



Appeal Decision

Site visit made on 12 June 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/T0355/W/21/3291600

**land adjacent to Old Coach House, 26a Old Ferry Drive, Wraysbury
TW19 5JT**

- 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 Peter Court against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/00340, dated 6 February 2021, was refused by notice dated 14 April 2021.
 - The development proposed is Construction of a detached two-bedroom dwelling with associated parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Royal Borough of Windsor and Maidenhead Borough Local Plan [2022] (LP) was adopted in February 2022. The Council has stated that the policies within the adopted plan have replaced the policies of the Royal Borough of the Windsor and Maidenhead Local Plan [2003]. The Council identifies that the following replacement LP policies are now germane to this appeal; QP3 (Character and Design), QP5 (Development in Rural Areas and the Green Belt), NR1 (Flood Risk), NR2 (Nature Conservation), NR3 (Trees and Woodlands) and IF2 (Sustainable Transport). The Council states that this change has not altered its case or the reasons for refusal.
3. The Appellant has submitted supplementary documents in support of the appeal. These include a Tree survey¹, Preliminary Ecology Appraisal², a document titled 'exceptional circumstances' and a Flood Risk Assessment Position Statement³. The Council and interested parties have had an opportunity to consider these documents and I have taken into account responses made to these. As such, no party would be prejudiced by my consideration of the additional documents.
4. The Ecological Appraisal found that the building and site did not provide a suitable habitat for protected or notable species. Furthermore, the Appraisal found that local ponds and the wet ditch were of poor suitability to support Great Crested Newts. Consequently, the Appraisal identified the site to be of low ecological value. The Council has reflected on this and consequently stated

¹ Tree Survey, Arbtech, 12/7/21

² Preliminary Ecological Appraisal, Arbtech, 30/7/21

³ Flood Risk Assessment, position statement, Three Counties Flood Risk Assessment, September 2021

that it no longer seeks to defend RfR3, as the proposal would now comply with LP policy NR2. I see no reason in evidence to disagree with these findings and find that the matters raised in the Appraisal could be suitably addressed through the imposition of planning conditions. I therefore consider that this is no longer a matter of dispute between main parties.

Main Issues

5. The main issues are:

- whether the proposed extension would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies;
- the effect of the proposal on the openness of the Green Belt;
- whether the proposal would be within a suitable location for housing with respect to flood risk in consideration of local and national policies;
- whether the proposal would affect arboricultural interests;
- the effect of the proposal on highway safety, particularly with respect to the use of the access; and
- if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

Reasons

Inappropriate development

6. The appeal site is within the Green Belt. LP Policy QP5 states that the Council will resist inappropriate development (as defined by the Framework) in the Green Belt unless very special circumstances can be demonstrated. Paragraph 149, of the Framework, establishes that buildings in the Green Belt would be inappropriate unless they would meet a listed exception. Paragraph 149(d) states that the replacement of a building would not be inappropriate provided that the new building is in the same use and is not materially larger than the one it replaces.
7. The phrase 'Materially larger' is not defined by the Framework. This is therefore ultimately a matter for the decision maker, with much depending on the individual circumstances of the proposal. However, a conclusion on this matter cannot be arrived purely on a mathematical calculation as a single factor as the test is primarily an objective one based on size, as referenced by the Framework.
8. During my visit I noted that the site is largely open including two small permanent structures. I also noted a mobile home was on site but there is no evidence to demonstrate that this has planning permission. The smaller of the two buildings is a breeze block structure, formerly used as an animal pen, located close to the frontage. The second structure is a boat house found to the rear of the site. The boat house is a single-storey flat roof structure with a corrugated roof, brick walls and has been extended by wooden and scaffold constructions, with an evident concrete base. These structures combined are

smaller in footprint, volume and overall mass than the proposed dwelling and are not within the same use as the proposed dwelling.

