



Appeal Decisions

Site visit made on 4 October 2023

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal A Ref: APP/T0355/W/22/3304019

Land to the west of Shepherds Lane, Hurley SL6 5NG

- 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 Hurleyford Farms against the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/03782/OUT, is dated 22 December 2021.
 - The development proposed is a replacement agricultural/commercial building.
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Appeal B Ref: APP/T0355/W/22/3311884

Land to the west of Shepherds Lane, Hurley SL6 5NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Hurleyford Farms against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/02202/OUT, dated 10 August 2022, was refused by notice dated 4 October 2022.
 - The development proposed is a replacement building.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for a replacement agricultural/commercial building at land to the west of Shepherds Lane, Hurley SL6 5NG in accordance with the terms of the application, Ref 21/03782/OUT, dated 22 December 2021, subject to the conditions set out in the attached schedule 1.

Appeal B

2. The appeal is allowed and planning permission is granted for a replacement building at land to the west of Shepherds Lane, Hurley SL6 5NG in accordance with the terms of the application, Ref 22/02202/OUT, dated 10 August 2022, subject to the conditions set out in the attached schedule 2.

Applications for costs

3. Applications for costs in respect of both appeals were made by Hurleyford Farms against the Council of the Royal Borough of Windsor and Maidenhead. These applications are the subject of separate Decisions.

Preliminary and Procedural Matters

4. Both applications are for outline permission with details of the scale of the development submitted for consideration. Plans have been submitted showing the layout and means of access and I shall consider those plans as being indicative only.
5. The parties agreed an amended description of development in Appeal A which I have used in the banner heading. However, there is no record before me of the parties agreeing any amended description for the Appeal B proposal and so I have used the description given on the application form for that appeal.
6. Appeal A is against the failure of the Council to issue its decision within the prescribed period. The Council has stated that, had it made a decision, permission would have been refused. The Council has provided its putative reason for refusal of the Appeal A proposal, which is the same as the reason for refusal given in respect of the Appeal B proposal.

Main Issues

7. The main issues in both appeals are:
 - i) whether or not the development would be inappropriate development in the Green Belt;
 - ii) the effect of the development on the Green Belt; and
 - iii) whether any 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 needed to justify the proposal.

Reasons

8. Both applications propose the demolition of an existing agricultural building and its replacement with a new building in a different position, closer to Shepherds Lane. This would be served by a new access from that road which is indicatively shown as being directly adjacent to the new building. The existing building is sited within an open field. There are two existing access points to the field from Shepherds Lane.
9. I saw on my visit that the existing building is a low building, rectangular in plan with a small projecting element at one end. It is constructed of concrete blockwork with a mono-pitch roof of corrugated sheeting. The building is internally partitioned to provide accommodation for livestock. There is a corridor along one side which is accessed from a door in the end elevation. The projecting part of the building contains a storage area off the corridor. On the southern side of the building there are entrances for livestock with covered projecting elements above the entrances.
10. The latter features are not shown on the submitted plans showing the existing elevations and existing floor plan. Although the 'Existing Elevations' plan shows the eaves height on the southern side to be 2m, I saw that the eaves of both the main part of the southern elevation and those of the covered projections are much lower than this. I also saw that the westernmost three bays of the building appeared to be unused because they have no roof and there is vegetation growing in that part of the building.

11. I observed that parts of the building were being used for storage of items connected with boating and construction of rafts. The full length of the habitable part of the corridor together with the adjoining storage area were used for storage of barrels and timber for raft making, two boats, life jackets and an archery target. Immediately adjacent to the building there were two boats, four further boats on a trailer and pontoons on another trailer. The livestock areas did not appear to be in use for storage.
12. The appellant has advised that the site forms part of a farm holding that has river frontage and that he runs team building activities which include raft building. He has also advised that dinghies and other items connected with a local regatta are stored.
13. The site is within the Metropolitan Green Belt. Paragraph 149 of the National Planning Policy Framework (the Framework) states that the construction of new buildings should be regarded as inappropriate in the Green Belt. That paragraph sets out exceptions to this. Sub-paragraph (d) states that the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, would form one such exception.
14. The proposed new buildings in both appeals are similar, the differences being that the appeal B proposal would have a slightly larger footprint but a lower roof than the appeal A proposal. In Appeal A, the roof would be dual pitched with a ridge height of 3.15m whereas in appeal B the roof would have a shallow single pitch with a maximum height of 2.6m.
15. Both proposed buildings would have significantly less floor areas than the existing building. Their roof heights in both cases would be higher, but in Appeal B the difference in height would be in relation to the existing southern elevation. The appellant has demonstrated that the volumes of both buildings would be lower than that of the existing building, and the Council has accepted this. Taking into account the lower eaves heights on the southern side of the building in comparison with that shown on the plans, I am satisfied that the volumes of both schemes would not materially exceed that of the current building, and indeed would be likely to be less.
16. The basis for the Council's refusal is that it has not been demonstrated that a change of use from agricultural use to storage use has taken place in accordance with the provisions of Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015.
17. Class R grants permission for such change of use subject to conditions and limitations. Where the floorspace which has changed use does not exceed 150 sqm, paragraph R.3 requires the developer to notify the local planning authority before changing the use of the date when the use will begin and the nature of the use. It is also necessary to provide a plan indicating the site and which buildings have changed use. There is no requirement for the developer to demonstrate to the local planning authority that the change of use has taken place.
18. The appellant notified the Council in accordance with that requirement and has provided a copy of the form which gave such notification. The form states that a site plan was submitted.

19. The site plans submitted with the applications indicate that the easternmost part of the building is used for storage, consisting of the end three bays and part of the fourth bay. The floorspace that was used for storage at the time of my visit differed from that plan in that the full extent of the habitable part of the corridor was so used, but the livestock accommodation was not. From my observation it was apparent that the floorspace used for storage was less than the 140 sqm stated on the plan.
20. It is not clear whether the site plan submitted with the applications is the same as that submitted with the notification of change of use in terms of it indicating the part of the building to be used for storage. The Council does not say that there is any inconsistency in this respect. Although my observation was that part of the building was used for storage which is not in accordance with the site plan, the eastern three bays of the corridor and the adjoining store are indicated on the plan for storage use and the change of use of that part of the building has clearly taken place.
21. The proposed buildings in both appeals would provide significantly smaller areas of floorspace for storage use than the 140 sqm indicated on the plans, of 55.5 sqm and 58 sqm. There would thus be no intensification of the storage use. For these reasons, the proposed buildings in both appeals would be in the same use as the existing building.
22. For the reasons given, the proposals in both appeals would not be inappropriate development in the Green Belt. There is no requirement in paragraph 149(d) of the Framework to consider the effect on the openness and purposes of the Green Belt. Because the proposals would not be inappropriate, they would not be harmful either to the openness of the Green Belt or to its purposes. There is therefore no need for me to consider the effects of the proposals on the Green Belt or whether there are any very special circumstances that would outweigh any harm. No other harm has been identified by the Council.
23. For the reasons given, the development would accord with Policy QP5 of the Local Plan¹ which requires protection of the Metropolitan Green Belt against inappropriate development.

Conditions

24. The Council suggested a number of conditions and I have imposed these with some minor amendments to ensure that they meet the tests in the Framework. I have also imposed two additional conditions in both decisions and have taken into account the parties' comments on these.
25. The first of these additional conditions imposes a requirement that the existing building is demolished within one month of the new building being first occupied. This is necessary to ensure that there is no greater impact on the openness of the Green Belt as a result of the new building. The one month period is necessary to allow for the items that are stored within the existing building to be transferred to the new building.
26. The second additional condition defines the floorspaces to be used for agriculture and storage. These are as stated on the planning application forms. This is necessary to define the development for which permission is granted

¹ Royal Borough of Windsor and Maidenhead Borough Local Plan (2022)

and to ensure that the development accords with national planning policy on Green Belt.

27. It is necessary to impose conditions requiring submission of reserved matters within the statutory time scale. As details of scale have been submitted, the reserved matters will include details of access, appearance, landscaping and layout.
28. The appellant submitted a preliminary ecological appraisal and preliminary roost assessment with both applications and subsequently carried out a bat emergence survey. The Council's Ecologist has recommended the imposition of three conditions which require a bat and reptile mitigation strategy, details of external lighting and provision of mitigation measures. I have imposed those conditions which are necessary to protect biodiversity.
29. A condition requiring the development to be carried out in accordance with the approved plans is necessary in order to ensure certainty as far as scale forms part of the application. It is not necessary to specify the access plan or the elevation overlays as these are indicative, or the existing elevations and floor plan.

Conclusion

30. For the reasons given, I conclude that both appeals should be allowed.

Nick Palmer

INSPECTOR

Schedule 1: Appeal A Ref: APP/T0355/W/22/3304019

- 1) Details of the access, appearance, landscaping and layout, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The existing building on the site shall be demolished in its entirety within 1 month of the new building becoming first occupied.
- 5) Without prejudice to any subsequent change of use that may be authorised under the Town and Country Planning (General Permitted Development) (England) Order 2015, the new building shall only be used for agricultural use (166.4 sq m) and storage use within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) (55.5 sq m).
- 6) Prior to the commencement of the development hereby permitted, a bat and reptile mitigation strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include the following elements:
 - timings when works that could impact upon reptiles and bats are to be undertaken;
 - methods to be employed during relevant works;
 - details of works that are to be supervised by a suitably qualified Ecological Clerk of Works; and
 - contingency plans should reptiles or bats be unexpectedly found.Works shall be undertaken in accordance with the strategy and a closing-out report from a suitably qualified ecologist, confirming that works have been undertaken in accordance with the approved details, shall be submitted to the local planning authority.
- 7) Prior to the commencement of the development hereby permitted, a report detailing the external lighting scheme and how this will not adversely impact wildlife shall be submitted to and approved in writing by the local planning authority. The report shall include the following:
 - a layout plan with beam orientation;
 - a schedule of equipment;
 - measures to avoid glare;
 - an Isolux contour map showing light spillage to 1 lux both vertically and horizontally, areas identified as being of importance for commuting and foraging bats, and positions of bird and bat boxes.

The approved lighting plan shall thereafter be implemented as agreed.

- 8) Prior to the occupation of the development hereby permitted, details of native planting, at least two bird and two bat boxes, brick or tiles (preferably integral within the new building) and log and brash piles shall be submitted to and approved in writing by the local planning authority. The approved measures shall be carried out in full.
- 9) The development hereby permitted shall be carried out in accordance with the following approved plans in terms of its scale: Location Plan, Proposed Elevations, Proposed Floor Plan and Proposed Roof Plan received by the Council on 17 January 2022.

Schedule 2: Appeal B Ref: APP/T0355/W/22/3311884

- 1) Details of the access, appearance, landscaping and layout, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The existing building on the site shall be demolished in its entirety within 1 month of the new building becoming first occupied.
- 5) Without prejudice to any subsequent change of use that may be authorised under the Town and Country Planning (General Permitted Development) (England) Order 2015, the new building shall only be used for agricultural use (174 sq m) and storage use within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) (58 sq m).
- 6) Prior to the commencement of the development hereby permitted, a bat and reptile mitigation strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include the following elements:
 - timings when works that could impact upon reptiles and bats are to be undertaken;
 - methods to be employed during relevant works;
 - details of works that are to be supervised by a suitably qualified Ecological Clerk of Works; and
 - contingency plans should reptiles or bats be unexpectedly found.Works shall be undertaken in accordance with the strategy and a closing-out report from a suitably qualified ecologist, confirming that works have been undertaken in accordance with the approved details, shall be submitted to the local planning authority.
- 7) Prior to the commencement of the development hereby permitted, a report detailing the external lighting scheme and how this will not adversely impact wildlife shall be submitted to and approved in writing by the local planning authority. The report shall include the following:
 - a layout plan with beam orientation;
 - a schedule of equipment;
 - measures to avoid glare;
 - an Isolux contour map showing light spillage to 1 lux both vertically and horizontally, areas identified as being of importance

for commuting and foraging bats, and positions of bird and bat boxes.

The approved lighting plan shall thereafter be implemented as agreed.

- 8) Prior to the occupation of the development hereby permitted, details of native planting, at least two bird and two bat boxes, brick or tiles (preferably integral within the new building) and log and brash piles shall be submitted to and approved in writing by the local planning authority. The approved measures shall be carried out in full.
- 9) The development hereby permitted shall be carried out in accordance with the following approved plans in terms of its scale: Location Plan, Proposed Elevations, Proposed Floor Plan and Proposed Roof Plan received by the Council on 10 August 2022.