



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: 10th September 2024

Appeal Ref: APP/T0355/W/24/3338512

8 Ham Island, Old Windsor, Windsor and Maidenhead, Windsor SL4 2JY

- 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 Ms Maureen Thompson against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 23/00699, dated 17 March 2023, was refused by notice dated 24 November 2023.
 - The development proposed is a replacement 3 bedroom dwelling following the demolition of existing dilapidated dwelling.
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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.

Main Issue

3. 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 the openness of the Green Belt;
 - 3) the effect of the proposal on the character and appearance of the area;
 - 4) the effect of the proposal on flooding;
 - 5) whether the development would mitigate the effects of climate change;
 - 6) the effect of the proposal on ecology and biodiversity;
 - 7) the effect of the proposal on the living conditions of neighbouring occupiers; and

- 8) 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

4. The appeal site comprises a building on a plot of land on Ham Island, a residential street. The surrounding dwellings are varied in nature, sited in a linear pattern with generally consistent spacing. The proposal seeks permission for a dwelling at the site.
5. 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.
6. However, this is subject to certain exceptions, including at paragraph 154(d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. The main parties disagree as to whether the use of the appeal property as a residential dwelling has been abandoned and, accordingly, whether the exception at paragraph 154(d) is applicable in this case.
7. A use may be regarded as existing and lawful even if it is dormant or inactive. However, the concept of abandonment applies when a building or land remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned. Case law has established four criteria for abandonment. These are: the physical condition of the land or building; the period of non-use; whether there has been any other use; and the owner's intentions as to whether to suspend the use or to cease it permanently.
8. The main parties agree that the physical condition of the building is very poor, and I observed this during my visit. The building has collapsed structural features, including roofing, walls and rotting internal floors and ceilings, and is surrounded by overgrown vegetation, some of which has penetrated internal rooms. Vegetation also largely masks views of the property from the street. Overall, it visually reads as a derelict site.
9. The Council estimates the period of non-use to be around 20 years, based on the condition of the building as per an Officer Report for a 2014 outline application for a replacement dwelling. However, the appellant has confirmed that they relocated from the appeal property, once their primary residence, to No. 2 Ham Island in 2012. I see no reason to dispute this, and consider the period of non-use prior to the current application to have been some 11 years. There is nothing to suggest an other, intervening use since this time.
10. The final test relates to the owner's intentions. The appellant states they intend to live at the site, and point to the proposal as demonstrating this. Nevertheless, it remains that some 9-10 years have passed since the last evidenced application for residential use at the site. In addition, no reserved matters application appears to have come forward following the grant of this

outline permission. Although the appellant references subsequent applications for redevelopment, I have limited detail on these. There is nothing substantive to suggest they were for residential use and, in any event, did not result in validated applications with the Council.

11. The test of the owner's intentions should be objective, not subjective. That is, what would the reasonable man equipped with all circumstances consider the intention of the owners to be, as opposed to what the owners themselves maintain their intentions to be. The building is visibly derelict and, prior to the application for this proposal, had been unused for residential purposes for some 11 years. While no intervening use has occurred since, it remains that prior to this application the last clear intention of the owner to resume residential use was in 2014. I therefore find that an objective assessment of all available evidence leads to the conclusion that the residential use of the property had been abandoned prior to the current application being made.
12. On this basis, the exception at paragraph 154(d) of the Framework would not apply. However, the Council also refers to the exception at paragraph 154(g). This relates to limited infilling or the 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.
13. PDL is defined as land which is or was occupied by a permanent structure, such that the appeal site would comply with this definition. 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.

Openness

14. 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 has been established that openness has both a spatial and visual aspect.
15. The appellant states that the footprint of the current building on site is 123sqm, with submitted plans showing the footprint of the proposal as 108.65sqm. Plans also show an aviary and air raid shelter at the site, which would be removed. Overall, there would therefore be a reduction in the footprint of built form. The proposal would also be set in further from the site boundaries, and would not project further south than the current structure.
16. Nevertheless, the appellant concedes that the proposal would have a greater volume than the current building. In particular, it would replace the current single storey structure with a two storey dwelling sited on a raised platform, such that the proposal would be notably more visible at the site and within the immediate surrounds. While the appellant contends that the raising of the dwelling is necessary to address flood risks, it remains that it would increase the prominence of the built form at the site. This additional height and bulk would result in the proposal having a greater impact on openness than the current situation from both a visual and spatial perspective.
17. 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.

Character and appearance

18. Ham Island is made up of detached dwellings of various designs. However, even noting the variety in style, the properties in the immediate vicinity of the site, particularly to the northwest, read as being of modest scale and proportions. Although larger dwellings do exist on the street, including a two storey raised property similar to the proposal, these are largely sited further southeast, towards and past a clear bend in the road where the predominant scale of built form is notably increased.
19. Accordingly, the height and bulk of the proposal due to its raised, two storey nature would read as overly dominant at the site among properties that are primarily of a smaller scale. In this sense, it would fail to reflect its immediate context or respect the overarching character of this section of Ham Island. While No. 9 Ham Island also fails to reflect the lower level of built form in the vicinity of the site, the proposal would also tower above this property, highlighting its prominence and incongruous scale in this section of the streetscene.
20. I note that the proposal retains a proportionate width and projection relative to other dwellings, and that the liner placement of built form along the street would be retained. I further acknowledge that the additional height of the dwelling has been informed due to flood risk defences. Nevertheless, for the reasons given above, it remains that it would look out of place in this immediate section of Ham Island.
21. For the reasons given, the proposal would result in significant adverse harm to the character and appearance of the area. As such, it would fail to comply with Policies QP3 and QP4 of the Local Plan and the Royal Borough of Windsor and Maidenhead Borough Wide Design Guide June 202 (the SPD) insofar as they seek to ensure high quality development, including in the setting of the Thames, that respects local character, paying attention to height, scale and bulk.

