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22 November 2024

Reading Borough Council

Dear Sir/ Madam,

Introduction & Site Description

The application site is located on the south side of The Warren and forms an existing lawful residential dwelling located close to the riverbank of the River Thames on the southern edge of the site. Alongside the dwelling itself, there is also a garage and ancillary structures located on the plot. It has been established through the site's planning history and paragraph 10.1.7 of the SFRA that the site is considered equivalent to flood zone 3a. The site is subject to significant topography changes whereby the land rises steeply in a northward direction away from the River Thames.

This Planning Letter Statement provides a targeted and focused response to the refusal of planning permission relating to the demolition of the existing dwelling and outbuildings and their replacement with a 4 bedroom dwelling and garage refused in September 2024 (under LPA Ref. PL/23/1270).

The Proposal

Proposal seeks full planning permission for the demolition of the existing dwelling on the existing outbuildings and their replacement with a traditionally designed 4 bed dwelling. The proposed new dwelling would be of a two storey scale. The submission is supported by detailed architectural drawings and supporting documentation covering a number of technical disciplines.

Planning History / Context

As detailed above, the site was subject to the refusal of planning permission for a proposed replacement dwelling in September 2024. In refusing this application, the officer's report confirmed the scheme to be acceptable in relation to all of the below matters:

- Tree and landscaping impact
- Impact upon protected species
- Transport and parking
- Noise impact
- No objection from the LLFA (subject to condition)
- Archaeology
- Design
- Heritage
- Impact upon neighbouring amenities

- Future Occupier amenity
- Sustainability & Energy.

The application was refused for the following reasons:

- 1. The proposed development has failed to provide a suitable Sequential Test Assessment to justify that there are no reasonable, available and suitable alternative sites at a lower risk of flooding from any source, thereby failing to address flood risk, contrary to Policy EN18 of the Reading Borough Local Plan 2019 and paragraphs 165-168 of the National Planning Policy Framework 2023.**
- 2. The proposed development has failed to adequately assess the flood risks posed, with the submitted Flood Risk Assessment not demonstrating compliance with the requirements for site specific flood risk assessments by failing to: use the most up to date available information to assess flood risk; demonstrate the development will not increase flood risk elsewhere; consider how people will be kept safe from the identified flood hazards; demonstrate that finished floor levels will be set above the 1% annual exceedance probability (AEP) flood level with an appropriate allowance climate change, leading to an unacceptable risk to the health and safety of the occupants in a flood event, all contrary to Policy EN18 of the Reading Borough Local Plan 2019 and paragraphs 165 and 173 of the National Planning Policy Framework 2023.**
- 3. The proposed development has failed to demonstrate that it does not result in a net loss of biodiversity, thereby failing to protect the existing biodiversity value of the site, contrary to Policies EN12 and H11 of the Reading Borough Local Plan 2019.**

The proposed scheme is very similar in design respects to that previously refused and therefore does not introduce any need for reconsideration of the above matters. The same positive assessment in all of these respects can be made. This statement now proceeds to respond to the respective reasons for refusal in turn.

Reason for Refusal 1

This reason for refusal related to the absence of a sequential test. Whilst the precise circumstances of an application for a replacement dwelling are not covered directly by the NPPF and associated guidance, the reality is that a lawful dwelling located in a floodplain location exists on the site today. That position will remain in the event that planning permission is not granted for replacement dwelling on the site. This necessitates the logical and necessary requirement to consider the actual consequences for future occupiers in relation to this issue. It would be inappropriate to simply refuse the scheme on the basis of the absence of a sequential test.

A similar context and scenario has been considered in relation to a proposal for a replacement dwelling in Malden District Council at appeal earlier this year. It is well established that appeal precedent can act as a strong material consideration in the determination of planning applications. The relevant appeal decision is appended as Annex A to this statement.

Paragraph 5 of the appeal decision made by senior Inspector David Smith identified that the site was located in a floodplain location. At paragraph 10, the Inspector proceeds to acknowledge that the precise circumstances relating to a replacement dwelling are not covered by Government policy or associated guidance. However, the existence of a lawful dwelling on the site is acknowledged and for this reason the actual consequences for future occupiers require further examination:

- 10. The precise circumstances of the appeal are not covered by Government policy or the associated guidance. Nevertheless, when judged against the Framework and the PPG, a sequential test is not excluded for cases involving replacement buildings. That said, the reality is that if the appeal were dismissed for that reason, a lawful dwelling would remain within an area at risk of**

flooding. Therefore, the actual consequences for future occupiers should be examined. (My emphasis)

Paragraphs 13 and 14 of the decision proceed to note and reference that there is already a legitimate residential use on the land and that the proposal would lead to a lessening in the risk from flooding because of its superior construction compared to the existing dwelling, the raising of the floor level above existing and the ability to put in place emergency plans. In conclusion, the existing risks to residential development would be significantly reduced and this benefit outweighs the absence of a sequential test as may be required by a strict application of national and local policy:

13. The PPG indicates that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. That is not so here but this is a case where other considerations are at play. In particular, there is already a legitimate residential use on the land. The proposal would lead to a lessening in the risks from flooding because its superior construction compared to the mobile home, the raising of the floor level by 0.65m above ground level and the ability to put in place emergency plans.

14. In conclusion, the occupiers of the proposed replacement dwelling would not be at risk of flooding. Furthermore, the existing risks would be significantly reduced. This benefit outweighs the absence of a sequential test as required by a strict application of national policy and the consequent conflict with Policy D5. Indeed, the proposal is acceptable in terms of the risk from flooding. (My emphasis)

In conclusion, the Inspector proceeds to determine as follows:

20. Because of the lack of a sequential test, the proposal would not accord with the development plan. However, this conflict is outweighed by the fact that the safety of residential occupiers at the site would be greater than it is at present. Future residents would not be at risk of flooding. Material considerations therefore indicate that the appeal should be decided other than in accordance with the development plan. So, for the reasons given, the proposed replacement dwelling is acceptable and the appeal should succeed.

A very similar set of circumstances apply in relation to the subject application proposal. First, 26% of the existing site forms impermeable area. By comparison, only 17% of the site would form impermeable area post development. This results in a 34.36% improvement over the existing situation. Consequently, the proposal delivers meaningful gain in capacity, flow and safety respects. Second, the existing dwelling has a finished floor level of 38.22 above ordnance datum. By comparison, the proposed new dwelling is sited far further away from the River Thames and is to be set at a finished floor level of 39.43 above ordnance datum. This is a level that lies above a 1 in 100 year flood event, plus a 35% allowance for climate change. The result of this is that whilst the proposed dwelling will not be at risk of flooding, the existing dwelling is plainly at risk of flooding from the River Thames and there is therefore a substantive greater risk to life associated with the existing situation when compared to the safe and managed proposed situation. Finally, the proposed dwelling is not only located above the 1 in 100 year plus a 35% allowance for climate change level but also includes a raised escape walkway for safe exit to higher ground at all times and a flood action plan to be related to the future occupier in the event of an extreme flood event. The result is not only a proposed situation on the site that is fundamentally safer than that of the existing but also a managed strategy for what occurs in the event of a flood event which is not presently conditioned or required by. These substantive considerations act as material considerations such that any conceivable conflict with the NPPF or Local Plan Policy EN18 are outweighed such that the proposed replacement dwelling is acceptable. The appended appeal decision provides a logical approach towards decision making in relation to this matter.

Notwithstanding and without prejudice to the above approach, a comprehensive Sequential Test relating to the development has been undertaken alongside the submission of the revised application. This comprehensively considers allocated and emerging allocation sites, windfall sites and sites on the brownfield register and confirms that there are no other available sites within preferable flood zones that can accommodate the proposals. Consequently, the sequential test is passed in any event.

Finally, the requirements of the exception test are addressed. The FRA evidences that the development will be safe for its lifetime by virtue of a finished floor levels proposed above the 1 in 100 year plus an allows for climate change event. Further, the development offers a clear sustainability benefit through an overall reduction in the risk of flooding to residential property for the reasons detailed above. It also offers an improved quality of design, biodiversity enhancement and improved green landscape. It follows that the scheme comfortably offers wider sustainability benefits to the community and both parts of the exception test are therefore passed.

