



Appeal Decision

Hearing held on 18 February 2025

Site visit made on 19 February 2025

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2025

Appeal Ref: APP/T0355/W/24/3354960

Land adjacent to Orchard Cottage, Drift Road, Birds Hill, Maidenhead SL6 3ST

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by K Pryse (Community Build) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 24/01067/OUT.
 - The development proposed is described as "Outline application for access, layout, appearance and scale for a phased development of two (2) custom and self build plots and all enabling works with landscaping and scale reserved."
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Decision

1. The appeal is dismissed and outline planning permission for access, layout, appearance and scale for a phased development of two custom and self-build plots and all enabling works is refused.

Preliminary Matters

2. The planning application is submitted in outline. The description on the application form, which I have used in the banner heading above, is unclear about whether scale should be considered as part of the outline scheme. At the hearing the appellant confirmed that, notwithstanding this, only landscaping is reserved for a subsequent reserved matters application. I have therefore considered the appeal on this basis, as did the Council, and this is reflected in my decision above.
3. The application is accompanied by supporting information on landscaping. I have taken this into account only insofar as establishing whether it would be possible, in principle, to erect two dwellings and all enabling works on the site in accordance with the access, layout and scale proposed.
4. The appellant submitted the following documents with the appeal that were not before the Council when it made its decision: Custom and Self-Build Delivery Statement and supporting letter from the National Custom and Self-Build Association; Arboricultural Impact Assessment (AIA) and Method Statement October 2024; Preliminary Ecological Assessment (PEA) August 2024; and Energy Statement October 2024. These documents provide additional information about, but do not fundamentally change, the appeal proposal. I am satisfied there has been sufficient opportunity for parties to comment on these documents, so there would be no procedural unfairness if I were to take them into account.
5. The National Planning Policy Framework (the Framework) was updated in December 2024. I invited the main parties to consider whether the revised

Framework had relevance to the appeal. The appellant submitted an updated Statement, with supporting evidence, in response to the Council's comments on the revised Framework. I accepted this considering the new circumstances arising from the change in national policy. The statement was made publicly available in advance of the hearing, and I gave the Council the opportunity to respond both before and during the event.

6. The other documents listed at the end of this decision were submitted during and after the hearing in accordance with agreed deadlines. I am satisfied they are relevant to the appeal and the parties have had an opportunity to comment on them, so there would be no injustice in my taking them into account.
7. Planning Practice Guidance (PPG) on Green Belt was updated on 27 February 2025, after the hearing. I invited the main parties to comment on the relevance of the guidance to the appeal and have taken account of their responses.

Main Issues

8. The appeal is supported by a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended), which was finalised, executed and submitted following discussion at the hearing. An updated list of conditions agreed between the parties was also submitted after the hearing. Amongst other things, these obligations and suggested conditions address ecology, biodiversity net gain and off-setting of carbon emissions in response to three of the Council's reasons for refusal. I will address these matters under other considerations below.
9. Consequently, the main issues are:
 - the effect of the proposal on the character and appearance of the surrounding area, with particular reference to its effect on trees and hedgerows;
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; and
 - 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 required to justify the proposal.

Reasons

Character and appearance, with particular reference to trees and hedgerows

10. The area surrounding the appeal site is predominantly open farmland interspersed with sporadic commercial and residential development. Having regard to the Council's Landscape Character Assessment¹, the countryside in this area largely comprises flat or gently undulating arable fields and paddocks, separated by linear roadways, hedgerows and isolated mature hedgerow trees. Drift Lane is one such roadway, flanked near the appeal site by hedgerows, trees, grass verges and ditches, which make a positive contribution to the surrounding landscape. The appeal site also contributes to this local character through its open verdant

¹ Landscape Character Assessment for the Royal Borough of Windsor and Maidenhead by LDA Design - Part 1: Landscape Character Assessment Final Report September 2004

appearance between cottages and the hedgerows and trees on its northern and eastern boundaries.

11. British Standard BS 5837:2012 'Trees in relation to design, demolition and construction' (the BS) requires an accurately measured topographical survey that records all features relevant to a site including principal trees and hedgerows.
12. The tree survey data in the appellant's AIA do not include key metrics specified in the BS methodology, such as stem diameters, future tree height and crown spread, or estimated remaining contribution in years. An Oak tree (T3) is categorised as B (moderate quality) in Appendix 1, but the results summary states all recorded trees are category C (low quality). The proposed tree protection plan (TPA) does not plot the RPA of tree T2 and shows the RPAs for T4 and T5 as ellipses rather than circles, without explanation, which is contrary to the approach specified in the BS. There is also no detailed survey of, or assessment of impact on, hedgerows in or adjacent to the appeal site.
13. No trees or hedgerow are proposed to be removed as part of the development. However, the house with attached garage on Plot 2, including its proposed vehicular access, would be situated very near the trees on the eastern side of the site. If the RPAs for T4 and T5 were shown as circles, the house and garage would fall within them, so the potential impact has not been fully assessed. In addition, the proposed route into and out of Plot 2's garage would allow little space for cars to turn to exit the site in forward gear. Given the proximity of existing trees and hedgerow, this could lead to pressure to remove some of them in future.
14. The proposed internal access route would lie closely adjacent to the northern hedgerow and trees that border Drift Lane. The TPA shows new permanent hard surfacing would exceed 20 per cent of existing unsurfaced ground within the RPAs of these trees, which is contrary to the BS's recommendations. In addition, the speed limit on this section of Drift Road is 60 miles per hour (mph) and there is insufficient evidence to persuade me the visibility splays shown on the proposed plans would meet the standard required, notwithstanding an absence of comment from the Highway Authority (HA). It was suggested at the hearing that cars in fact travel at lesser speeds, but this is unsubstantiated. Consequently, there would be a risk of future harm to the northern hedgerow to improve visibility, whether or not it is within the appeal site.
15. Taking all this together, I find the risk of harm to, and thereby loss of, both trees and hedgerows as a result of the proposed development would be high. Bearing in mind their positive contribution to the character of the surrounding area, the loss of even some of the trees and hedgerow would have a very detrimental impact. The level of harm, should it arise, would therefore be considerable.
16. At the hearing, the appellant suggested any issues or shortcomings in the AIA could be overcome by condition and/or during a subsequent reserved matters application. However, the draft condition before me would secure tree protection measures during construction only. This is not sufficient to allay my concerns about the effect of the proposed layout and access on the long-term viability of trees and hedgerows. Moreover, this layout and access would be fixed were I to allow this appeal, and there is no compelling evidence the risk of harm I have identified could be adequately mitigated through landscape design alone.

17. For the above reasons, I conclude the proposal would harm the character and appearance of the surrounding area, with particular reference to its effect on trees and hedgerows. This is contrary to Policy NR3 of the Royal Borough of Windsor & Maidenhead Borough Local Plan 2022 (BLP), which requires development proposals carefully to consider the impact on existing trees and hedgerows, including those that make a particular contribution to local character; and to be accompanied by an appropriate tree survey, constraints plan and TPP that comply with the BS.
18. It is also contrary to the Framework, where it requires decisions to contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside, including trees.

Whether inappropriate development

19. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states development in the Green Belt is inappropriate unless one of several exceptions apply. BLP Policy QP5 protects the Green Belt from inappropriate development as defined in the Framework. Consequently, notwithstanding the recent changes to national Green Belt policy, BLP Policy QP5 is consistent with the Framework for the purposes of this appeal.
20. The exception at Framework paragraph 154g) allows for the partial or complete redevelopment of previously developed land (PDL) which would not cause substantial harm to the openness of the Green Belt.
21. The main parties agree the appeal site previously formed part of the garden of the adjacent property known as Orchard Cottage. This was disputed at the hearing by an interested party who had lived next to the site for several decades and could not recall seeing it used as a garden but did remember it being used to graze sheep. The landowner explained his memories extended even further back as he had grown up in the area: whilst he acknowledged sheep had sometimes grazed there, he said the land was primarily used as a garden and for picking fruit, as well as children's play. Although the evidence before me is not definitive, on the balance of probabilities I am satisfied the site was previously part of a residential garden.
22. The definition of PDL in the Framework excludes residential gardens in built-up areas. However, it was held in *Dartford BC v SSCLG [2017] EWCA Civ 141* that residential gardens which are not in built-up areas are not excluded from this general definition. Whether an area is built-up is a matter of planning judgement.
23. As noted above, the area surrounding the appeal site is predominantly rural with sporadic development. The parties agree the appeal site is not within a village and I concur. There are houses on either side of the site but the commercial development to the rear is separated from it by an open area. Open fields lie on the other side of Drift Road. Together these factors lead me to find the area surrounding the site is not built-up. Consequently, the site does fall within the definition of PDL.
24. Openness is capable of having both spatial and visual aspects, and the degree of activity generated can also be a factor². The proposed development would reduce spatial openness by introducing built form into the space between the existing

² PPG Paragraph: 013 Reference ID: 64-013-20250225

cottages. The two new dwellings would be visible above the hedgerow on Drift Road, on the approach down this road and from the public footpath further along it. The houses, circulation areas and associated comings and goings would also be seen from neighbouring dwellings. Appreciation of visual openness would therefore be diminished from several vantage points. Existing trees and hedgerows would provide some screening, thereby limiting the level of harm. However, I have found the risk of their loss would be high. Taking that risk into account, the harm to openness from the proposed development would be substantial.

25. I therefore find the tests for the exception at paragraph 154g) are not met.
26. There is no suggestion any of the other exceptions under Framework paragraph 154 would apply, but the exception for grey belt land at Framework paragraph 155 has been raised. This exception applies where all of four criteria are satisfied. There is disagreement between the parties about the third of these, namely whether the development would be in a sustainable location. This should be determined in light of local context and site or development-specific considerations, and opportunities to maximise sustainable transport solutions should be considered as set out in Framework paragraphs 110 and 115³.
27. On the evidence before me, including my observations on site, there can be considerable traffic on Drift Road, travelling at speeds up to 60mph. There is no footway or dedicated cycleway along this stretch of the road, which is unlit, and there are deep roadside ditches. Walking or cycling to and from the site would therefore be dangerous for all pedestrians and all but the most experienced cyclist. It would be particularly hazardous for children and other vulnerable road users. This would in turn limit access to bus-stops, which are in any event some considerable distance away. The nearest public footpath is not directly opposite the site as suggested and anyway would not give direct access to local shops. This local context means access to employment, shopping, leisure and other destinations by modes other than the private car would not be realistic for most future occupants of the development, notwithstanding an absence of comment from the HA.
28. I am mindful opportunities to maximise sustainable transport solutions vary between urban and rural areas. I recognise there are some local employment, leisure and educational opportunities, as well as public footpaths, cycleways and public transport in the wider area. Nevertheless, the option to work locally or from home could not be guaranteed for all future residents. On-line shopping would involve delivery vehicles. There is no pertinent evidence the proposal would materially improve pedestrian connectivity or safety for cyclists. Consequently, the day-to-day movements from two four-bedroom homes would add a moderate level of traffic, even if powered by electricity, to an already busy highway. I have had regard to evidence in the RBWM Local Transport Plan, but this is strategic in nature with only limited applicability to fine-grained assessment of an individual development site. Overall, these other factors are not sufficient to overcome the site-specific considerations noted above.
29. Taking all this together, I find the development would not be in a sustainable location. Consequently, whether or not the other criteria in paragraph 155 are satisfied, the requirement to meet them all is not, so this exception does not apply.

³ PPG Paragraph: 011 Reference ID: 64-011-20250225

30. I have considered the appeal decisions relating to sustainability of location brought to my attention⁴. I am not aware of their full local context. Be that as it may, in both cases the proposal was for one dwelling rather than two, resulting in less additional traffic. Based on information in the decisions, bus-stops in each case were closer to the appeal site than would be the case in the current appeal. In addition, at Hydon Farm the Inspector found more than one public footpath close to the site, which I have not. I am therefore not persuaded the circumstances in these other appeals are fully comparable to those before me, and they do not alter my finding above.
31. For the above reasons, I conclude the proposed development would be inappropriate development in the Green Belt, contrary to the Framework and BLP Policy QP5.

Other considerations

32. The Self-build and Custom Housebuilding Act 2015 (as amended) (the SBCH Act) requires local authorities to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom housebuilding (SBCH), and to give permission to enough suitable serviced plots to meet the identified demand. The benefits of SBCH are recognised in the PPG⁵.
33. The Council does not dispute the numbers on its self-build register, and accepts it is falling short of meeting this demand. Even if recent permissions on allocated sites deliver some serviced plots, on the evidence before me the scale of unmet SBCH demand in the area would remain considerable. However, the parties disagree about whether the proposed dwellings would meet the definition of SBCH, and therefore whether they would contribute to meeting this unmet demand.
34. The SBCH Act defines SBCH as the building or completion by individuals, associations of individuals, or persons working with or for individuals or associations of individuals, of houses to be occupied as homes by those individuals. In considering whether a home is SBCH, relevant authorities must be satisfied its initial owner will have primary input into its final design and layout⁶. This is reflected in the Council's SBCH Guidance Note 2023 (GN), which sets out parameters for outline applications of this type.
35. The appellant describes Community Build (CB) as a self-build enabler, facilitating the process of finding suitable sites and obtaining planning permission on behalf of self-builders. In the case of the appeal scheme, the appellant says CB is working for two individuals from its waiting list of over 50 prospective self-builders.
36. CB has agreed a land option (OA) with the site owners, which includes a clause allowing the benefit of the OA to be transferred to a third party. The appellant has provided an onward memorandum of sale (MoS), which confirms acceptance of the individuals' offer for the plots at the appeal site subject to planning permission; their responsibility for designing their homes and providing the plans for CB to submit as part of the planning application; and CB's intention to assign the OA to the individuals, allowing them to complete the purchase of the plots.
37. Although the names of the individuals and the CB waiting list are not before me, the OA and MoS substantiate the appellant's explanation of the arrangement between

⁴ Refs APP/R3650/W/24/3352222 and APP/B1930/W/24/3349774

⁵ PPG Paragraph: 16a Reference ID: 57-016a-20210208

⁶ PPG Paragraph: 016 Reference ID: 57-016-20210208

CB and the individuals and the process by which the proposed dwellings were designed. This is sufficient to satisfy me the arrangement would be consistent with the definition in the Act and these individuals, as initial owners, would have primary input into the final design and layout of the proposed houses.

38. However, the OA allows for transfer of the land to any third party within a time-limited period from planning permission being granted, so it is possible the initial owners of the homes would not be the two individuals to which the MoS is addressed. The appellant's evidence acknowledges this possibility and points to plot passports (PP) as the mechanism by which replacement self-builders would be able to influence the design of the homes. PP would be agreed by the Council prior to commencement of development under the terms of the UU. Nevertheless, the only reserved matter is landscaping and further scope to change the design and layout of the homes via PP once approved would include little more than external finishes and ground-floor internal layout. In my view, such input to design and layout would be secondary and not fully consistent with the first principles of SBCH, or with the approach for outline applications in the GN.
39. Primary input by way of more substantial changes to the design and layout of the proposed dwellings would require an application to vary the permission under s73 of the Town and Country Planning Act 1990. However, the outcome of such an application would be uncertain. Given this, I cannot be sure the homes would be genuinely SBCH, even with a clause in the UU to secure them as such. In such circumstances, this obligation would not be directly related to the proposed development. Therefore, notwithstanding the considerable unmet need for SBCH in the area, I give the provision of two SBCH homes only moderate weight.
40. I have considered the PP for application Ref 22/01717/FULL brought to my attention and I recognise the indicative PP before me follow a similar model. However, the SBCH homes in that scheme were to be secured as part of a much larger housing development and custom-built by the main developer. In the appeal proposal, the scale of development would be substantially smaller, and CB would act as enabler rather than developer, so the relationship with the initial owners as self-builders would be quite different.
41. I recognise the Council gave significant weight to provision of SBCH plots on a large, allocated site⁷, and an Inspector gave very significant weight to four SBCH plots in two linked appeals in RBWM⁸. I also acknowledge it is likely demand for SBCH in RBWM would have to be met in part on windfall sites (as encouraged in BLP Policy HO2) and in the Green Belt, as did the other Inspector. However, there is no pertinent evidence the arrangements for input into the final design and layout of the homes in those cases are directly comparable to those before me. Also, in the current appeal only two SBCH homes are proposed.
42. Consequently, the circumstances in these other cases do not alter the weight I have attached above to provision of SBCH homes.
43. Even if not SBCH, the development would support the Framework's objective to boost the supply of homes, including through community-led development for housing on small sites, which can be built out relatively quickly. At 4.47 years, there

⁷ Ref 22/01537/OUT

⁸ Refs APP/T0355/W/22/3309281 and APP/T0355/W/23/3314990

is an agreed shortfall in overall housing land supply in the area and I give the contribution of two community-led dwellings towards this moderate weight.

44. There would be an economic benefit from construction and future occupiers' use of local services and facilities, which would support the Framework's economic objectives. This adds limited weight in favour of the proposal because of the quantum of development proposed.
45. The parties agree a pre-commencement condition could be used to secure details for the way in which the proposed development would address energy and carbon reduction in accordance with BLP Policies SP2 and EP1 and the checklist in the RBWM Sustainability Supplementary Planning Document. I see no reason to disagree. In addition, following assessment of these further details, should financial contributions be necessary to off-set carbon emissions, these would be calculated according to an agreed formula and secured by way of the planning obligation at schedule 2 of the UU. Given the context provided in Policy and guidance, I am satisfied the obligation would meet the tests in the CIL Regulations and Framework paragraph 58. I give limited weight to this environmental benefit of the proposal because it is a planning policy requirement.
46. If not delivered as SBCH, the development would be required to provide 10 per cent Biodiversity Net Gain under the Environment Act 2021. The application was not submitted with the minimum required information in this regard⁹, but the planning obligation before me would secure this and accords with the statutory tests. Even if delivered as SBCH, biodiversity enhancements could be secured by condition. Either way, this environmental benefit adds limited positive weight because it would be required of any development to be policy compliant.
47. Following consideration of the PEA, the Council accepts the risk of harms to protected species could be adequately mitigated via a Construction Environmental Management Plan and wildlife-friendly external lighting strategy, secured by condition were the appeal to be allowed. The Council has also raised no concern with the proposed appearance of the dwellings, the living conditions of future occupiers, effects on the living conditions of neighbouring occupiers, parking, or storage for cycles and refuse, subject to conditions. On the evidence before me, I see no reason to disagree with these conclusions. However, an absence of harm in these respects is a neutral factor.

Other Matters

48. I note the appellant's comments about the advice it sought from the Council before and during the application, and that they would have preferred not to submit the application in outline. Nevertheless, I can only assess the proposal based on the information before me.

Planning Balance

49. Framework paragraph 153 states inappropriate development in the Green Belt should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, are clearly outweighed by other considerations.

⁹ PPG Paragraph: 011 Reference ID: 74-011-20240214

50. I am required by the Framework to give substantial weight to the harm the development would cause to the Green Belt, including harm to its openness. I have also found considerable harm to the character and appearance of the surrounding area, to which I ascribe considerable weight. Individually or cumulatively, the weights I have attached to the other considerations above do not clearly outweigh these harms. Consequently, the very special circumstances necessary to justify the development do not exist.
51. For the reasons set out above, policies in the Framework that protect Green Belt provide a strong reason for refusing the development proposed. Therefore, in accordance with paragraph 11d)(i) and footnote 7 of the Framework, the presumption in favour of sustainable development at 11d)(ii) is not engaged.

Conclusion

52. I have found the proposal conflicts with the development plan, read as a whole. No other material considerations, including the Framework, have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal should be dismissed.

C Carpenter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Lucy Pickering	Head of Planning and Legal, Community Build
Mr Jago Pickering	Community Build Steering Group Member

FOR THE LOCAL PLANNING AUTHORITY:

Mr Dariusz Kusyk	Senior Planning Officer
Mr Ian Motuel	Planning Policy Manager
Mrs Lucinda Pinhorne-Smy	Planning Policy Officer
Ms Helen Leonard	Arboricultural Officer

INTERESTED PARTIES:

Mr David Potter	Co-owner of the appeal site
Mrs June Brayne	Neighbour

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

1. Landscape Character Assessment for RBWM Part 1 Final Report by LDA Design dated September 2004
2. Appeal decision Ref APP/R3650/W/24/3352222
3. Appeal decision Ref APP/B1930/W/24/3349774
4. Option Agreement relating to the appeal site dated 4 March 2024
5. Memorandum of Sale and covering letter relating to the appeal site dated 10 March 2024
6. Updated list of suggested conditions dated 20 February 2025
7. Unilateral Undertaking dated 21 February 2025
8. Self-Build and Custom Housebuilding Statement (Demand and Delivery) April 2024 (submitted with the original planning application)