Flood Risk

22. The main parties agree that the appeal site lies within Flood Zone 3. 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. A Flood Risk Assessment was provided, which concluded an acceptable level of flood risk, subject to certain mitigation measures.
23. 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 Assessment. The appellant contends this to be unnecessary as the proposal is for a replacement dwelling, but I have found above that this would not be the case given that the residential use of the site has been abandoned.
24. I acknowledge that, in accordance with the Framework, buildings for use as dwelling houses are considered to be 'more vulnerable' land uses with regard to flood risk. In this regard, Planning Practice Guidance acknowledges that Flood Zone

3 is an accepted location for 'more vulnerable' development subject to 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.

25. 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 various mitigation proposed by the appellant. Nevertheless, this does not remove the need for an appropriate sequential test to be carried out.

26. 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.

Climate Change

27. 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).

28. The ISS outlines that all new development should be net zero unless this is demonstrated to be unfeasible. 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 in this regard.

29. The appellant has referred to the submitted Design and Access Statement as outlining how the development would be sustainable. Nevertheless, the information submitted, being reference to the use of sustainable materials, double glazing, water butts, and low lying solar thermal panels 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.

30. 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.

Ecology and Biodiversity

31. 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.

32. An Ecological Survey Report was provided, which concludes that the proposal would not result in ecological harm, subject to the imposition of conditions. However, with regard to biodiversity, no specific biodiversity net gain calculation has been undertaken as part of the Ecological Survey Report.

33. It is outlined that the proposal would provide a minimum of one bat box on site. However, specific biodiversity net gains have not been demonstrated by a quantifiable method such as the use of a recognised metric calculation. 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.
34. 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.

Living conditions

35. The proposal would feature a full width rear terrace on the raised ground floor level, in addition to a rear recessed balcony at first floor level. While such rear terraces may feature elsewhere in the immediate locality, it remains that the proposed terrace would, due to its proximity to the side boundaries of the site, allow for clear and direct views towards the rear gardens of the neighbouring properties at Nos. 7 and 9 Ham Island. This would reduce the enjoyment of these spaces by the residents of these dwellings, due to actual and perceived overlooking from this location.
36. The set-in nature of the proposed first floor balcony, coupled with its distance from the boundary with No. 7 Ham Island, would ensure no unacceptable overlooking towards this property or garden. However, even with its recess it remains that the proximity of this balcony to the side boundary with No. 9 Ham Island would allow further direct views of the rear garden space of this dwelling. Overall, the proposal would result in undue harm to the living conditions of immediately neighbouring occupiers with regard to privacy.
37. The Council further states that a degree of harm would result to the living conditions of neighbouring occupiers with regard to outlook, due to the scale and positioning of the proposed dwelling. However, this did not form a reason for refusal and as I am dismissing the appeal for other reasons, I have not considered this matter further.
38. For the reasons given, the proposal would have a significant adverse effect on the living conditions of neighbouring occupiers of Nos. 7 and 9 Ham Island, with particular regard to privacy. As such, it would fail to comply with Policy QP3 of the Local Plan and the SPD insofar as they seek to ensure development that has no unacceptable effect on amenities enjoyed by occupants of surrounding properties in terms of privacy.

Other considerations

39. As I have found that the residential use of the appeal site has been abandoned, the proposal would result in an additional dwelling in an established residential area, reusing previously developed land, optimising the use of the site, and improving the aesthetic appearance of the site. However, due to the single dwelling nature of the proposal, this attracts limited weight.
40. While the appellant makes reference to a fallback position, this relies on the building at the appeal site being in residential use. I have found that this use has been abandoned. In any event, there is nothing determinative before me

that the use of any such fallback is anything more than a theoretical possibility. As such, very limited weight can be attached to the fallback.

Whether Very Special Circumstances Exist

41. The proposal would be inappropriate development in the Green Belt. It would also cause harm to the character and appearance of the area and the living conditions of neighbouring occupiers, and I cannot be certain that it would result in a biodiversity net gain, mitigate the effects of climate change and not increase flood risk. 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.
42. Even when taken together, I find that the other considerations raised in this case, including the WMS and 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.

Planning Balance and Conclusion

43. Although not referenced by the main parties, I am aware from other casework that the Council currently have a shortfall in housing land supply. Therefore, in accordance with paragraph 11(d) of the Framework, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 to paragraph 11(d) is clear that this applies to land designated as Green Belt. The harm to the Green Belt identified is such that the policies in the Framework relating to the Green Belt provide that clear reason for refusing the development. As a result, the presumption in favour of sustainable development would not apply and as such I do not consider that any party's interests have been prejudiced by my not seeking comments on this matter.
44. For the reasons given, I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR