Young (7 July 2021).

⁷ Figures 15 and 16 of the Flood Risk Assessment and Drainage Strategy by Clive Onions Ltd (10 February 2021) and Figure 3.2 of Flood Risk Assessment by Revision A by Evendale Young (7 July 2021).

⁸ Comparison of Figures 5.5 and 5.6 of the Flood Risk Assessment by Revision A by Evendale Young (7 July 2021).

⁹ Figure 5.7 – 5.9, *ibid*, and Figures 5.11 – 5.13 of the Hydrological Modelling report by Evendale Young Revision B Draft (7 July 2021).

¹⁰ Flood Risk Assessment and Drainage Strategy by Clive Onions Ltd (10 February 2021)

22. However, for the reasons set out above the proposal is not compliant with policies in respect of flood risk. It conflicts with paragraphs 159 and 162 of the Framework, the relevant provisions of which are set out above. It would also conflict with Policy LP18 of the Pre-Submission Bracknell Forest Local Plan (2021) (the PSLP) insofar as this states that development will only be permitted where the sequential test is applied and is passed. While the PSLP is to be subject Main Modifications following examinations, this part of Policy LP18 is not¹¹ and is consistent with the Framework, so it still attracts moderate weight.
23. The Council has not adequately reasoned why the proposal conflicts Policies CS1 and CS6 of the of the CS. I find no conflict with them insofar as they require development provides infrastructure to mitigate the adverse impacts of development upon communities and secure the specification, provision and lifetime maintenance of SUDS. I also do not find conflict with the House of Commons Written Statement (HCWS161) of 18 December 2014 or PPG in this specific regard. However, this does not mitigate or outweigh the conflict with national flood risk policy in respect of the sequential test I have set out above.

Other Matters

24. The most recent ecological survey¹² confirms the site generally offers limited opportunities for protected species and no evidence of any such species was recorded during the survey work. Subject to the imposition of suitable planning conditions in respect of matters such as updated surveys, mitigation during construction work, lighting, habitat creation, and retention and maintenance of ecological enhancement measures the proposal would not result in harm to biodiversity, including protected species.
25. The appeal site is within the 7km Zone of Influence of the Thames Basin Heaths Special Protection Area (the SPA) for recreational disturbance. Had the proposal been otherwise acceptable, it would have been necessary for me to undertake an Appropriate Assessment as the competent authority. The Council is of the view the planning obligation addresses reason for refusal No 2 in respect of contributions to mitigate the impact upon the SPA. As I have concluded the proposal is unacceptable for other reasons, and as it is not put to me this proposal would secure overall benefits in this regard weighing in favour of the scheme, it is not necessary to analyse this matter in detail.

Planning Balance

26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) states that an application shall be determined in accordance with the development plan unless material considerations indicate otherwise. While it is a material consideration the Framework does not alter Section 38(6) of the Act.
27. The appellant's analysis of the most important policies for determining the application suggests the basket of most important policies is out of date. However, paragraph 11 of the Framework states that where the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal having regard to footnote 7 (which includes areas at risk of flooding) the tilted balance does not apply.

¹¹ Letter from PINS to Bracknell Forest Council (19 January 2023).

¹² Ecological Appraisal by Aspect Ecology (March 2021).

28. The appellant has provided data upon the economic effects of house building and how they could be measured in relation to this proposal. This suggests the proposal would result in a moderate temporary economic benefit during construction, and once occupied a moderate on-going benefit including through expenditure and job creation, support to local services and facilities, to the local and wider economy, New Homes Bonus, CIL and Council tax receipts. The proposed development would result in a more efficient use of land, and as a small and medium size development it could be built out relatively quickly.
29. The proposal would meet the Framework objective of boosting the supply of new dwellings in an area of strong demand, and where figures before me suggest on 1 April 2022 there was only a 4.44-year housing land supply. Based upon the substantive evidence before me, there has been a persistent shortfall in delivery of affordable housing and the need for it can be considered acute¹³. I am also informed it is probable that housing targets are likely to increase. This scheme would deliver above the development plan policy requirement for affordable housing. Therefore, while the scheme is a modest one numerically, the delivery of nine dwellings including two affordable dwellings, is a benefit that attracts significant weight in favour of the scheme.
30. The Inspector for appeal ref. APP/E2530/W/17/3181823 gave substantial weight to the social benefits of that scheme. However, it is not within this Council area, and was for 29 dwellings, 13 of which were affordable. Therefore, it provided significantly more market and affordable dwellings and so is not directly comparable to the appeal proposal before me, which I have assessed based upon its own merits and effects.
31. Subject to the imposition of suitably worded planning conditions there would be likely to be some benefits in respect of an overall biodiversity net gain, landscaping, and some localised drainage effects. However, having regard to the substantive evidence before me, these are likely to be limited, attracting limited weight.
32. The planning obligation would secure highways infrastructure related to the proposal and a small contribution towards a mini roundabout, although it is not demonstrated that roundabout scheme would be prejudiced were this proposal not to be permitted, therefore this is a minor benefit at best. It has not been fully explained whether the contributions secured towards matters such as open space and community facilities are necessary to mitigate the effects of the development, or would represent a benefit. Were I to assume it were the latter, these would attract limited weight. Overall, the benefits of the development attract significant weight in favour of the scheme.
33. In respect of the SPA, it is not put to me or demonstrated that the contributions and measures to mitigate the effects would be anything other than a neutral matter. Were I to agree the proposal is, or subject to the imposition suitable planning conditions, could be made compliant with policies in respect of matters such as highway safety, accessibility, access and parking standards, construction management, archaeology, tree protection and retention, communications, the living conditions of future and neighbouring occupiers, the design of the dwellings, certain aspects of drainage, contamination, refuse and recycling storage, incorporation of renewable energy

¹³ Annex 1 of the Planning Written Representations Appeal Statement by Douglas C B Bond BA (Hons) MRTPI Woolf Bond Planning LLP (May 2022).

and resource and energy efficient design, these would all be neutral matters in the balance.

34. As set out above, there is harm to the setting and significance of a designated heritage asset from the scheme. However, the proposal is compliant with up-to-date development plan policies in respect of applying the heritage balance. Having regard to the nature and magnitude of the harm to the character and appearance of the countryside, and that some development plan policies are out of date, the harm attracts a minor amount of weight against of the scheme.
35. However, the proposal conflicts with policies of the Framework in respect of flood risk. This is a matter that attracts considerable weight against the scheme. This is of such weight that the harm from this conflict outweighs the benefits of the scheme. Therefore, planning permission should be refused.

Conclusion

36. The proposed development conflicts with the development plan and the Framework read as a whole. There are no material considerations that indicate the application should be determined other than in accordance with the development plan and the Framework. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR