



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: 22nd April 2025

Appeal Ref: APP/T0355/W/24/3355693

No. 4 Beenhams Farm Cottages, Callins Lane, Shurlock Row, Reading, Windsor and Maidenhead RG10 0QB

- 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 Mr Peter Cook against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application reference is 24/01995.
 - The development proposed is replacement dwelling/self-build single house status.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on biodiversity and protected species; and
 - whether the proposal would comply with development plan policies in respect of climate change.

Reasons

Biodiversity and protected species

3. 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. The proposal is advanced on the basis that, as a self-build dwelling, it is exempt from the BGC.
4. The description of the development refers to the proposal as a self-build dwelling, and it is clearly the appellant's intention to design, build and occupy the proposed dwelling. However, whilst the appellant has sought to engage with the Council to prepare a planning obligation, there is no such obligation before me through which matters relating to the ownership and occupation of the dwelling could be secured and enforced. Therefore, there is no guarantee that the dwelling would be built and occupied as a self-build dwelling. In the absence of a legal agreement or other effective mechanism to secure it as such, I cannot be certain that the proposal would be exempt from the BGC as a self-build dwelling.

5. Policy NR2 of the Borough Local Plan (2013-2033) (LP) seeks to secure biodiversity enhancements but, unlike the statutory provisions, it does not quantify the minimum amount of net gain that should be achieved. Given the reasonably modest scale of the proposal, and the size and characteristics of the site, it is reasonably likely that some biodiversity enhancements could be delivered on land under the control of the appellant. However, in the absence of a completed metric calculation tool showing robust calculations of the pre-development biodiversity value of onsite habitat, and the other statutory minimum information requirements¹, the mandatory BNG requirements would not be met. This is a matter of principle importance, to which I attach significant weight.
6. In forming this view, I have had regard to the appeal decision at Elmgrove House². However, that appeal related to a scheme that pre-dated the introduction of the statutory framework for BNG for small sites. Therefore, it is not directly comparable to this appeal. Furthermore, whether or not the site benefits from permitted development rights does not alter the statutory framework for BNG in relation to developments that are the subject of a planning application.
7. Whilst self-build dwellings are exempt from the statutory provisions for BNG, this is not the case for the safeguarding of protected species set out in The Conservation of Habitats and Species Regulations 2017 (as amended). Indeed, in deciding this appeal, I have a statutory duty under the Natural Environment and Rural Communities Act 2006 (as amended) to have regard to the purpose of conserving biodiversity.
8. The site does not form part of an ecologically designated area. Nonetheless, the Council has stated that the site has the potential to support a range of protected species due to its proximity to suitable habitats and possible bat entry points to the existing building. These conclusions are disputed by the appellant. However, the habitats of animals, and the ways in which they are used, are not always obvious and they can be subject to daily or seasonal variations. Therefore, the site has the potential to support protected species despite its domestic character, the extent of the built form, and the absence of loft spaces.
9. There is limited evidence before me to ascertain the level of ecological expertise and the qualifications of the author of the Ecology and Biodiversity Statement, and only limited information is provided as to the methodology used to produce the statement and the other photographic evidence submitted. Therefore, I do not have sufficient authoritative information before me from which I can be certain about the ecological baseline of the site. It follows that, notwithstanding the scale and footprint of the proposed dwelling, it is not possible to identify the degree of harm that could be caused to protected species, or to determine the necessity and effectiveness of any mitigation measures that could be required.
10. Consequently, I cannot be satisfied that protected species would be safeguarded. The proposal would therefore conflict with Policy NR2 of the LP insofar as it expects protected species to be safeguarded from harm or loss.

¹ Planning Practice Guidance Paragraph: 011 Reference ID: 74-011-20240214 and Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

² Appeal decision reference APP/T0355/W/24/3342112, dated 13 November 2024

Climate change

11. Policy SP2 of the LP expects proposals to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change. Part 3 of the policy explicitly requires developers to refer to the Sustainable Design and Construction Supplementary Planning Document or its successor documents, which include the Sustainability Supplementary Planning Document (adopted July 2024) (SPD). The SPD expects a Sustainability and Energy Statement to be submitted with applications, and a requirement for development to achieve a net-zero carbon outcome.
12. A range of carbon reduction measures are proposed as part of the appeal scheme, including energy efficient design measures and renewable energy provision. Given the age of the existing bungalow and the intervening changes in building regulation standards, it is reasonably likely that the new building, once constructed, could be more energy efficient than the existing dwelling.
13. However, unlike the appeal at Elmgrove House, there is no substantive evidence before me to indicate that the existing building is unsuitable for habitation, or that it could not be reasonably retained or modified as part of the proposal. Moreover, there is no authoritative technical evidence to demonstrate the carbon emissions associated with the demolition of the existing building, and how these effects would be mitigated. Consequently, I cannot be certain about the carbon emissions associated with the proposal and, therefore, whether the measures proposed are sufficient to ensure the proposal adapts to and mitigates climate change in accordance with the requirements of the SPD and Policy SP2 of the LP. Furthermore, there is no substantive evidence to indicate that the costs associated with any potential additional carbon mitigation measures would render the development unviable.
14. Consequently, I conclude on this main issue that the proposal would fail to comply with Policies SP2 and EP1 of the LP insofar as they seek to ensure development adapts to and mitigates climate change, and to incorporate measures to improve environmental quality.

Other Matters

15. The Council has previously granted planning permission and a lawful development certificate at the site, and there is a clear intention to develop the site in a way that would meet the appellant's personal needs. However, the evidence indicates these permissions and certificates pre-date the LP and the statutory framework for BNG. I have necessarily considered the appeal with regard to the adopted development plan and up-to-date policy and legislation. Therefore, whilst I have had regard to the planning history of the site, it has not been determinative to my decision.
16. The Council has not objected to the principle of a replacement dwelling on this Green Belt site; and no harm has been identified in respect of the design of the accommodation and the access proposed, or its impact on local character and neighbouring occupants. Based on the evidence, I have no reason to take a different view on these matters. The absence of harm weighs neither for nor against the proposal.

Conclusion

17. The proposal would conflict with the development plan, and it would fail to meet the statutory requirements for biodiversity net gain. The material considerations do not indicate that the appeal should be decided other than in accordance with the development plan. Therefore, for the reasons given above, the appeal should be dismissed.

E Catcheside

INSPECTOR