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## Appeal Decision

Site visit made on 18 March 2025

by **E Catcheside BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 April 2025

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**Appeal Ref: APP/T0355/W/24/3356463**

**8 Bell Weir Close, Wraysbury, Staines, Windsor and Maidenhead TW19 6HF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Ms Natasha Raja against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
  - The application reference is 24/02301/FULL.
  - The development proposed is replacement dwelling.
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### Decision

1. The appeal is allowed and planning permission is granted for replacement dwelling at 8 Bell Weir Close, Wraysbury, Staines, Windsor and Maidenhead TW19 6HF in accordance with the terms of the application, reference 24/02301/FULL, subject to the conditions in the attached schedule.

### Preliminary Matters

2. The description of the development is taken from the application form, as this formed the basis upon which the Council consulted upon and considered the proposal. I am satisfied that the description accurately reflects the proposed development. Therefore, it would not be appropriate to alter the description of the development through the appeal process.
3. The appeal documents include an Energy Statement and a signed Unilateral Undertaking (UU), dated 21 January 2025, which makes provision for a financial contribution to offset carbon emissions. These documents were not before the Council when it determined the application. However, the Council has been provided with the opportunity to comment on the documents, and I have taken the comments received into account.
4. The National Planning Policy Framework (the Framework) was revised in December 2024. The parties have had the opportunity to comment on the revised Framework as part of the appeal process and I have had regard to the comments received.

### Main Issues

5. The main issues are:
  - whether the proposal would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies; and

- whether the proposal complies with relevant development plan policies in respect of climate change.

## Reasons

### *Whether inappropriate development*

6. The appeal site lies within the Metropolitan Green Belt. The Framework states that development in the Green Belt is inappropriate other than in a few exceptions. Policy QP5 of the Borough Local Plan 2013-2033 (LP) also seeks to protect the Green Belt from inappropriate development as defined by the Framework, unless very special circumstances are demonstrated.
7. The Council assessed the scheme against the exception listed in paragraph 154 d) of the Framework, which refers to replacement buildings. However, the application was advanced on the basis that it would comprise the redevelopment of previously developed land (PDL). Paragraph 154 g) of the revised Framework states that development in the Green Belt is not inappropriate where it comprises: *“limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt”*.
8. The Council states that the site is not PDL because the previous bungalow has been demolished and only remnants of the foundations remain. However, the definition of PDL in the Framework does not preclude sites where permanent structures have been removed. I observed that some structures, including boundary walls, access gates, and a garage are retained on the site and are in good condition. When combined with the foundations, which remain clearly apparent, the site has the character of a residential plot that has been partially cleared. Moreover, the evidence suggests the bungalow was removed less than 5 years ago, and I did not observe unmanaged vegetation growth or other features of the site that would indicate the permanent structures have blended into the landscape. The site therefore comprises PDL.
9. Given the new building would be raised above ground level, and due to its width and length, the proposed dwelling would be larger and taller than the demolished bungalow, and it would have a greater volume and floor area. Therefore, there would inevitably be a loss of openness in spatial terms. Due to its increased height, bulk and mass, the new dwelling would partially inhibit views across the wider area from neighbouring properties, and there would be a reduction in the upward views towards the sky that can currently be gained from Bell Weir Close. Therefore, the loss of openness would also occur in visual terms.
10. Nonetheless, the site lies within an established residential area with no through traffic, and the proposed dwelling would be surrounded by existing buildings on three of its sides. Consequently, whilst there would be some loss of openness resulting from this single replacement dwelling, it would be of a moderate scale and localised in nature. It follows that the harm caused to the openness of the Green Belt would be less than substantial.
11. I conclude that the proposal would not be inappropriate development in the Green Belt, by virtue of paragraph 154 g) of the Framework. Therefore, it is not necessary

for very special circumstances to be present to outweigh the harm to the Green Belt by way of inappropriateness, or any other harm and there would be no conflict with Policy QP5 of the LP.

### *Climate Change*

12. Policy SP2 of the LP expects proposals to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. Guidance on how to comply with Policy SP2 is provided in the Sustainability Supplementary Planning Document (July 2024) (the SPD) which, as a successor document, is cross-referenced in Policy SP2. The SPD includes a requirement for a Sustainability and Energy Statement to be submitted, which sets out the measures to minimise emissions as well as a requirement for development to provide a net-zero carbon outcome.
13. An Energy Statement was submitted with the appeal, which sets out a range of design measures that would reduce the carbon emissions associated with the development, and the Council has not raised any concerns in relation to the measures proposed. In addition, the UU provides for a Building Emissions contribution of £2752, which would be payable to the Council's Carbon Offset Fund. The financial contribution is based on the criteria set out in the SPD, and I am therefore satisfied that it would meet the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and the Framework.
14. Not all of the details referred to in the SPD are included within the Energy Statement. Therefore, the proposal does not fully accord with the SPD. However, the omissions are minor in nature and, overall, the proposal would incorporate a range of measures to adapt to and mitigate climate change. Therefore, there would be no conflict with Policy SP2 of the LP.

### **Other Matters**

15. Schedule 7A of the Town and Country Planning Act 1990 (as amended) (the Act) introduced a statutory framework for biodiversity net gain (BNG), and it applies to all planning applications for non-major development submitted on or after 2 April 2024. Under the statutory framework, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the Biodiversity Gain Condition (BGC), which requires that at least a 10% increase in biodiversity value is met.
16. As a replacement dwelling, the proposal would not fall within the exemption for householder development. Furthermore, there is no enforceable mechanism before me through which matters relating to the ownership and occupation of the dwelling could be secured. Therefore, there is no guarantee that the proposal would be built and occupied as a self-build dwelling and, consequently, I cannot be certain it would be exempt from the mandatory BNG for that reason. It follows that the proposal is subject to the general BGC, as set out in the Act.
17. It is proposed that the BGC would be met through a range of on-site and off-site measures, and the Council has not raised any concerns with this approach. Based on the evidence before me, I have no reason to conclude that the BGC could not be achieved.

## Conditions

18. The Council provided a list of suggested conditions, which I have considered with regard to the tests set out in the Framework and the Planning Practice Guidance. Where appropriate, I have adjusted the wording of the conditions to improve precision and enforceability.
19. In addition to the standard time limit condition, I have attached a condition to define the permitted plan to provide certainty.
20. Conditions requiring the submission of a construction environmental management plan and the implementation of tree protection measures are necessary, with a pre-commencement trigger, to ensure that biodiversity features and trees are protected during the construction works.
21. I have included a condition, requiring the submission of a surface water drainage scheme, to reduce the risk of surface water flooding. This is a pre-commencement condition to ensure that other development works would not impede the implementation of the scheme.
22. The Council requested a condition preventing any raising of ground levels. However, this condition would be unenforceable without details of the existing and proposed ground levels being agreed. I have therefore altered the wording of this condition to require details of the ground levels to be submitted.
23. I have imposed conditions requiring the submission of details of external materials and landscaping in the interests of protecting local character. Conditions requiring details of biodiversity enhancements and the control of external lighting are necessary to protect local character and to enhance biodiversity.
24. It is necessary to include a condition requiring the installation of a privacy screen, in order to protect the living conditions of neighbouring residents.
25. A condition to secure the implementation of measures to reduce carbon emissions is required to ensure compliance with Policy SP2 of the LP.
26. I have included conditions requiring details of car parking and bicycle parking to be submitted. These conditions are necessary to protect highway safety and to encourage sustainable modes of transport. Details of bin storage are required to be submitted in the interests of safeguarding the character of the area.
27. It is necessary to secure the implementation of proposed flood mitigation and management measures to reduce the risk of harm through flooding. For the same reason, and also to safeguard the openness of the Green Belt, I have included conditions which restrict some permitted development rights so as to allow the Council to assess the impact of other structures that could be erected at the site.
28. I have not included the suggested condition requiring all remnants of the former bungalow to be removed prior to the commencement of the development, because the evidence does not lead me to conclude it would be necessary or reasonable. Furthermore, because I have concluded that the proposal is in accordance with Policy SP2 of the LP, it is not necessary to secure further sustainability measures through condition as has been suggested by the Council.

29. The general BGC has a separate statutory basis as a planning condition under Paragraph 13 of Schedule 7A of the Act. On this basis, the Planning Practice Guidance strongly encourages decision makers to not include the BCG, or the reasons for applying it, in the list of conditions imposed in the written notice when granting planning permission<sup>1</sup>. For this reason, I have not included the Councils suggested conditions relating to a biodiversity net gain plan and offsetting.

### **Conclusion**

30. For the reasons given above the appeal should be allowed.

*E Catcheside*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing number MH/8/2024/C Revision 2.
- 3) No development shall take place (including demolition, ground works and vegetation clearance), until a Biodiversity Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of the measures to be taken to mitigate the risk of harm to biodiversity during the construction period, including:
  - A biodiversity risk assessment of potentially damaging construction activities.
  - The identification of biodiversity protection zones.
  - Practical measures, including physical measures and working practices, to be taken to avoid or reduce impacts on species, including protected species, to include those measures set out in the Preliminary Ecological Appraisal and Roost Assessment, dated 19 August 2024.
  - The location and timing of works that may cause harm to biodiversity.
  - The identification of an Ecological Clerk of Works (ECoW).
  - Details of construction activities that would be overseen by the ECoW.
  - Roles, responsibilities and necessary lines of communication to avoid harm to biodiversity.

The construction of the development shall thereafter be undertaken in accordance with the approved CEMP.

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<sup>1</sup> Planning Practice Guidance Paragraph: 024 Reference ID: 74-024-20240214

- 4) No development shall take place, and no equipment, machinery, or materials shall be brought to the site until tree protection measures have been installed in accordance with the details set out in the Arboricultural Method Statement (dated 5 September 2024) (AMS) and the Tree Protection Plan, numbered Arbtech TPP 01 (dated September 2024) (TPP). The development shall thereafter be constructed in complete accordance with the AMS, TPP and the details shown on drawing number Arbtech AIA 01. The tree protection measures shall be retained for the duration of the construction process and until all construction equipment, machinery, and materials have been permanently removed from the site.
- 5) No development shall take place until a surface water drainage scheme, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. The submitted details shall include:
  - (i) Full details of all components of the surface water drainage system, including dimensions, locations, gradients, invert levels, cover levels, and construction details,
  - (ii) Supporting calculations demonstrating compliance with DEFRA's Sustainable Drainage Systems: Non-Statutory technical standards for sustainable drainage systems (March 2015) (or any subsequent version),
  - (iii) A management and maintenance regime for the surface water drainage system, including details of who has responsibility for implementing the management and maintenance regime.

The approved surface water drainage scheme shall thereafter be implemented, retained, managed and maintained in accordance with the approved details.

- 6) No development shall take place until details of the existing and final ground levels, demonstrating that the ground level would not be raised, have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in complete accordance with the approved final ground levels.
- 7) No development shall take place above ground floor level until details of the materials to be used on the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in complete accordance with the approved details.
- 8) No development shall take place above ground floor level until a hard and soft landscaping scheme has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall be implemented in its entirety in the first planting season following the completion of the development, or the occupation of the dwelling, whichever is sooner. Any trees or plants which, within a period of 5 years from planting, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 9) No development shall take place above ground floor level until details of biodiversity enhancement measures to include, but not be limited to, hedgehog friendly boundary treatments, wildlife-friendly planting, log piles, bird and bat roosting opportunities, and other enhancement measures set out in the Preliminary Ecological Appraisal and Roost Assessment, dated 19 August 2024 have been submitted to and approved in writing by the local planning authority. The approved biodiversity enhancement measures shall thereafter be implemented prior to the occupation of the development.
- 10) No external lighting shall be erected at the site unless and until details of the external lighting have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
  - (i) A lighting layout plan with beam orientation.
  - (ii) A schedule of lighting equipment.
  - (iii) Measures proposed to reduce glare.
  - (iv) An isolux contour map showing light spillage to 1 lux both vertically and horizontally, along with details of areas of importance for commuting and foraging bats and the locations of any bird and bat boxes.

External lighting shall thereafter only be installed in accordance with the approved details.

- 11) The development shall not be occupied until a permanently fixed 1.8-metre high privacy screen has been erected on the covered veranda shown on the approved drawing in accordance with details, to include its proposed siting, that have first been submitted to and approved in writing by the local planning authority. The privacy screen shall be retained as approved thereafter.
- 12) The development shall not be occupied until the 'Be Lean' and 'Be Green' measures set out in sections 3.0 and 5.0 of the Energy Statement, dated 7 January 2025 have been implemented. The 'Be Lean' and 'Be Green' measures shall thereafter be retained.
- 13) The development shall not be occupied until car parking spaces have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. The car parking spaces shall thereafter be retained for car parking.
- 14) The development shall not be occupied until covered and secure bicycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. The bicycle parking facilities shall thereafter be retained for bicycle parking.
- 15) The development shall not be occupied until details of refuse bin storage and recycling facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. The facilities shall thereafter be retained in accordance with the approved details.
- 16) The development shall be carried out in complete accordance with the measures set out in the Flood Risk Assessment (Report Reference: C18739, dated July 2024), including the finished floor level set at 17.00AOD, the flood resilience and resistance measures set out in sections 6.1.1 and 6.1.2 of the

report, and the Flood Evacuation Plan set out in sections 6.2 and 6.3 of the report. The void beneath the raised ground floor of the building shall remain permanently open, unenclosed, and unobstructed at all times.

- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no boundary treatments, access gates, or other means of enclosure shall be erected or installed at the site other than in complete accordance with details that have first been submitted to and approved in writing by the local planning authority. The submitted details shall demonstrate how the boundary treatments shall not impede the flow of flood water across the site.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement, or other alteration to the dwellinghouse, including the erection of buildings incidental to the enjoyment of the dwellinghouse, as permitted by Classes A, B and E of Part 1 of Schedule 2 of that Order shall be carried out without first obtaining planning permission from the local planning authority.

\*\*\*END OF SCHEDULE\*\*\*