9. The proposed dwelling would stand in the middle of the site on a raised base. It would have the appearance of a dormer bungalow, but due to its raised nature would have the overall scale of a two-storey dwelling. Consequently, the proposal would be substantially larger than the existing buildings and would be within a prominent location within the site. As such, as well as not being within the same use, the proposed dwelling would also be materially larger than the limited built development on site.
10. Therefore, I find that the proposal would be inappropriate development in the Green Belt and would fail to accord with the provisions of paragraph 149(d) of the Framework. As it has not been demonstrated that the proposal would be any of the exceptions listed in Paragraph 149 of the Framework, it would amount to inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt in conflict with LP policy QP5.

Openness

11. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and its essential characteristics are therefore its permanence and openness. Considerations of openness have both visual and spatial aspects. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. The appeal site is enclosed by temporary fencing but is otherwise largely open containing only limited built form.
12. The proposed dwelling would be a large permanent structure in the centre of the site representing a substantial intrusion into this setting resulting in harm to the openness of the Green Belt.

Flood matters

13. 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. Moreover, where it is necessary, it should be made safe for its lifetime without increasing risk elsewhere. Being for a dwellinghouse the proposal would be 'more vulnerable' to flooding. The site would have a 'high' probability of flooding being within flood zone 3. In such circumstances table 3⁴ of the National Planning Practice Guidance (PPG) explains that development should not be permitted within flood zone 3b.
14. The site is within the functional flood plain of the River Thames. LP policy NR1 identifies that a Sequential Test is required for all development in areas of risk of flooding. The PPG also advises that the Sequential Test should be applied to 'Major' and 'Non-Major development'⁵ therefore including this scheme for the erection of one dwelling. Therefore, whilst the Framework (paragraph 168) explains that some minor development should not be subject to a sequential test, footnote 56 explains these types of development, *inter alia*, relate to small extensions and some changes of use.

⁴ Planning Policy Guidance: Paragraph 067 Reference ID: 7-067-20140306

⁵ PPG: Paragraph 027 Reference ID: 7-027-20220825

15. The Framework identifies that the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. LP policy NR1 states that a sequential test should consider five issues. These relate to the availability of suitable alternative sites in areas of lower risk of flooding, the vulnerability of the proposed use, the present and future risk, the scale of potential consequences and suitable site evacuation plan. Without this, I am unable to conclude that an alternative site exists within the borough that would be less vulnerable to flooding.
16. The Appellant's Flood Risk Assessment⁶ (FRA) confirms that the site is within flood zone 3. The FRA states that as the application is for a replacement building the application does not require a Sequential Test. However, there is no existing dwelling located within the application site. Consequently, a Sequential Test would be required as the existing building on site, the boat house, is not in residential use and deemed by the PPG to be a 'less vulnerable' use.
17. The Appellant has subscribed to a flood warning system and intends to hang a small boat within easy reach and have waders ready to use if needed. The FRA recommends that the dwelling is built with flood resilient and resistant construction measures, including placing it on stilts. However, matters of mitigation and resilience would be of relevance as part of an Exception Test. An Exception Test does not need to be applied as in the absence of a Sequential Test it has not been demonstrated that there are no other reasonably available sites suitable, for the proposal, on lower risk sites.
18. The Appellant's more recent Flood position statement also fails to undertake a Sequential Test and maintains that the proposal should be treated in the same manner as local cases that were for replacement dwellings. However, the proposal is not for a replacement dwelling and should not therefore be treated in the same manner. This position is reinforced by the Environment Agency⁷ (EA) in objecting to the proposal, in principle, as it would be within the functional flood-plain.
19. Accordingly, the proposal would not comply with local or national policies with respect to matters of flooding. Consequently, the proposal would conflict with LP policy NR1 and the Framework. These seek, *inter alia*, to only allow development that is located and designed to ensure that flood risk is acceptable in planning terms and to only allow water compatible uses and essential infrastructure development within the functional flood-plain.
20. The Appellant's evidence includes a consultation response from EA with respect to a new dwelling at Chez Polly close to the site also within FZ3. This advice stated that its objection could be overcome if it could be satisfied, with an FRA, that any increase in built footprint within the 1% annual probability (1 in 100) flood event can be compensated. However, this advice was from 2018 and I am unconvinced that current guidance remains the same. Furthermore, the FRA refers to sites at Cygnets Friary Island and Wildflower Friary Island, also within FZ3 which were approved for new dwellings. However, these were for replacement dwellings and therefore were materially different in planning context terms to the proposal the subject of this appeal.

⁶ Flood Risk Assessment, Three Counties, December 2020

⁷ Environment Agency consultation letter, 3 March 2021

Arboricultural interests

21. The site is an area of open land, close to the River Thames and adjacent to a woodland area within the countryside. The Council's Landscape Character Assessment identifies the site as being within its 'Farmed Parkland' area, where trees and woodland make an important contribution to the character of the area. The appeal site is adjacent to a woodland area subject to a group Tree Protection Order (W2) to the east of the site. The submitted Tree Survey considers all trees within the site, principally those on the site's east and northern boundaries. The Tree Constraints Plan (TCP) demonstrates that several mature trees have Root Protection Areas (RPAs) that encroach onto the site. Notably 'Tree 03' (sycamore) has a substantial RPA that appears to extend halfway across the site.
22. This tree has been identified as being in good physical condition and good future growth and being a category A tree. Whilst the TCP is not superimposed on the proposed site layout plan, it seems that the RPA would overlap with the footprint of the proposed dwelling. The Appellant has therefore failed to demonstrate how this tree would be protected from harm during the construction of the dwelling. This conflict could reduce the health and longevity of the sycamore tree to the disbenefit of the character and appearance of the area.
23. As such, the proposal would conflict with LP policies NR3 and QP3. These seek, among other matters, for development to protect and retain trees, including those that make a particular contribution to an area's character and distinctiveness.

Highway matters

24. The submitted drawings show an access onto Old Ferry Drive with the entrance gates recessed into the site a short distance. The Council indicates that the access will need to achieve a visibility splay of 2 metres by 25 metres. No plan has been provided to demonstrate the requisite visibility splays. However, Old Ferry Drive appears to be a relatively quiet country lane with limited access points and is lightly trafficked. As such, the site access would provide good visibility in both directions where the required sight lines could be readily achieved. These details could have been specified in a planning condition had I been minded to allow the appeal.
25. Consequently, I am satisfied that a safe and suitable access could be created from the site without causing impediment to the safety of other road users. As a result, the proposal would comply with LP policy IF2 which seeks, among other matters, for development to optimise traffic flows and circulation to minimise negative environmental impacts.

Other considerations

26. The Appellant indicates that the proposed dwelling would be for his own occupation and would be constructed as a self-build project. However, it has not been demonstrated that the Appellant is on the Council's Self-Build Register. Although there is limited evidence to confirm this position, the Framework supports housing that would meet the needs of groups with specific housing requirements including for those people wishing to commission or build their own homes. This provision could have been secured, in this case, by the

imposition of a negatively worded condition had I been minded to allow the appeal. Consequently, the merits of specialist housing of this type, and its social benefit to the Appellant, weigh in favour of the scheme.

27. The Appellant indicates that the site was previously untidy and subject to fly tipping and has since been cleared of such material. The type of clearance described, whilst undoubtedly of some benefit to the visual appearance of the area, would have resulted in a minor visual improvement only. Furthermore, I understand that the Appellant and other family members have suffered illness in the past and bereavement and a new home would improve their wellbeing. Moreover, the proposed development would include new tree planting and development that would improve the current appearance of the site. These matters are of limited to moderate weight in favour of the proposal.

Whether there would be Very Special Circumstances

28. Paragraphs 147 and 148 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
29. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in moderate harm to the openness of the Green Belt. Furthermore, the proposal has failed to demonstrate that it would be in a sequential preferable location with respect to an assessment of potential alternative sites in areas less likely to flood. The proposal also fails to demonstrate that it would not adversely affect a category A tree subject to a TPO. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt.
30. The proposal would not harm ecological interests or present an adverse impact on highway safety. However, an absence of harm in these respects would have a neutral effect on the planning balance. The other considerations I have identified, including the provision of self-build housing, the personal benefits to the Appellant and the visual improvements to the site are of limited to moderate weight in favour of the proposal. As such, the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist. Accordingly, the proposal fails to adhere to the local and national Green Belt policies I have already outlined.

Conclusion

31. The proposed development would not accord with the development plan or national policy and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Ben Plenty

INSPECTOR