



Appeal Decision

Site visit made on 29 July 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15th August 2024

Appeal Ref: APP/T0355/W/24/3338024

Crown Farm, Eton Wick Road, Windsor SL4 6PG

- 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 Fred Sines against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 23/01241, dated 17 May 2023, was refused by notice dated 1 August 2023.
 - The development proposed is the erection of a barn.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement (WMS), which is a material consideration, the proposed changes to the Framework can only be given limited weight at this stage, given that no final document has been published. The main parties have been provided with an opportunity to comment on these documents and their responses have been taken into account, where received.
3. At the time of my visit a barn was in place at the appeal site. However, this does not reflect that for which permission has been sought in accordance with the submitted plans. I have dealt with the appeal on the basis of the plans submitted to the Council at the time of its decision.
4. The Council's reasons for refusal also related to the effect of the proposed development on: highway safety; and the living conditions of surrounding occupiers, with regard to noise. During the appeal the Council agreed that, if the proposal had been acceptable in all other matters, these issues could be addressed by suitably worded planning conditions. Based on my observations I have no reason to disagree and have therefore proceeded on this basis.

Main Issue

5. The main issues are:
 - 1) whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - 2) the effect of the proposal on flooding;

- 3) the effect of the proposal on ecology and biodiversity;
- 4) whether the development would mitigate the effects of climate change; and
- 5) 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 necessary to justify the proposal.

Reasons

Whether the proposal constitutes inappropriate development

6. The appeal site comprises an area of land to the north of Eton Wick Road, in the Green Belt. It sits beside a cluster of industrial buildings to the east, with a residential estate beyond. It is bound immediately to the south and west by an area of car parking, with buildings further west. Immediately to the north of the site lie open fields. While a barn is currently present on site, the submitted 'Existing Site Block Plan' shows the site to be free from built form, contributing to a visual break between vertical development to the east and west. The appellant has outlined that the proposal would be used for storage purposes.
7. Policy QP5 of the Royal Borough of Windsor and Maidenhead Borough Local Plan 2013-2033 (the Local Plan) defines land in the Green Belt as rural areas where national Green Belt policies will apply. In this regard, the Framework states that construction of new buildings in the Green Belt should be regarded as inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is subject to exceptions, including at paragraph 154(g) limited infilling or partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
8. The main parties agree that the site is PDL and I have proceeded on this basis. Accordingly, whether the proposal would constitute inappropriate development will depend on whether it would have a greater impact on the openness of the Green Belt than the existing development. The Framework states that "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." It is established that openness has both a visual and spatial aspect.
9. The proposal would erect a barn on a site that is shown to be free from built development on the existing plan. While it would be single storey in nature, it would feature a pitched roof and have a sizeable footprint, introducing a prominent structure at the site. Even among the range and density of surrounding buildings, introduction of such permanent built form in this position would unduly interrupt views within the immediate vicinity towards open land to the north. In doing so it would significantly disrupt the contribution the site currently makes to a visual break in the vertical built form to the west and east. As such, the proposal would cause harm to the openness of the Green Belt from both a visual and spatial perspective.
10. On the basis of the information before me and my observations on site, the proposal would therefore be inappropriate development in the Green Belt, which by definition is harmful to the Green Belt. In this respect, it would fail to comply with Policy QP5 of the Local Plan.

Flood Risk

11. The main parties agree that the appeal site lies within Flood Zone 3a. The Framework and Policy NR1 of the Local Plan outline that a site-specific flood risk assessment should be provided for all development in Flood Zone 3. No site-specific flood risk assessment was provided with the application, but a Flood Risk Note has been provided with the appeal.
12. However, both the Framework and Policy NR1 aim to steer development to areas with the lowest probability of flooding through a sequential test. While this is subject to certain exceptions, the proposal would not meet any of these. National and local policy is therefore clear that, in the case of the proposal, a sequential test should be undertaken to determine if there are other reasonably available sites for the proposal, with a lower probability of flooding. No substantial evidence of such a sequential test is within the submitted Flood Risk Note.
13. I acknowledge that, in accordance with the Framework, buildings for storage and distribution and buildings for agricultural purposes are considered to be 'less vulnerable' land uses with regard to flood risk. In this regard, Planning Practice Guidance states that 'less vulnerable' development in Flood Zone 3a does not require an exception test. However, explanatory notes outline that this does not show the application of the sequential test, which should be applied first to major and non-major development to guide development to areas of lower flood risk.
14. I therefore find that there is insufficient information to determine whether the requirements of the sequential test have been satisfied and that it has not been demonstrated that the proposed development cannot be located in an area that is at a lower risk of flooding. I acknowledge the appellant's position regarding the current and proposed use of the site, the surrounding uses and floor levels, and the fact that the Environment Agency and Lead Local Flood Authority were not consulted. Nevertheless, this does not remove the need for an appropriate sequential test to be carried out.
15. For the reasons given, I cannot be certain on the information provided that the proposal would not have a significant adverse effect with regard to flooding. As such, it would fail to comply with Policy NR1 of the Local Plan in this regard.

Ecology and Biodiversity

16. Policy NR2 of the Local Plan is clear that proposals should demonstrate how they maintain, protect, and enhance the biodiversity of application sites, and follow the mitigation hierarchy to avoid, mitigate or as a last resort compensate. It continues that development proposals will be expected to demonstrate a net gain in biodiversity by quantifiable methods such as the use of a biodiversity metric.
17. The Council expressed concern that the site was likely used by protected species and that no ecological appraisal had been submitted with the application. An Ecological Technical Note was submitted with the appeal, recommending replacement habitat should be provided to ensure that there are no adverse impacts on protected and notable species. The main parties agree that such ecological enhancement could be secured via a condition.
18. However, with regard to biodiversity, no specific biodiversity net gain calculation has been undertaken as part of the Ecological Technical Note. It is outlined that the proposal would involve the removal of 0.028ha vegetation

which would have had a biodiversity value, with an estimated loss of 0.17 habitat units. The Note then outlines suggested enhancement measures.

19. Despite the estimate provided, it remains that specific biodiversity net gains have not been demonstrated by a quantifiable method such as the use of a recognised metric calculation. In addition, final and certain details of the specific enhancement measures have not been provided at this stage. As such, I cannot be certain that the proposal could achieve a measurable net gain in biodiversity. Given the level of uncertainty in this regard, I do not consider that it would be suitable for this specific matter to be addressed by way of planning condition.
20. For the reasons given, I cannot be certain on the information provided that the proposal would not have a significant adverse effect with regard to biodiversity. As such, it would fail to comply with Policy NR2 of the Local Plan in this regard.

Climate Change

21. Policy SP2 of the Local Plan requires development to demonstrate how it will adapt to and mitigate climate change by demonstrating how it has been designed to incorporate a range of outlined measures. The policy does not set a specific standard that developments are expected to achieve but reference has been made by the Council to an Interim Sustainability Statement (ISS).
22. The ISS outlines that all new development should be net zero unless this is demonstrated to be unfeasible. Where this is not available on site, the ISS refers to a carbon offset fund. The Council has raised concerns that it has not been demonstrated that the proposal would be net zero, and there is no evidence before me that a contribution has been made to the referenced carbon offset fund. The position of the main parties on the status and weight to be attributed to the ISS, and whether there is a requirement for the proposal to be net zero, differs.
23. However, even if I were to find that the failure of the proposal to demonstrate that it would be net zero would not result in conflict with the local plan, it remains that I have limited information to demonstrate how the proposal accords with other relevant local plan policies. I note the appellant's position that, due to the scale and nature of the proposal, a detailed Sustainability Statement would not be appropriate. Nevertheless, the information submitted, being reference to the use of recyclable materials and a likely low level of energy and water consumption, does not provide certainty that the proposal has been designed to adapt to and mitigate climate change in accordance with the measures set out in Policy SP2, regardless of the net zero position.
24. For the reasons given, I cannot be certain on the information provided that the proposal would mitigate the effects of climate change. As such, it would fail to comply with Policy SP2 of the Local Plan in this regard.

Other Considerations

25. The proposal would have certain benefits. It would contribute to improving the appearance of the appeal site and immediate area through the development of the site. It would reuse previously developed land, with an opportunity for additional landscaping and ecological enhancements. It was constructed using locally sourced labour, providing employment opportunities during the construction phase and through the supply chain, and has been constructed from recyclable materials.

However, given the single structure nature of the proposal and the scale of the site in the overall context of the wider area, such benefits attract limited weight.

Whether Very Special Circumstances Exist

26. The proposal would be inappropriate development in the Green Belt. On the information provided it would also fail to suitably address flood risk, climate change or biodiversity net gain. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that harm. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
27. Even when taken together, I find that the other considerations raised in this case, including the proposed Framework changes, do not clearly outweigh the harm to the Green Belt and the other harm identified. Consequently, the very special circumstances necessary to justify the development in the Green Belt do not exist.

Conclusion

28. For the reasons given, the proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR