



Appeal Decision

Site visit made on 12 March 2024

By David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 March 2024

Appeal Ref: APP/T0355/W/23/3323059

Temple Weir House, Temple Lane, Temple Marlow SL7 1SA

- 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 & Mrs Doedens against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/02285, dated 16 August 2022, was refused by notice dated 19 January 2023.
 - The development proposed is demolition of existing house (incl outbuildings) and proposed construction of new detached house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (NPPF) was updated on 19 December 2023. The relevant paragraphs as they relate to the main issues in this appeal have not changed and so I have determined the appeal against the latest national planning policy without prejudice.
3. The description of the proposal in the banner above is taken from the planning application form. It refers to outbuildings being included in the removal of what exists at the appeal site. This is repeated in the appellant's appeal material as a matter to be taken into account when considering residual impact on openness and ultimately the weight to any fallback. From my observations on site, the current situation regarding outbuildings does not tally with the plans that are before me. I note similar is dealt with in the Local Planning Authority's (LPAs) officer report. Some outbuildings as shown on the submitted plan no longer exist and new outbuildings, constructed to a good standard, have been erected on other parts of the wider appeal site. For the avoidance of doubt, I have dealt with the appeal on the basis of the plans that are before me and in particular drawing HA/TWH/02 revision A03 (Proposed site plan). There is no key to this plan, but paragraph 7.13 of the appellant's appeal statement deals with an extract from this plan and refers to the "overlay of existing built form to be removed compared to proposed built form". Accordingly, I have assessed the appeal proposal on the basis of what is shown in red would be removed, including the 2 outbuildings shown. I note that permitted development rights have not been removed at the appeal site as part of the recent planning history.

Main Issues

4. The main issues in this appeal are as follows:

- (i) Whether the proposal would be inappropriate development in the Green Belt having regard to the NPPF and any relevant development plan policies.
- (ii) the effect of the proposal on the openness of the Green Belt and the purposes of including land within it.
- (iii) Whether the proposed development represents an acceptable form of development having regard to its flood zone location and the provisions of the NPPF.
- (iv) 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 required to justify the proposal.

Reasons

Whether inappropriate development

5. Paragraph 154 of the NPPF says that the construction of new buildings should be regarded as inappropriate in the Green Belt but provides exceptions. These include at criterion d) of that paragraph, the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
6. Temple Weir House is a good-sized detached dwelling house in the Arts and Craft style. It has a rectangular form orientated on a south-west to north-east axis. Redolent of the Arts and Craft style it has steep pitched roof form to the front elevation, giving the building a notable height when viewed from the front and over the wall from the adjacent public right of way. At the rear of the dwelling there is a large catslide roof to a low eaves above ground floor level on the rear elevation. Various modest pitched and flat roof openings add moderately to the volume of the roofscape. A single storey flat roof extension with glass balustrade balcony has been incorporated along part of the rear of the property and very slightly projecting to the north-eastern side.
7. The proposed replacement dwelling would be similarly orientated within the plot as the existing dwelling albeit slightly to the east. It would adopt a marginally lower ridge height but with a range of more extensive pitched projections above eaves height, particularly on the front elevation. Accordingly, in contrast to the existing dwelling, the proposed replacement would be a palpably bulkier building in terms of its scale and massing, due to the combination of the two-storey height across the depth of the building, the larger roofscape including the tall vertical projections and the notably wider frontage including the two symmetrical single storey side wings.
8. Both the LPA and appellant use a figure of 553sqm for the gross internal floorspace area of the replacement dwelling. This would reasonably represent a significant enlargement on the baseline. The appellant refers separately to a figure of 375sqm for the gross internal floor area excluding the basement. The proposed basement would be an integral part of the replacement dwelling providing accommodation for a cinema room, spa, gym and relaxation room, amongst other things. Consequently, to exclude it for the purposes of NPPF paragraph 154 d) would not be justified. Accordingly, when considering the

scale, volume and overall massing of the entire proposed replacement dwelling, it would be materially larger than the one it would replace.

9. I therefore conclude that the appeal proposal would amount to inappropriate development in the Green Belt. Accordingly, the appeal proposal, would be at odds with Policies SP1 and QP5 of the Royal Borough of Windsor and Maidenhead Borough Local Plan 2013-2033 (the BLP) and the NPPF which collectively seek to protect the Green Belt from inappropriate development. The NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness and Green Belt Purposes

10. A fundamental aim of Green Belt policy, as set out in paragraph 142 of the NPPF is to keep land permanently open. This openness is an essential characteristic of the Green Belt and has both spatial and visual aspects. Paragraph 143 of the NPPF sets out the purposes of Green Belt, including amongst other things, safeguarding the countryside from encroachment.
11. The appeal site comprises a large verdant plot, comprising mature trees and extensive grassed areas within the setting of the River Thames. The existing dwelling sits compactly towards the western part of the site, although various outbuildings and ancillary structures are scattered in other parts of the site. A tall brick boundary wall separates the site from the public right of way (PROW) to the south. The site is at the edge of the small cluster of settlement at Temple Marlow. The proposed dwelling would have a limited relationship to the nearest properties at Stable Cottages. The appeal site is predominantly part of the wider, open countryside in this part of the Green Belt including the tree belt and open farmland beyond to the south-east of the site and the treed edge of Temple Mill Island and the openness of the River Thames to the north-west.
12. As set out above, the scale and massing of proposed dwelling (excluding the basement), in comparison to the existing dwelling, would tangibly reduce the spatial openness of the Green Belt at the appeal location. Notwithstanding the degree of screening provided by mature trees and the wall along the site boundary to the PROW, the harmful loss of openness of the Green Belt at this location would be highly perceptible. Consequently, the appeal proposal, in contrast to the existing dwelling, would be experienced as intensification of development detrimentally encroaching into the countryside and harmfully impacting on Green Belt purposes related to openness.
13. As set out above, the appellant refers to existing outbuildings. Those shown on the submitted plans have now largely gone. New structures, some of which are sizeable, currently exist in different locations at the site. The Design and Access Statement (DAS) gives a figure of 68sqm for the existing outbuildings and a figure of 16sqm in the proposed area schedule. Notwithstanding, the current proliferation of outbuildings at the site (none of which would need to be removed to accommodate the proposed replacement dwelling), on the basis of the proposed plans and the DAS (i.e. a reduction in outbuildings), this would not sufficiently offset the net effect of the proposed replacement dwelling, which would be materially harmful on openness as a visual and spatial quality at the appeal site.
14. I therefore conclude that the appeal proposal would result in a loss of Green Belt openness and would impact on the purposes of including the land within

the Green Belt. Therefore, it would be contrary to the relevant Green Belt policy within the NPPF and in turn, Policy QP5 of the BLP.

Flood Risk

15. The appeal site is entirely within Flood Zones (FZs) 2 and 3a with the location of the proposed replacement dwelling within FZ2, where there would be a medium probability of fluvial flooding from the almost adjacent River Thames. The planning application was not accompanied by a detailed Flood Risk Assessment (FRA). Policy NR1 of the BLP states that within designated FZs 2 and 3 development proposals will only be supported where an appropriate flood risk assessment has been carried out. This is consistent with NPPF paragraph 173 (footnote 59). Accordingly, the LPAs concern regarding the absence of an FRA was a justified reason for refusal at the time it made its decision.
16. As part of the appeal the appellant has submitted a site-specific FRA. The analysis¹ in the FRA shows that the appeal location would be partially within the 1:100 year event plus a 35% allowance for climate change (1%AEP+CC) and entirely within the modelled 1:1000 year event extent. To mitigate flood risk the finished ground floor level and all thresholds and entrances to the basement would need to be set at 29.92m AOD² which would equate to being some 300mm above the 1%AEP+CC. This would be marginally above the current ground floor level of the existing dwelling. In terms of the basement, it would only be accessible from within the proposed dwelling. The submitted plans show no bedrooms or principal habitable accommodation within the basement and this could be secured by condition. Other measures could include a flood warning and evacuation plan. The appeal proposal as a replacement dwelling would not introduce a more vulnerable type of development into an area of medium to high flood risk. In terms of the sequential test, it would be unreasonable to search for alternative sites for a replacement dwelling. I am also satisfied that with various measures identified in the FRA, the development could be made safe for its lifetime for existing and future occupiers.
17. NPPF paragraph 173 makes clear that notwithstanding the sequential and exception tests it remains that flood risk is not increased elsewhere. The Environment Agency (EA) consider that there should be calculations comparing the existing and proposed built footprint within the 1% AEP+CC extent. I acknowledge that the FRA has taken a relatively broad-brush approach and refers to the location of the replacement dwelling to be "partially below the modelled 1%AEP+CC". Looking at Figure 11 of the FRA this shows that only a very small part of the rear extension to the existing dwelling is within the modelled 1%AEP+CC. By reference to the submitted site plan, the replacement dwelling would be repositioned (the LPA calculate by a measure of 4 metres) to the east of the existing dwelling such that when looking at Figure 11 of the FRA it would appear the entirety of the replacement dwelling would not be within the modelled 1%AEP+CC as shown in the FRA.
18. The EA refer obliquely to "the modelled flood level and topographical survey should be used to provide a mapped revised flood outline for the 1%AEP+CC flood event". I am unclear why the FRA should be considered deficient in using the relatively recent modelled flood extents (2019) provided by the EA and the

¹ Drawing on the modelled flood data from the Lower River Thames Modelling Study 2019

² Above Ordnance Datum

detailed topographic site survey (Figure 4 of the FRA) at this location. As such I do not consider the absence of detailed comparisons within the 1%AEP+CC to render the FRA inadequate in this regard. If I am wrong on this, then a precautionary approach could be adopted requiring a compensatory flood plain storage scheme to be submitted and approved along the lines of the level for level compensation outlined by the EA. This could be secured by condition.

19. Compared to the existing dwelling, the proposed replacement dwelling would increase the footprint of development. Notwithstanding the degree of flood risk at the appeal location, the existing dwelling is capable of being lawfully extended into what are currently permeable areas of garden. As such I consider them to be a material consideration of moderate weight for the purposes of considering flood water capacity at the appeal site. Even when deducting the 19.3sqm outbuilding under the 2022 Certificate of Lawfulness, the proposed replacement dwelling would not reduce flood water capacity compared to what could be lawfully implemented at the appeal site.
20. I therefore conclude, that following the submission of the FRA, it has been satisfactorily demonstrated that the proposal would not increase flood risk elsewhere. The position and scale of the proposed replacement dwelling would not conflict with Policy NR1 or the BLP in that it would not materially reduce the capacity of the floodplain to store water or cause new or exacerbate existing flood problems elsewhere. In similar terms, there would not be a conflict with paragraph 173 of the NPPF.

Very Special Circumstances?

21. The NPPF advises at paragraph 153 that substantial weight should be given to any harm to the Green Belt. It goes on to state that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
22. The appeal property benefits from an extant planning permission (under reference 21/01644) for a two-storey side extension to the north-east of the dwelling. The extension would be connected to the existing dwelling by a narrow lower link before taking the form of a complementary two storey structure. The proposed extension would appear slightly detached from the original dwelling and it would sit below the ridge height of the existing dwelling. The appellant provides evidence that when the LPA determined this extension it was assessed as comprising a 46% uplift in floor area on the original dwelling. As such, it would be a sizeable extension. This is a relatively recent planning permission, secured by the appellants.
23. Additionally, the appellant's have also obtained a Certificate of Lawfulness in January 2022 (under reference 21/03538) for, amongst other things, proposed single storey side and rear extensions, a rear dormer roof window and a single storey outbuilding. From the submitted plans, the proposed extensions would comprise a modest single room extension to the south-west, which would be subservient in scale and appearance to the existing dwelling. Similarly, the proposed rear extension would project only a little further than the existing rear extension, such that it too would be a modest consolidation of the existing building rather than a notable projection. The plans also show a small, detached outbuilding that would effectively infill between these two extensions.

Cumulatively, the Certificate of Lawfulness would enable a moderate footprint of single storey development to the west of the existing dwelling.

24. I accept that the appeal proposal would be a significant departure from what could currently be built at the site through existing permissions in terms of the layout, appearance and type and scale of accommodation. Other than limited references to meeting the needs of the family and representing “a preferable design for them” there is little before me to particularly justify the replacement dwelling, other than it would clearly (with the basement) be a much larger property. On the other hand, there is little to demonstrate, including any change in circumstances, that the existing dwelling, with the consented extensions, would not provide an acceptable form and standard of accommodation for the appellants and their family. As such I consider there would be a real prospect that both the two-storey consented extension and the development available under permitted rights, having been obtained and established by the appellants, would be concurrently implemented to provide further accommodation as a fallback to this appeal proposal.
25. The appellant asserts that cumulative internal floorspace area were the dwelling extended as approved and certified would amount to 440.5sqm (compared to the LPAs figure of 412sqm). This includes the 19.3sqm outbuilding, which I consider a reasonable approach given its very close relationship to the proposed side and rear extensions. The gross internal floor area of the proposed dwelling from ground level up, excluding the proposed basement, is submitted to be 375sqm. The overall footprint of the proposed dwelling would be slightly less than the existing dwelling (with extensions), but it would not be materially different. As such on floorspace and footprint from the ground level up there would appear to be a modest quantitative benefit in terms of openness. These measurements, however, in my assessment, mask some appreciable visual differences between what could be built at the appeal site and the proposed dwelling.
26. In overall volumetric terms there would be very little difference between the appeal scheme (1,516sqm³) and the available fallback (1,518m³), on the appellants figures. In terms of visual impact on openness, I find the overall bulk, massing and appearance of the existing dwelling with the various implementable extensions and alterations would comprise a more diffused form of development. This would be the result of the combination of the extensive catslide roof on the rear elevation and the modest projections and dormers in the roofscape of the existing dwelling together with the slightly detached and lower form of the two-storey extension and the modest cumulative scale of the single storey additions.
27. In contrast, despite deploying a similar lower eaves height at the front, the replacement dwelling would not do so on the rear elevation which currently drops to a very low eaves level in the western corner of the building. As such, the replacement dwelling, would appear as a bulkier, consolidated form of development. It would do so over the full depth of the proposed dwelling, which would be similar to the existing dwelling when measuring from the principal front elevation rather than the most forward point of the existing single storey modest front porch element. The replacement dwelling would be only marginally lower than the existing house, however, to fully utilise the first floor for habitable accommodation sizeable vertical pitched roof projections are proposed in the roofscape in stark contrast to the more modest arrangement

that currently exists. The proposed roofscape would add to the overtly bulky appearance of the replacement dwelling.

28. As set out, the situation regarding outbuildings at the appeal site is unclear. To a large extent the outbuildings shown on the submitted plans “as existing” have been removed but have been relatively recently replaced or superseded by various well-built structures elsewhere in the garden. Given the absence of any conditions removing permitted development rights this could be considered part of the fallback situation. I accept that with the appeal proposal a condition removing permitted development rights (to limit further ancillary structures) could be imposed. Such a condition would be, however, onerous and may rely on the retention of what has been recently built, given the submitted plans show the retention of a garage building near the entrance gate (that has now gone).
29. Bringing this altogether, despite some modest betterments in terms of potential to remove available permitted development rights and the footprint and internal floor area and volumes of the dwellings being comparable, in terms of visual impacts and perceptions of openness, I find the available fallback would be, on balance, marginally less harmful than the appeal proposal. This would be due to the dispersed scale and layout and subdued height of what could be implemented at the main dwellinghouse compared to the bulky, imposing rectangular block of the proposed replacement dwelling positioned closer to the PROW. Whilst the proposed design would create a unified appearance to a dwelling on the appeal site, I do not find this would amount a significant benefit compared to what could be implemented at the appeal site in terms of retaining a good quality original Arts and Crafts house and high-quality extensions which would complement rather than compete with the host dwelling. Overall, I give the available fallback, as a material consideration, only moderate weight.
30. The appellant refers me to a recent appeal in the Borough³ where the provision of self-build dwellings in form of 4 serviced plots to meet the needs of those seeking self-build or custom housing amounted to a matter of overriding weight, such that a conclusion of very special circumstances was arrived at. In contrast the appeal proposal here, which may well be a self-build project, would replace an existing dwelling for an existing household in the Borough rather than be available to meet wider needs, including those on the Borough Council’s register. As such, there are material differences here compared to the recent Holyport decisions and so I give only very limited weight to any benefit from the self-build nature of the proposed replacement dwelling.
31. The replacement dwelling would be constructed to modern building standards and so would be energy efficient and sustainably constructed. It would, however, occur at the expense of demolishing an existing dwelling, which appears to be structurally sound and otherwise in good order. There is little before me that the existing dwelling, with the proposed extensions, would be particularly energy inefficient. As such I give the potential sustainable construction benefits only limited weight.
32. Overall, I do not consider the available fallback to be more harmful and so as to amount to a material consideration that should be given more than moderate weight. For the reasons set out above I give only limited weight to

³ APP/T0355/W/22/3309281 & 3314990

the sustainability credentials of the proposed dwelling and only very limited weight to its self-build nature. Accordingly, these considerations, when taken together, do not clearly outweigh the Green Belt harms that I have identified. Accordingly, very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.

Other Matters

33. The basement would require excavation, which given its footprint and depth could generate an appreciable volume of material. There are scant details on how this could be dealt with and whether it would be disposed of at the appeal site via landscaping, which is suggested in the appellant's DAS, with potential implications for flood water storage capacity. The appellant's position at this appeal is that the material would be removed from the site.
34. Access to the site from Temple Lane is constrained as it passes alongside Stable Cottages which directly front onto the shared private access road. Whilst only a snapshot in time, I also observed that this access road also accommodates vehicles parking for Stable Cottages such that where this occurs only a relatively narrow access is maintained to Temple Weir House, and this passes directly to the front of the Stable Cottages residences. This narrow route is also shared by pedestrians using the PROW to and from Hurley. As such there is potential for highway safety conflict with other users of the shared access road. The appellant suggests that the matter could be dealt with by way of condition through a mechanism such as a construction management plan but there is little evidence to demonstrate that this would be reasonable or enforceable given the circumstances described above. As such I am cautious that a condition could meet the necessary tests. This adds to my concerns regarding the appeal proposal.

Conclusion

35. I have had regard to all other matters raised, but there is nothing that leads me to conclude other than that the appeal should be dismissed for the reasons given.

David Spencer

Inspector.