



Appeal Decision

Site visit made on 26 September 2024

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/T0355/W/24/3344810

27 Princes Close, Eton Wick, Windsor SL4 6LZ

- 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 and Mrs Sandhu against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 23/02075/FULL.
 - The development proposed is for the sub-division of the existing site to create 2no. dwellings with a two-storey side extension, new shared access and 3no. parking spaces following the demolition of the existing garage and detached outbuilding.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The decision notice included a reason for refusal relating to securing a contribution towards the Council's carbon off-set fund. The appellant indicated that such matters could be addressed through a planning obligation where necessary, and a certified copy of a Unilateral Undertaking dated 23 August 2024 has been provided as part of the appeal process.

Main Issue

3. The main issue is whether the proposal represents an acceptable development having regard to flood risk, and specifically if it passes the Sequential Test.

Reasons

4. The site is located within Flood Zone 3. Policy NR1 of the Borough Local Plan 2013 – 2033 (BLP) states that within designated zones 2 and 3 development proposals will only be supported where an appropriate Flood Risk Assessment (FRA) has been undertaken and it has been demonstrated that development is located and designed to ensure that flood risk from all sources of flooding is acceptable in planning terms. This is consistent with the approach in the National Planning Policy Framework (the Framework) which at paragraph 165 advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.

Sequential Test

5. The planning application was accompanied by a FRA and a Sequential Test Assessment prepared by Ark Environmental Consultancy Ltd which have been revised as part of the appeal process in response to the Council's concerns.

6. The aim of the Sequential Test (ST) is to steer new development to the areas of lowest risk, and the Framework states 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. The supporting Planning Policy Guidance (PPG) advises that '*reasonably available sites*' are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.
7. The appellant's ST Assessment takes a Borough-wide approach and has reviewed sites within the Council's Housing and Economic Land Availability Assessment 2019 (HELAA), allocated sites, plots available for sale on property sites (such as Zoopla and Rightmove) and information requested from the Council on housing land supply. The sites were initially filtered to those potentially suitable for one dwelling with a size of between 0.0228ha and 0.038ha and excluded sites within the Green Belt. This was extended to 0.05ha, which provides some flexibility and allows for a reasonable range of density based on a single dwelling whilst making efficient use of land.
8. While the appellant sought to confirm the search criteria, the Council advised they did not have a standard methodology and the approach to the ST Assessment is based on a proposal for a similar development nearby. The details of which are not before me, and the absence of a 5-year land supply is not a relevant consideration for the ST for individual applications. Nevertheless, each proposal is to be considered on its own merits.
9. Following various updates, a small number of potentially comparable sites were initially identified. These were all subsequently discounted for a variety of reasons including that planning permission had been granted, being in an alternative use, a physical constraint, the size of the plot and/or being within the Green Belt.
10. The Council raise general concerns relating to the comprehensiveness and robustness of the assessment and that consideration has not been given to larger sites, sites with planning permission and that landowners have not been contacted. Whilst I am mindful of the appellant's concern regarding disproportionate requirements and taking a pragmatic approach, the purpose of the ST is to ensure that only where there are no sites available in low and medium flood risk areas, sites within high risk areas, such as the appeal site, are developed.
11. Additionally, the PPG does indicate that available sites may be part of a larger site if it would be capable of accommodating the development, that sites do not need to be in the applicant's ownership and that checks on the current status of relevant sites may be necessary. Given the importance of the ST in directing the location of development a level of verification of the availability of potentially comparable sites is necessary.
12. I am also conscious that many of the sites suitable for the proposed development type and capacity would be windfall sites, and under the HELAA threshold of 0.25ha. No search has been undertaken of sites with planning permission within or outside the Green Belt, and there are no details of the extent of the enquiries relating to sites on the market. While the appellant indicates that it is established that sites with planning permission or live applications are not available, I have not been provided with evidence.

13. Given the general presumption against new buildings within the Green Belt a new residential property would be contrary to the development plan and would require very special circumstances or be an exception. As such, the exclusion of sites within the Green Belt, in my view, is not unreasonable unless they are allocated or there is an extant consent. The appellant did subsequently include the three specific sites referenced by the Council - Challen's Chickens, Hurford House and The Little Chef although none of these sites have an extant consent with planning permission either having been refused or expired several years ago.
14. However, there are several small sites in the appellant's spreadsheet of all sites which were highlighted but discounted due to planning consent and/or accommodating more than one dwelling. Some were also rejected on potential issues relating to compensation due to the use, and the flood risk levels are not shown for all sites. Whilst I recognise that matters of commerciality would affect the appellant's ability to purchase the site, in relation to the ST there are no details which confirm or otherwise the availability of these sites and/or any potential for subdivision.
15. The PPG is clear that development should not be permitted if there are reasonably available sequentially preferable sites. Whilst the proposal is for a particular form of development, extending an existing semi-detached property into a small terrace of three, there is nothing special or site specific about the proposal, which would be contributing one additional house to the Borough. The site is within a high area of flood risk, and from the evidence before me, it has not been adequately demonstrated that there are no sequentially preferable sites that could accommodate the proposed development.
16. Therefore, the proposal fails to pass the Sequential Test, and accordingly, the development would be contrary to the BLP policy NR1 and the Framework. Together these seek to manage flood risk, protect people and property from flooding and require proposals to demonstrate that development is directed to the areas of lowest flood risk.

Other Matters

17. Having found against the proposal on the main issue I have not considered the details of the planning obligation any further as this is not a determinative issue.

18. Conclusion

19. For the reasons set out and having regard to all other matters raised the appeal is dismissed.

G Ellis

INSPECTOR