It follows that reason for refusal 1 is overcome. This can either be concluded through the logical and sound approach pursued by the referenced appeal Inspector, whereby material considerations comfortably outweigh any conceivable conflict with policy or through review of the submitted sequential test that confirms compliance with these policies in any event. On either basis, reason for refusal 1 is overcome.

Reason for Refusal 2

The previous application was in the rather unusual situation whereby the lead local flood authority were supportive of the development subject to condition. However, the Environment Agency objected and a reason for refusal was pursued on this basis. A comprehensive updated Flood Risk Assessment supports the submission. It is anticipated that this document will enable the EA objection to be overcome. This document now uses data obtained from the Environment Agency in early November and therefore is predicated upon the most up-to-date available information to assess flood risk. It demonstrates how the proposed dwelling is to be raised 300 millimetres above the modelled flood level for a 1 in 100 year plus a 35% allowance for climate change event. Accordingly, an appropriate allowance for climate change is made and the development will be appropriately flood resistant and resilient for its lifetime. Section 4.3 of the FRA details the safe access and egress strategy in the event of an extreme fluvial event which includes use of a mesh bridge and the occupants being advised to sign up to the EA's flood warnings direct to receive a flood warning in advance of any event occurring. If considered necessary, this could be formalised into a more comprehensive flood action plan to be secured by planning condition.

In relation to floodplain storage, the FRA illustrates how the existing impermeable area on the site will be substantively reduced through the proposals and there will be a 34.36% secured through the development proposals. Finally, it is explained that the absence of lips (that can encourage silt buildup) and wide aperture mesh that limits waste buildup will ensure that the proposed voids will not be used to storage and therefore appropriately contribute towards flood storage compensation. An ongoing programme for cleaning and maintenance of the voids can ensure they remain fully effective. This maintenance can be secured through a maintenance strategy secured by planning condition. It should also be noted that the differences in impermeable area are not marginal but actually substantial and this further justifies the use of voids as appropriate in this case. Finally, the movement of the dwelling further away from the River Thames and its placing at a higher floor level is plainly a fundamental benefit associated with the proposal in substantially reducing the likelihood of a flood event affecting a residential property and in turn having beneficial impacts upon the overall risk to life associated with the site. It follows that even if there were some outstanding concern with the approach towards voids, a balanced judgment on the basis of an improved impact upon overall flooding to vulnerable uses is necessary and appropriate in this instance. For all these reasons, it is envisaged that the EA's objection is now overcome and that the scheme complies with Local Plan Policy EN17 and paragraphs 165 and 173 of the NPPF.

Reason for Refusal 3

It was confirmed during the course of the previous application that following the submission of additional bat survey information, the conventional impacts upon protected species were acceptable subject to the inclusion of an appropriate planning condition securing that demolition is supervised as per the mitigation detailed in the report.

The concerns expressed with the biodiversity net gain assessment related to there not being sufficient clarity on the plans about areas of hardstanding and garden before and after development.

The **Existing Areas** drawing submitted alongside this application illustrates the areas of existing built form and hardstanding across the site. Further, the **Proposed Areas** drawing illustrates the proposed built form and hardstanding areas proposed across the new dwelling scheme. This is then supported by the proposed Biodiversity Plan that illustrates new native scrub planting, new wildflower meadow and proposed new trees throughout the site. Bats boxes, robin boxes and sparrow terraces are also proposed. This drawing also purposely shows the existing dwelling and existing hard standing to be removed using dashed red lines and associated hatching. A clear and precise indication therefore of both the existing and proposed situation on the site is therefore detailed within this submission.

Using the referenced plans, a biodiversity net gain position has been calculated. This now uses the statutory metric rather than the small sites metric (as requested by the Council's ecologist in considering the previous application). The resulting conclusion show that a 0.31% increase in habitat units can be secured on the site. It follows that an overall enhancement in the biodiversity value of the site is secured on site. An overall net gain in biodiversity is therefore achieved and the scheme accords with Local Plan Policies EN12 and H11 that are clear in their objective of development enabling biodiversity net gain where possible.

It should be noted that the proposal is a self build, meeting the 3 criteria of no more than 9 dwellings, no larger than ½ a hectare and something that consists exclusively of self-build or custom housebuilding as defined in the Self-build and Custom Housebuilding Act 2015. As a self-build it is exempt from the BNG requirement to achieve a 10% improvement. Unfortunately, the metric form isn't designed for self builders and therefore incorrectly tests for a 10% improvement and incorrectly shows the proposal failing to meet the BNG conditions.

With regard to the requirements of the now engaged Environment Act, if the requirements of the Act are engaged at all, then the conventional national biodiversity net gain condition can be applied to any future planning permission:

A Biodiversity Gain Plan must be submitted and approved by the planning authority before commencement of the development.

It follows that reason for refusal 3 is now overcome.

Planning Balance & Conclusion

The first test, and the statutory starting point is whether the application is 'in accordance with the plan', which is a phrase that has been the subject of consideration in the High Court in the context of Section 54A of the Town and Country Planning Act 1990. In his judgment of 31 July 2000 (R v Rochdale Metropolitan Borough Council ex parte Milne), Mr Justice Sullivan concluded as follows:

...I regard as untenable the proposition that if there is a breach of any one Policy in a development plan a proposed development cannot be said to be "in accordance with the plan"...

‘For the purposes of Section 54A, it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.

The Rochdale judgment is applicable to the interpretation of Section 38(6) of the 2004 Act such that the decision maker must reach a decision as to whether the proposal is in accordance with the development plan when it is considered as a whole, which position I assess later in this evidence.

Section 38(6) of the Act does not prescribe that either the development plan or other material considerations be given any particular weight in the required balance. It is, in effect, an ordinary, unweighted balance between the two countervailing elements.

A further relevant judgment is dated July 2014 (Arsenal Football Club Plc v SoS for CLG and Islington London Borough Council). This refers to the need for a decision maker to determine whether a proposal is in accordance with the development plan:

It is up to the decision-maker how precisely to go about the task, but he must make the determination in accordance with the development plan unless material considerations indicate otherwise, and “he must as a general rule decide at some stage in the exercise whether the proposed development does or does not accord with the development plan”: (para 29). (Our emphasis).

The judgment then refers to the requirement for a decision maker to decide in light of a whole development plan whether the application accords with it. In a case where a development plan points in different directions it is for the decision maker to decide which policy should be given greater weight in relation to a particular decision:

In enunciating this point Lewison LJ drew on the proposition of Ouseley J in R (on the application of Cummins) v Camden London Borough Council [2001] EWHC 1116 (Admin) at [164], that it may be necessary for a council in a case where policies pull in different directions to decide which is the dominant policy, whether one policy compared to another is directly as opposed to tangentially relevant, or should be seen as the one to which the greater weight is required to be given. Ouseley J derived this proposition in turn from the dictum of Sullivan J in R v Rochdale MBC ex parte Milne [2000] EWHC 650 (Admin) at [47]-[50]. (See also London Borough of Islington v Secretary of State for Communities and Local Government [2012] EWHC 1716 (Admin), at [53], per Ouseley J). Recently Lord Reed restated the point authoritatively in Tesco Stores Ltd v Dundee City Council [2012] UKSC13; [2012] PTSR 983, [19]:

“[D]evelopment plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment.” (para 31).

In summary, the above case law confirms that a decision maker must determine whether a proposal is in accordance with the development plan and undertake this judgment against the development plan as a whole. In undertaking this judgment, the decision maker will have to decide which policy (or policies) should be given greater weight in relation to a particular decision.

For the reasons detailed, the scheme addresses the previous reasons for refusal and can therefore be determined to be squarely compliant with the development plan. Notwithstanding, even if an outstanding breach in relation to Local Plan Policy EN18 were identified, that breach must be considered within the context of the scheme's positive performance against all other development plan policies. Further, it must be considered within the context of the material considerations detailed in our response to reason for refusal 1, namely, an overall substantial reduction in the overall level of flood risk occurring on the site to the

residential dwelling. It follows that the scheme can either be determined as compliant with the development plan as a whole or there are material considerations to outweigh any possible conflict such that the planning application can be approved on either basis.

Yours sincerely

Woolf Bond Planning

Woolf Bond Planning Ltd.

Encs. Annex A