



Appeal Decision

Site visit made on 26 November 2024

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Appeal Ref: APP/Z3635/D/24/3345196

Tower House Chertsey Road, Shepperton TW17 9NU

- 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 Subir Patel against the decision of Spelthorne Borough Council.
 - The application Ref is 24/00269/RVC.
 - The application sought planning permission for the erection of two storey house following demolition of the Tower House, adjacent outbuildings and stables, without complying with a condition attached to planning permission Ref PA/01/0224, dated 27 September 2002.
 - The condition in dispute is No 4, which states that: Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 1995, (or any Order revoking and re-enacting that Order) no extensions or other form of enlargement to the residential development hereby permitted, nor erection of porches, outbuildings, storage tanks, gates, fences, walls or other means of enclosure, shall take place without the prior permission of the Local Planning Authority.
 - The reasons given for the condition is: To safeguard the openness of the Green Belt. To safeguard the flooding situation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether or not condition No 4 is reasonable and necessary having regard to:
 - flood risk; and,
 - the openness of the Green Belt.

Reasons

Flood Risk

3. The permission relates to a replacement dwelling within the flood plain, which was larger than the one it replaced. Paragraphs 54 – 56 of the National Planning Policy Framework (2023) (the Framework) explain that authorities should consider whether development could be made acceptable through the use of conditions, which should be kept to minimum, meet the six tests, and should not be used to restrict national permitted development rights unless there is clear justification to do so.

4. When assessing the application, the matter of flood risk was considered, and the development was permitted subject to a number of planning conditions that were imposed to address flood risk matters. The reasons for some conditions refer to, amongst other things, the prevention of increased flood risk due to impedance of flood flows, ensuring the free flow of flood water, and the reduction of storage capacity. The reason for condition No 4 has less precision and clarity but does refer to safeguarding the flooding situation.
5. The appeal site is within a flood zone and the significant majority, including the house itself is within flood zone 3b, which is functional floodplain, lying between Chertsey Road and the River Thames. The Planning Practice Guidance (PPG) defines this as comprising land where water from rivers has to flow or be stored in times of flood. The PPG explains it normally comprises land with a high risk of flooding with any existing flood risk management infrastructure operating effectively, or land that is designed to flood.
6. Paragraph 165 of the Framework seeks to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk. Where development is necessary it should be made safe for its lifetime without increasing flood risk elsewhere. Paragraph 173 states that when determining applications, authorities should ensure that flood risk is not increased elsewhere. All applications for development in flood zones 2 and 3 should be supported by a site-specific flood risk assessment (FRA).
7. Paragraph 173 goes on to state that development should only be allowed in areas at risk of flooding where, in the light of an FRA, it can be demonstrated (amongst other things) that development is flood resilient and any residual risk can be safely managed. Policy LO1 of the Spelthorne Core Strategy and Policies DPD (2009) (the SCS) seeks to reduce flood risk and its adverse effects by maintaining the effectiveness of the more frequently flooded area of the floodplain, to both store water, and allow the movement of fast flowing water by not permitting any additional development including extensions.
8. A variety of what may otherwise be permitted development is withdrawn by condition No 4, some of which might be regarded as minor, small-scale and uncontentious. The Thames is a large river with a considerable flow of water and in relative terms, the effects upon floodplain function may well be limited from development restricted by the condition. However, extensions, other forms of enlargement, porches, outbuildings, storage tanks, gates, fences, walls and other means of enclosure, all could have flood risk implications.
9. Potential implications include in respect of flood storage capacity, impeding flow of water, residual flood risk, risk of harm or damage from flooding both on the site, up and downstream, to people and to property. It seems likely that developments of the type withdrawn in the functional floodplain, could well have implications for the overall risk of flooding to people and property, of which avoidance, is a fundamental aim of planning policies and guidance. I am not provided by a substantive analysis of the implications the types of development withdrawn by condition 4, which would justify any relaxation of the condition, in the context of relevant planning policies.
10. I acknowledge that the Town & Country Planning (General Permitted Development) Order 2015 (the GPDO) does not withdraw rights for the classes of development restricted by condition No 4 within the functional floodplain. However, in-light of the previous development and the sensitivity of this

location, the evidence before me, suggests it is necessary for further new development to be fully considered in-light of its implications for flood risk. The condition does not mean an authority will refuse all applications for such development, but that the development implications need to be assessed first.

11. Circular 11/95 was cancelled upon publication of the PPG, save for Appendix A in respect of model conditions. The Council's condition No 4 has consistency with the wording of model conditions 50 – 52 of the PPG and the relevant development Classes in Parts 1 and 2 of the updated GPDO, which could increase the risk of flooding, be flooded or suffer damage.
12. The appellant's photographs of a past flood event indicate flood water was close to but still below the dwelling by a limited amount. However, the appellant's evidence does explain the exact expected flood event depths and extents, and how typical this event was, of what may be expected or modelled within the flood zone. Therefore, this does not justify me allowing this appeal which would be at odds with fundamental principles of flood risk policies.
13. This appeal site and dwelling may be regarded as similar to the neighbouring Riversleigh Farm and other properties where permitted development rights are intact. However, their past development and their relationship with the functional floodplain is not explained. The existence of other properties nearby with rights intact does not justify me allowing this appeal.
14. Therefore, for the reasons set out above, the condition is reasonable and necessary having regard to flood risk. Its removal would conflict with the aims of Policy LO1 of the SCS and paragraphs 165 and 173 of the Framework, the relevant provisions of which I have set out above.

Green Belt

15. The evidence indicates that to demonstrate and secure the very special circumstances to justify a significantly larger replacement dwelling in the Green Belt, the permission being issued was dependent upon planning obligations being in place. The scope appears to have included the removal of built development, and restrictions upon and foregoing of river moorings. In combination the matters secured were necessary to provide the very special circumstances necessary to justify permitting inappropriate development.
16. The rights withdrawn by condition No 4 are not restricted by the GPDO in the Green Belt. However, in-light of the evidence before me it appears in this case there were quite unusual and development specific exceptional justifications, in respect of Green Belt openness for permitting the replacement dwelling. These could be undermined were condition No 4 not imposed. This strongly implies the condition met the test of necessity at that time and the development would have been unacceptable without its imposition.
17. Permitted development rights have had their scope widened since the imposition of the condition, allowing potentially for greater built developments. The appellant has not provided a substantive analysis of the development types that might otherwise be built, and any effects they could have. Some developments might well be quite limited, and while many might not be regarded as inappropriate development, it seems probable that most, if not all, would have some adverse effect upon openness, which the condition seeks to protect. Were the condition to be removed, or significantly changed, then it

would seem the very special circumstances necessary justify the dwelling previously, could be diminished. Therefore, having regard to the advice at paragraph 21a-017-20190723 of the PPG, the condition did and still does meet the tests of tests of reasonableness and necessity.

18. My attention is drawn to three other appeal decisions, some in the Green Belt. Two of these are not in the Council area and so not subject of the same development plan policies. As far as I can ascertain none are within a functional floodplain (Zone 3b), which is very important matter in this appeal. In 3281048 the Inspector imposed a revised condition retaining the withdrawal of 4 Classes of what appears to have been judged the most significant types of development in Part 1.
19. In Ref. 3275230 it appears the previously permitted extensions were proportionally much less than were permitted in the replacement dwelling before me, so differ to the circumstances of this appeal dwelling. In Ref. 3004224 the details are limited, and it is unclear if the case relates to the Green Belt. While I do not disagree with some of the appellant's commentary upon the cases, their circumstances do not appear directly comparable to those of the dwelling subject of this appeal, and based upon the evidence before me, they do not justify allowing this appeal.
20. Therefore, for the reasons set out above, the condition is both reasonable and necessary having regard to the openness of the Green Belt. Its removal would conflict with the aims of Policy GB1 of the Spelthorne Borough Local Plan Saved Policies (2008) which states that development will not be permitted which would not maintain the openness of the Green Belt. It would also conflict with the fundamental aim of Green Belt policy at paragraph 142 of the Framework, to prevent urban sprawl by keeping land permanently open.
21. From what is before me, it has not been demonstrated that its removal conflicts with Policy EN2 of the SCS, because the policy does not refer to Green Belt openness or inappropriate development in the Green Belt as policy tests against which development would be assessed.

Conclusion

22. For the reasons set out above, it is reasonable and necessary for the Council to retain control and assess the impact of proposals, to prevent harmful developments. Therefore, condition No 4 is reasonable and necessary, and the clear justification required by paragraph 54 of the Framework exists. Moreover, its removal would be contrary to the development plan read as a whole, and the Framework taken as a whole. There are no other considerations advanced which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR