



Appeal Decisions

Site visit made on 6 June 2024

by Lewis Condé BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2024

Appeal A Ref: APP/T0355/W/23/3324554

Maryland Horse Gate Ride, ASCOT, SL5 9LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr G Scott, Ashley Homes, against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 22/02629.
 - The application sought planning permission for Replacement dwelling following demolition of existing elements and x1 new vehicular access, without complying with a condition attached to planning permission Ref 21/02702, dated 26 July 2022.
 - The condition in dispute is No 13 which states that: 'The development hereby permitted shall be carried out in accordance with the approved plans listed below'.
 - The reason given for the condition is: 'To ensure that the development is carried out in accordance with the approved particulars and plans'.
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Appeal B Ref: APP/T0355/W/23/3324556

Maryland Horse Gate Ride, ASCOT, SL5 9LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr G Scott, Ashley Homes against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 23/00277.
 - The application sought planning permission for a replacement dwelling following demolition of existing elements and x1 new vehicular access, without complying with a condition attached to planning permission Ref 21/02702, dated 26 July 2022.
 - The condition in dispute is No 13 which states that: 'The development hereby permitted shall be carried out in accordance with the approved plans listed below'.
 - The reason given for the condition is: 'To ensure that the development is carried out in accordance with the approved particulars and plans'.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. As set out above there are two appeals at this site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with both schemes together except where otherwise indicated.

4. Condition 13 of planning permission Ref 21/02702 relates to the plans that the permission is to be built in accordance with and refers to 'the approved plans listed below'. The condition itself does not provide a list of plans, albeit it is clear from reading the decision notice that the relevant plans referred to are those listed within an associated informative.
5. Both main parties were invited to comment upon case law¹ relating to development within the Green Belt during the course of the appeal. Comments received have been taken into consideration in my determination of the appeal.

Background and Main Issues

6. Planning permission was granted in July 2022 for a replacement detached dwelling at the site under permission reference: 21/02702 and remains extant. The appellant is now seeking to alter the design of the permitted dwelling, through varying a condition on the permission which specified the approved plans. Whilst the appeal schemes are advanced under Section 73 of the Town and Country Planning Act 1990 (as amended), the effect of any approval would be to grant a new planning permission.
7. Under Appeal A, the changes to the approved scheme (ref: 21/02702) would involve the addition of basement accommodation that would be accessible via an external vehicular access ramp. The scheme also would alter the previous garage arrangement to provide further living space, with associated alterations to the internal layout of the dwellinghouse.
8. Under Appeal B, the addition of basement accommodation is also proposed, however, the basement area would only be accessible internally from within the proposed dwellinghouse. Appeal B also involves the addition of living accommodation at second floor level (within the roof space of the proposed dwelling) and the incorporation of dormer windows to serve the relevant second floor rooms.
9. Permission ref 21/02702 did not include any living space at second floor level. However, I have been made aware of a separate extant planning permission (ref: 23/01094) at the site that has resulted in permission for a dwellinghouse of a largely similar design to that under permission 21/02702, but also includes accommodation at second floor level within the roof-space of the dwelling. Unlike, current Appeal B, the accommodation within the roof space under permission 23/01094 is to be served by flat rooflights as opposed to dormer windows.
10. I have also been made aware of another application at the appeal site (ref: 24/00176/VAR), for a dwelling of a similar design to that previously approved under 23/01094, but which would also involve the provision of a basement like that proposed under current Appeal B. From the evidence before me, it appears that the Council has indicated that the pending application (24/00176/VAR) is considered to be acceptable, subject to the completion of a Section 106 legal agreement.

¹ *Feather v Cheshire East Borough Council v Mr Christopher Wren and Mrs Susan Wren* [2010] EWHC 1420 (Admin)

11. The existing permissions are material considerations in this case, as is application ref: 24/00176/VAR, albeit I have reached my decision based on the circumstances of the site and the details of the scheme before me.
12. The main issues in both appeals are:
 - Whether the development 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 development on the openness of the Green Belt;
 - Whether the development would provide suitable carbon off-setting measures to mitigate the effects of climate change; and
 - Whether the 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

13. The appeal site lies within the Metropolitan Green Belt. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy QP5 of the Royal Borough of Windsor & Maidenhead Borough Local Plan (adopted 2022) (the 'BLP') takes a consistent approach to the Framework in seeking to guard the Green Belt from inappropriate development.
14. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 154. Policy QP5 is also consistent with the Framework in this regard. Of relevance to the appeal schemes is the exception at Paragraph 154d) of the Framework, which relates to the replacement of a building in the same use and not materially larger than the one it replaces.
15. The Framework provides no definition of what constitutes 'materially larger', it is therefore a matter of planning judgement. Notably, above ground, the dwellinghouses proposed under the current appeals are broadly comparable in terms of volume and appearance as the dwelling approved under planning permission 21/02702. Whilst for Appeal B, the additional floorspace (above ground) within the proposed scheme also closely aligns with that granted under permission 23/01094. Despite this, in determining whether the appeal schemes meet the exception at paragraph 154d) I must consider whether the proposals are materially larger compared to the existing buildings on the site and not subsequent planning permissions.
16. The proposed dwellings would be of a similar height and more consolidated built form than the existing dwellinghouse² at the site. However, their overall volume and floorspace would be much increased. I have not been provided with precise and verified figures of the overall increase in floorspace and volume compared to the existing dwelling at the site. Nonetheless, I

² Reference to the existing dwelling also includes its detached garage.

understand that the above ground floorspace for Appeal A is in the region of 25% larger than the existing dwelling on the site, which the Council previously accepted as not being materially larger. While as indicated, Appeal B would also include further floorspace at second floor level that the Council (through permission ref: 23/01094) still found did not result in a materially larger replacement building at the site. However, in this instance the appeal proposals also include sizeable basements.

