



Appeal Decision

Site visit made on 18 March 2026

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2026

Appeal Ref: APP/T0355/W/25/3373873

The Walled Garden, Sutton Road, Cookham, Maidenhead SL6 9QZ

- 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 Foster against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 25/00434/FULL.
 - The development proposed is described as the change of use of land from agriculture to equestrian. Erection of stable building, associated hardstanding and floodwater compensation works. (Part Retrospective).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Mr Simon Foster against the Council of the Royal Borough of Windsor and Maidenhead. This application is subject of a separate decision.

Preliminary Matters

3. Although the appeal site is within the Green Belt, the Council has indicated that the proposal would not harm the openness of the Green Belt or the purposes of including land within it. The Council therefore advises that the scheme does not constitute inappropriate development in the Green Belt. In the absence of compelling evidence to the contrary, I have no reason to reach another view and proceed accordingly.
4. A completed Biodiversity Net Gain (BNG) small site metric, a habitat management and monitoring plan and an addendum to the Flood Risk assessment have been submitted in support of this appeal. Although these documents were not before the Council at the time the application was determined, interested parties have had the opportunity to comment upon them at the appeal stage. That being the case, no parties would be prejudiced by my decision to accept these additional documents.
5. Although parts of the appeal scheme have not yet been undertaken, I have no reason to doubt that the stable building structure (the stables) and the hardstanding parking area have been constructed in accordance with the submitted details. However, during my site visit, exterior lighting was observed on the stables. Given that this is not shown on the submitted plans, it does not form part of the scheme subject of this appeal.

6. The appeal site forms part of the setting of the Listed Building at Clivedon¹ (the Listed Building). Therefore, in reaching my decision, I have exercised my statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 – as amended.

Main Issues

7. The main issues are;
- whether there are reasonably available sites/alternative configurations for the appeal scheme which would be at lower risk of flooding and whether the sequential test has been met, and;
 - whether the biodiversity gain condition as set out at Schedule 7A of the Town and Country Planning Act 1990 – as amended (the Act), is capable of being successfully discharged.

Reasons

Flooding

8. The appeal site comprises sections of land within flood zones 2, 3a and 3b - as identified within the Government's Planning Practice Guidance (PPG) on Flood risk and coastal change². The annual probability of flooding within these flood zones increases from medium in flood zone 2, to high in flood zone 3a, and functional floodplain in flood zone 3b. That being the case, both now and in the future, the appeal site is at risk from flooding.
9. Even if the application of paragraph 176 of the National Planning Policy Framework (the Framework) means that the change of use of the land would not trigger the need for a sequential test to be undertaken, the same consideration does not apply to other parts of the appeal scheme, which include the stables. Therefore, and while the stables are a less vulnerable form of development, a sequential approach and test is required as set out in policy NR1 of the Local Plan³, the Framework and Planning Policy Guidance.
10. The evidence indicates that part of the stables and hardstanding are within the functional floodplain, and the remainder is at high risk of flooding. I appreciate that there are practical and welfare reasons for the siting of these elements of the scheme close to an existing wall and partly open-sided barn-type structure. However, even if the walled garden acts as a single hydraulic unit, there is higher ground within other parts of the former walled garden, with a lower annual probability of flooding. Moreover, no compelling evidence has been provided that this higher land is not reasonably available to accommodate the same quantum of stabling and hardstanding. In addition, and given the fairly modest scale and nature of the scheme, I am unconvinced that the catchment area for the type and amount of development subject of this appeal should be limited to the appeal site only.
11. Therefore, the evidence before me has failed to demonstrate that it is not possible to locate the proposed development on land at lower risk of flooding.

¹ Official list entry number: 1125041

² paragraph 078 Reference ID: 7-078-20220825 of the

³ Royal Borough of Windsor & Maidenhead – Borough Local Plan – 2013-2033

12. On the basis that the stable is a floodable structure, and if the proposed mitigation measures were undertaken, then the development would not increase the risk of flooding either within or outside of the appeal site. Furthermore, given that there is no proposal to remove sections of the walls at the edges of the land under the control of the appellant, the development would not materially affect flood flows in the area. However, these are neutral considerations that do not lead me away from my previous findings.
13. For the reasons given, the appeal scheme fails to demonstrate that there are no reasonably available sites/alternative development configurations which would be at lower risk of flooding. The sequential test has not therefore been met. Consequently, the scheme is contrary to Policy NR1 of the Local Plan and the Framework, which seek to steer new development to areas with the lowest risk of flooding, and to prevent an increase in the amount of property at risk of flooding.

Biodiversity Net Gain

14. Unless a relevant exception applies, BNG is a mandatory requirement of Schedule 7A of the Act. PPG⁴ then confirms that the mandatory BNG does not apply to retrospective planning permissions made under section 73a of the Act. The PPG also indicates that the biodiversity gain condition is a pre-commencement condition once planning permission has been granted⁵.
15. The main parties agree that the mandatory biodiversity gain condition would only apply to the part of the scheme that relates to the flood compensation works that have not yet been commenced, and the evidence does not lead me to take a different view. Moreover, the small site metric has been completed and provided on this basis.
16. Insofar as it relates to the part of the site which would be subject of the flood compensation works, the habitat management and monitoring plan document includes a suitable plan showing the on-site habitats. Therefore, and in combination with the other related information provided, I am satisfied that the scheme subject of this appeal has been validly made.
17. The PPG⁶ guides that when determining a planning application for a development subject to BNG, it would generally be inappropriate for decision makers to refuse an application on the grounds that the biodiversity gain objective will not be met. In this case, the submitted small site metric shows that a BNG of 16.34% could be achieved, and that with all trading rules satisfied, the BNG targets could be met. Furthermore, and notwithstanding the Council's view on the matter, the modest scale and nature of the identified on-site habitat enhancements to secure the BNG cannot reasonably be described as significant. Consequently, had the development been otherwise acceptable, a specific planning condition or section 106 agreement to secure the BNG would not have been justified.
18. For these reasons, the biodiversity gain condition as set out at Schedule 7A of the Town and Country Planning Act 1990 – as amended, is capable of being successfully discharged, and the scheme would comply with policy NR2 of the Local Plan. Amongst other things, this requires development proposals to include

⁴ paragraph: 003 Reference ID: 74-003-20240214

⁵ Paragraph: 001 Reference ID: 74-001-20240214

⁶ Paragraph: 019 Reference ID: 74-019-20240214

details of measures to be undertaken to enhance the biodiversity value of sites, where such opportunities exist.

Other Matters

19. The imposing Listed Building occupies an elevated position within the local landscape, and both it and the associated Grade I Listed Park and Garden at Clivedon⁷ (the Park and Garden) are designated heritage assets of the highest significance. For the Listed Building, this significance is mainly derived from its architectural and historic interest. Whereas, the Park and Garden's significance mainly results from its historic phased development that encompasses a range of gardens, pleasure grounds and woodlands. However, some significance for both designated heritage assets also results from the pastoral land that forms part of their backdrops and settings. This land extends over a section of the Thames Valley – and includes the appeal site - which comprises a large portion of a historic walled garden where produce for Clivedon is likely to have been historically grown.
20. Even if the development subject of this appeal is/would be visible from parts of the designated heritage assets, the stable structure has a simple form and is of fairly modest proportions. Consequently, and without external lighting, it would not be a prominent or incongruous feature within the setting of the Listed Building or the Park and Garden. Similarly, the use of the site for equestrian purposes is not discordant with the pastoral character and appearance of the area. For these reasons, the settings of the Listed Building and the Park and Garden would be preserved, and their significance would not be harmed by the appeal scheme. However, this finding does not weigh in favour of the appeal.
21. Even if the appeal scheme would not cause harm to the living conditions of the occupiers of nearby properties, the character and appearance of the area or highway safety, these are also all neutral considerations.
22. Although the brick wall around parts of the appeal site makes a positive contribution to the character and appearance of the area, the allowance of this appeal would not necessarily secure the ongoing maintenance of this feature.
23. The planting of trees and the keeping of horses on the appeal site has the potential to deliver economic, social and environmental benefits. BNG benefits would also result from those works associated with the formation of the flood compensation area/ditch. However, the modest scale of the scheme means that the associated benefits would be small.

Conclusion

24. Notwithstanding my findings on the second main issue, the appeal scheme conflicts with the development plan when taken as a whole, and there are no material considerations that outweigh the identified harm and associated development plan conflict.
25. I therefore conclude that this appeal should be dismissed.

V Simpson

INSPECTOR

⁷ Official list entry number: 1000323