

Appeal Decision

Site visit made on 21 November 2023

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2024

Appeal Ref: APP/T0355/W/23/3322301

Land to the north east of Hawthorn Lea, Cedar Drive, Cookham SL6 9DZ

- 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 Ian Thomas against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/01954, dated 18 July 2022, was refused by notice dated 18 November 2022.
 - The development proposed is the erection of a new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
3. Amended plans were submitted with the appeal to show the technical details in the Flood Risk Assessment and Energy and Sustainability Statement including levels and solar panels. The Council has had the opportunity to comment on the revised plans through the appeal process, and I do not consider that any other party would be prejudiced by my acceptance of them.
4. Revised plans have also been submitted to clarify a discrepancy between the proposed floor plans and elevations in relation to the first-floor openings in the side (east) elevation of the proposed dwelling. However, interested parties have not had the opportunity to comment on these and as such an injustice would occur should I accept them. Accordingly, I have determined the appeal based on the drawings that were before the Council when it made its decision.

Main Issues

5. The main issues are:
 - whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - whether the proposal represents an acceptable form of development having regard to flood risk; and
 - whether the proposal would include appropriate measures to meet carbon reduction objectives.

Reasons

Whether or not the development would be inappropriate

6. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to specified exceptions. One such exception is limited infilling in villages.
7. Policy QP5 of the Borough Local Plan adopted February 2022 (BLP) seeks to protect the Green Belt from inappropriate development in accordance with national policy. The site lies outside of the defined settlement boundary, where, in accordance with Policy QP5 limited infilling is acceptable where it can be demonstrated that the site can be considered as falling within the village envelope as assessed on the ground. In assessing the village envelope, Policy QP5 sets out that consideration will be given to the concentration, scale, massing, extent and density of built form on either side of the identified village settlement boundary and the physical proximity of the proposal site to the identified village settlement boundary.
8. The appeal site comprises the front part of the garden of Hawthorn Lea, a detached property which sits on a generous plot in a cul-de-sac of several detached properties. The land lies between the adjoining residential properties which front Cedar Drive, albeit with an intervening driveway to one side to serve the existing dwelling at Hawthorne Lea.
9. The site is coterminous with the settlement boundary on the edge of the village of Cookham. It is residential in character due to the presence of a front boundary wall and manicured hedge and its use as part of a wider lawned garden. Notwithstanding the spacious nature of the neighbouring plots, the site is well contained by the surrounding built form, associated enclosed gardens including incidental buildings and structures, and boundary treatments. Thus, on the ground, the land forms a distinct part of the existing residential development in the group, rather than being experienced as part of the more open and rural context beyond. As such the site is characterised as forming part of the village.
10. Moreover, despite the curvature of the road, due to the presence of the boundary wall to the frontage of the land, the site is clearly perceptible as a continuation of the residential development on this side of Cedar Drive. The proposal, which would occupy the space between existing built development, would therefore represent the filling of a gap in an otherwise built-up frontage, which is the widely held definition of infilling.
11. In light of the above considerations and having regard to the scale and location of the proposal, as well as the density of the surrounding built form, I conclude that it would represent limited infilling in a village and as such would not be inappropriate development within the Green Belt. Accordingly, the proposal would comply with Policy QP5 of the BLP and the aims and objectives of the Framework in relation to the protection of the Green Belt. On that basis there is no need for me to further consider the effect of the proposal on the openness

of the Green Belt nor whether there are special circumstances necessary to justify the development.

Flood risk

12. The appeal site lies in Flood Zone 2 as defined on the Environment Agency's flood map and the Council's Strategic Flood Risk Assessment. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This requires the application of the sequential test (ST). The aim of the ST is to steer new development to areas with the lowest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
13. The Planning Practice Guidance (PPG) outlines that reasonably available sites include those in a suitable location for the proposed development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. The PPG also indicates that a site could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development and does not need to be owned by the applicant.
14. Policy NR1 of the BLP sets out that the ST is required for all development in areas at risk of flooding, except for those on sites allocated for development within the BLP or a made Neighbourhood Plan. Policy NR1 is generally consistent with the Framework in respect of its approach to flood risk. The appeal site is not a site which is allocated for development and as such the ST is required in accordance with Policy NR1.
15. A revised ST has been submitted as part of the appeal which concludes that there is no suitable alternative site that is reasonably available within the search area. Initially the ST considered 17 sites within Cookham of a comparable size to the appeal site. The sites were identified using the Windsor and Maidenhead Strategic Housing Land Availability Assessment (January 2014), the Housing and Economic Land Availability Assessment 2016 and the Council's brownfield register. After an initial assessment 10 sites which were considered suitable in terms of size and flood risk were subsequently discounted on various grounds.
16. The search area in this case was specifically Cookham. However, there is nothing before me to justify the limited extent of the search area, which realistically will often extend across a town, a housing market area or district, or the reason for choosing this specific area. Moreover, the search fails to consider sites that may have become available since the publication of the sources used, which are of a considerable age. A further borough wide search of available vacant land for sale was subsequently carried out. This search also discounted sites that were not of a similar plot size to the appeal proposal.
17. In both cases the search for alternative sites focused on those that were comparable in size to the appeal site and therefore excluded larger sites which the development could reasonably form part. This approach fails to accord with advice in the Framework that a reasonably available site could form part of a larger site. Consequently, I cannot be certain that there is no alternative

reasonably available site suitable for the development which is located within an area at a lower risk of flooding.

18. Furthermore, although the Flood Risk Assessment includes measures to mitigate the harm that would be caused to future occupiers of the development in terms of flood risk, the proposal would nonetheless introduce built development on the site, which is at risk of flooding and, where it has not been satisfactorily demonstrated that an alternative site is not available.
19. The Council's third refusal reason refers to the absence of information relating to the sustainable drainage of the development. The Surface Water Drainage Strategy submitted as part of the appeal sets out measures to be incorporated into the development to manage surface water run-off is uncontested by the Council. As such, subject to a planning condition to secure the implementation of the strategy, there is nothing before me to suggest that the development would exacerbate flooding in the area.
20. For the foregoing reasons it has not been demonstrated that the ST has been satisfied. As such the proposal would fail to represent an acceptable form of development having regard to flood risk and would conflict with Policy NR1 of the BLP and the aims of the Framework in relation to flood risk.

Carbon reduction measures

21. Policy SP2 of the BLP sets out a range of measures to be incorporated into new developments to ensure that they are designed to adapt to and mitigate climate change. My attention is also drawn to the Council's Interim Position Statement on Sustainability and Energy Efficient Design March 2021 (IPS). The IPS seeks to ensure that new developments deliver on the requirements set out in national and local policy commitments towards climate change, and achieve net-zero carbon emissions unless it can be demonstrated this would not be feasible.
22. The appellant's Energy and Sustainability Statement submitted as part of the appeal, indicates that the proposal could achieve net-zero with a 102% carbon saving through enhanced energy efficiency, a clean heating system and renewable energy generation. Subject to a planning condition to secure the implementation of the measures set out therein, the proposal would accord with both Policy SP2 and the requirements of the IPS in that regard.
23. The IPS also sets out a requirement for a legal agreement in relation to post-construction testing and modelling and seeks a shortfall contribution towards the Council's Carbon Offset Fund, if a performance gap between the modelled and actual performance of a building should arise. The appellant has not submitted a unilateral undertaking to secure such measures and as such would fail to fully accord with the IPS.
24. However, Policy SP2, which forms part of the more recently adopted BLP does not contain the same requirements. Moreover, the IPS does not form part of the BLP, nor is it referred to in Policy SP2. Consequently, I attribute little weight to the degree of conflict with the requirements of the IPS.
25. For the foregoing reasons I therefore conclude that the proposal would include appropriate measures to meet carbon reduction measures, in accordance with Policy SP2 of the BLP and the aims of the Framework with regards to mitigating and adapting to climate change.

Other Matters

26. The proposal would offer benefits in terms of housing supply in the borough, in particular self-build housing, in a location which benefits from accessibility to local services and amenities. This is a key objective of the Framework, which seeks to significantly boost the supply of housing. It would also offer economic benefits during the construction phase and beyond. However, the benefits associated with a single unit in these regards would be limited.
27. Whilst the proposed dwelling would be of a sustainable design, and would include biodiversity enhancement features, as these are expectations of all new development, such considerations are neutral factors. Moreover, the absence of harm in terms of, among other things, the character and appearance of the area and living conditions of the occupiers of the neighbouring properties are ordinary requirements for new development and do not weigh in favour of the scheme.
28. I note the Council's Five Year Housing Land Supply Position Statement dated July 2023 which indicates it can demonstrate 4.83 years supply. In this scenario, paragraph 11 of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where there are specific policies in the Framework which indicate that development should be restricted. Given my conclusions in relation to flood risk, the Framework provides a clear reason for refusing the development. As such, the proposal does not benefit from the presumption in favour of sustainable development outlined at paragraph 11 of the Framework.

Conclusion

29. The proposal would not constitute inappropriate development in the Green Belt and measures could be incorporated into the development to minimise carbon emissions. These are neutral matters in the planning balance. Set against this, I have found that the proposal is not acceptable in terms of flood risk. It would therefore conflict with the development plan taken as a whole, and material considerations have not been shown to carry sufficient weight to indicate that a decision should be taken otherwise than in accordance with it.
30. For the foregoing reasons, the appeal is dismissed.

E Worley

INSPECTOR