17. The basement elements in the current appeal schemes would include space for a swimming pool, gymnasium, sauna and steam rooms, changing facilities, as well as plant room and lobby space. In respect of Appeal A it would also provide parking space to accommodate four vehicles, while Appeal B would instead host a home cinema. Furthermore, the basements in both schemes seemingly have a footprint in excess of the ground floor footprint of the proposed dwellinghouses. Even without precise figures, it is clear that the proposed basements are substantial in floorspace and volume.
18. I find that the scale of the proposed dwellings, through the addition of substantially sized basements, are materially larger than the existing dwellinghouse to be replaced. The proposal therefore represents inappropriate development in the Green Belt.
19. Furthermore, the access ramp proposed under Appeal A and dormers in Appeal B, although in themselves relatively minor works and limited in size, would continue to add to the overall scale of the development proposals.
20. In reaching the above view, I recognise that the Council has not raised issue with the overall size of the proposed basements. However, in the judgement of *Feather v Cheshire East Borough Council v Mr Christopher Wren and Mrs Susan Wren* [2010] EWHC 1420 (Admin) it was found that the size and scale of a basement addition should be taken into account in determining whether the building was or was not materially larger than the one it is to replace.
21. In light of the findings of the above case and the overall scale of the proposed dwellings (including the extent of the basements), I find it would be perverse to conclude that the appeal schemes before me are not materially larger than the existing buildings on the site.
22. Therefore, as set out in the Framework, the proposals would be inappropriate development in the Green Belt which is, by definition, harmful. It would also conflict with the provisions of Policy QP5 of the BLP.

Openness

23. The Framework also sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of Green Belts being their openness and their permanence.
24. The concept of openness does not relate directly to visibility or visual harm but to the absence of building and development. It follows that openness can be harmed even when development is not readily visible from the public domain. The increased scale of the proposed dwellings compared to the existing dwellinghouse, including the provision of a sizeable basement in both the appeal schemes, would still have a spatial impact and reduce openness, as the proposals would result in additional works across a currently undeveloped area.

25. In respect of Appeal A, I do not consider that the removal of vehicles from the existing driveway to an underground garage would off-set the loss of openness caused by the design and scale of the proposed dwellinghouse.
26. Accordingly, in addition to the harm arising from the proposal constituting inappropriate development, there is also a degree of harm arising from the loss of openness and from being contrary to one of the purposes of including land within the Green Belt. However, given the subterranean nature of a considerable extent of the works, and the enclosed nature of the appeal site, the reduction in openness and the harm arising from it would be modest.

Climate Change

27. The Council's second reason for refusal for both Appeal A and Appeal B related to the absence of a legal agreement to secure a carbon off-setting contribution for the proposed development.
28. Policy SP2 of the BLP requires development to demonstrate measures to adapt to and mitigate climate change. The policy sets out several design measures that are expected to be explored to maximise climate change resilience in development. The policy does not set a specific standard that developments are expected to achieve (i.e. carbon neutrality) but does indicate the need for applicants to refer to related Supplementary Planning Documents (SPD), or successor documents, for further guidance to the policy.
29. An Interim Sustainability Statement (March 2021) (ISS) has been prepared by the Council, which targets a net zero carbon rating for new dwellings. Where there is a shortfall, the ISS enables developers to provide mitigation through a financial contribution towards a carbon off-set fund. The ISS can be considered a successor document referred to under Policy SP2 for additional guidance.
30. It has not been demonstrated that the proposed dwellings would meet net zero standards, but the appellant has indicated a willingness to prepare a Unilateral Undertaking (UU) to provide a financial contribution towards relevant carbon off-setting measures. I also note that a UU, to provide financial contributions to such measures, was complete in relation to the previously approved development at the site (ref: Ref 21/02702). However, as I am dismissing the appeal on other grounds, I have not sought for an updated UU to be provided nor considered the matter further.

Other Considerations

31. As highlighted above, I note that the appellant has existing planning permissions in place for a replacement dwelling at the site. In essence, the appellant has sought to 'salami slice' the design of the replacement dwelling at the site through a range of planning applications. As such, the fallback options have broad similarities to the appeal scheme. However, it remains that the current appeal schemes are materially different and involve a greater overall extent of development in the Green Belt than the current fallback positions. Therefore, even though the fallback options have a realistic prospect of being undertaken, they do not justify the current appeal proposals.
32. The proposals would provide improved living conditions to the personal benefit of the appellant. There are also likely to be wider socio-economic benefits associated with the proposed developments. Given that the proposals involve

the replacement of a single dwellinghouse such benefits would be limited and are not necessarily dependent on the form of development being pursued.

33. A lack of harm in terms of the character and appearance of the area is to be expected of new development and therefore is a neutral matter that does not weigh in favour of the appeal scheme. Likewise, compliance with other planning policies is also to be expected and again does not weigh in favour of the appeal schemes.

Green Belt Balance

34. Both appeal schemes amount to inappropriate development in the Green Belt that would result in a small loss of openness. The inappropriateness and the harm to openness carry substantial weight. The Framework establishes that development should therefore not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations.
35. Overall, I find that together the matters that the appellant has put forward do not amount to very special circumstances that are needed to justify inappropriate development in the Green Belt

Conclusion

36. For the reasons outlined above, having regard to the development plan and all other material considerations, both Appeal A and Appeal B are dismissed.

Lewis Condé

INSPECTOR