

Appeal Decision

Site visit made on 13 September 2016

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 September 2016

Appeal Ref: APP/V1505/W/16/3152036

239 Noak Hill Road, Billericay, Essex CM12 9UN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Huntley against the decision of Basildon District Council.
 - The application Ref 16/00126/FULL, dated 2 February 2016, was refused by notice dated 14 April 2016.
 - The development proposed is closure of existing access, demolition of existing bungalow/outbuilding and erection of a dwelling as a one for one replacement dwelling. Creation of new vehicular access and erection of one additional dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the closure of existing access, demolition of existing bungalow/outbuildings and erection of a dwelling as a one for one replacement dwelling and the creation of new vehicular access and erection of one additional dwelling at 239 Noak Hill Road, Billericay, Essex CM12 9UN in accordance with the terms of the application, Ref 16/00126/FULL, dated 2 February 2016, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to noise and disturbance and outlook;
 - other considerations;
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal?

Reasons

Whether Inappropriate Development?

3. The appeal site is located on the east side of Noak Hill Road and accommodates a detached bungalow which is located in line with the dwellings to the north and south. The site extends beyond the rear gardens of the flanking properties where it broadens out. The front part of the site accommodating the bungalow falls outside
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of the Green Belt, whereas the broader rear area is within the Green Belt. The proposed dwellings would be located within the Green Belt.

4. Paragraph 89 of the National Planning Policy Framework (the Framework) states the new buildings in the Green Belt will be inappropriate unless they fall into specified exceptions. These include replacement buildings, provided that the new building is not materially larger than the one it replaces, and limited infilling or the partial or complete redevelopment of previously developed sites (brownfield and) which would not have a greater impact on the openness of the Green Belt. The appellant has sought to rely on both exceptions. The Council has not referred to any development plan policies in respect of this issue.
5. With regard to the replacement of buildings, the building to be replaced is located outside of the Green Belt and, therefore, does not affect openness or the other purposes of designating Green Belt land, whereas both proposed buildings would be within the Green Belt and would potentially have an effect on those considerations. There is nothing in the Framework to suggest that the building to be replaced could be located outside of the Green Belt. Furthermore, the floor area of the existing building is 104sqm, whereas the floor areas of each of the proposed dwellings would be 278sqm. This represents a 167% increase in floor area. On this basis, I consider that each new building would be materially larger than the one claimed to be replaced. Consequently, I find that the replacement building exception is not applicable to the appeal proposal.
6. With regard to the second exception relied on by the appellant, the Council appears to have considered this only in relation to limited infilling. Nevertheless, paragraph 89 also allows for the complete or partial redevelopment of previously developed land.
7. The appellant's evidence indicates that the appeal site contains a 13 buildings totalling 571 sqm floor area. However, two of these buildings are outside of the Green Belt and therefore, for the reasons outlined above, should not be taken into account for the purposes of assessing the effect of the proposal on the openness of the Green Belt. The remaining 11 buildings have a total floor area of 455 sqm. I saw on the site visit that most are substantial, permanent structures and many have pitched roofs. The area of the appeal site within the Green Belt also accommodates a significant amount of open storage in the form of vehicles, timber, metals, building materials and the like. Although these are not permanent works, they appear to have been in place for a considerable time and have a physical presence which reduces the openness of the Green Belt. There is also a limited amount of hard surfacing, although most of the concrete hardstanding appears to fall outside of the Green Belt designation.
8. There is nothing in the Council's evidence to indicate that either the buildings or the open storage has been, or is likely to be, the subject of enforcement action to secure their removal. Therefore, I consider that they should be taken into account in assessing the impact of the proposal on openness.
9. The Council also refers to the exclusion of private garden land from the definition of previously developed land. However, the appellant's evidence suggests that the rear proportion of the site was last used for business purposes. Whilst the documentary evidence in support of such use is limited, I saw on the site visit that the buildings, machinery, materials and equipment in that part of the site are more extensive than would be normally expected of a use incidental to the enjoyment of a dwellinghouse. On that basis I consider that the area in question is not a private

garden and would amount to previously developed land for the purposes of the assessment under Framework paragraph 89.

10. The proposed dwellings would have a total floor area of 557 sqm. The dwellings and associated parking and turning area would not extent beyond the area of the existing buildings and open storage. Therefore, whilst the total floor area proposed is greater than that of the existing buildings within the Green Belt, having regard to the additional loss of openness resulting for the open storage, I consider that the proposal would not have a greater impact on openness. There is no substantive evidence to suggest that the proposal would lead to other harm to the Green Belt.
11. I note that the Council also found that, in respect of a scheme at 302 Noak Hill Road (application ref 15/01051/OUT), the removal of outbuildings and the erection of two new dwellings to the rear of a replacement dwelling would not be inappropriate development in the Green Belt since it would amount to the re-development of previously developed land which would not have a greater impact on openness.
12. Overall therefore, I conclude that the proposal would not be inappropriate development in the Green Belt. In these circumstances, there is no need to consider whether the very special circumstances necessary to justify inappropriate development exist.

Character and Appearance

13. Development along Noak Hill Road in the vicinity of the appeal site is mainly linear in character. However, there are a reasonable number of cases of residential development located behind the dwellings which front onto the road. The Council advises that some of these pre-date the designation of the Green Belt. Others, such as those at 181 and 302 Noak Hill Road, are more recent. In any event, the accesses to these developments, which are located between the dwellings fronting the road, and the presence of development in depth, is apparent in views along Noak Hill Road. As such, they form part of the character of the area. The layout of the appeal proposal would be comparable to these developments.
14. The removal of the existing, somewhat dilapidated, dwelling and its replacement with a new access with planting on both sides would result in a minor improvement to the street scene.
15. I have already concluded that the appeal proposal would not impact on the openness of the area at the rear of the site due the removal of extensive existing buildings and open storage. Those features, whilst not prominent in wider views, detract from the character and appearance of the site itself and its immediate surroundings.
16. The proposal would result in the removal of a number of existing trees on the site. However, these are, for the most part, located in the central area of the site and are not prominent in public views. The Arboricultural Report submitted on behalf of the appellant (Andrew Day Arboricultural Consultancy, dated 7 January 2016) finds that they are low quality trees which are unlikely to develop into significant landscape features. There is nothing to suggest that the spruce tree at the front of the site which proposed to be removed has particular amenity value.
17. The land to the east of the proposed dwellings is, unusually for the area, fairly densely wooded. It would be retained and, together with new planting along the side boundaries of the site, effectively screen the proposal in wider views. There is

no substantive evidence to suggest that the appearance of the proposed dwellings would be objectionable.

18. Consequently, having regard to the particular characteristics of the appeal site and the visual improvements arising from the proposed development, and notwithstanding the prevailing linear pattern of development, I consider that the proposal would not be detrimental to the character and appearance of the area. As such, it would not conflict with Policy BAS BE12 of the Basildon District Local Plan Saved Policies 2007 (LP) to the extent that it presumes against residential development which would cause harm to the character of the surrounding area, including the street scene. Nor would it conflict with the Framework's objectives for high quality design or guidelines DC1 or DC2 of the Council's Development Control Guidelines 1997 (DCG) insofar as they have similar aims in respect of 'backland' residential development.

Living Conditions

19. The proposed access would run between the side boundaries of the neighbouring dwellings at Nos 237 and 241. I saw on the site visit that the flank walls of both properties contain windows. However, the previous use of the site allowed for vehicular access to the rear of the site and the existing access is closer to the boundary with No 237 than the proposed access, which would be positioned centrally within the site. This positioning would ensure a reasonable gap between the drive and the neighbouring properties. It would allow space for planting as well as the erection of fences along both boundaries. These matters could be secured by condition.
20. With these features in places, and having regard to the likely very modest increase in the number of vehicle movements generated by two dwellings rather than the existing dwelling and the previously activity to the rear of the site, I conclude that the proposal would not adversely affect the living conditions of neighbouring occupiers through noise and disturbance.
21. The rear wall of No 237 is some 32m from the point on the common boundary where the appeal site broadens behind that property. The proposed dwelling would be positioned more than 7m beyond that boundary. This distance would be sufficient to ensure that the proposed single storey building would not have an overbearing effect on the outlook from the rear of No 237. Other change to the private view from a window is not, of itself, regarded as a planning matter. The separation distance would also ensure that there would be no material loss of privacy for the occupiers of 237. The separation distance is even greater in respect of No 241.
22. Overall therefore, I find that the proposal would not have a harmful effect on the living conditions of neighbouring occupiers with regard to outlook, noise or disturbance. Consequently, it would not conflict with LP Policy BAS BE12 inasmuch as it presumes against residential development which causes harm through noise, disturbance or the over-dominance of neighbouring dwellings. Nor would it be contrary to DCG guidelines DC1 or DC2 which include similar objectives concerning 'backland' development.

Other Matters

23. It has been suggested that the proposal would set a precedent for similar development elsewhere along Noak Hill Road. However, no directly comparable sites to which this might apply were put forward. Each application or appeal must

be determined on its merits and a generalised concern of this nature does not justify withholding permission in this case.

24. Concern has also been expressed by neighbouring occupiers that the proposal would reduce security at their properties. However, the driveway is proposed to be gated and the introduction of permanently occupied dwellings would increase the opportunity for natural surveillance in and around the site. Consequently, I consider that the proposal would not have the anticipated effect.
25. With regard to highway safety, the proposal would allow for cars to turn around within the site and for vehicles to pass one another at the site entrance. Further, there is a broad grass verge at the front of the site which would ensure good visibility for vehicles exiting the proposed drive. Therefore, whilst I recognise that concern has been expressed regarding the speed of vehicles on Noak Hill Road, there is nothing to suggest that the proposed access arrangements would, of themselves, be unsafe. I have already concluded that the proposal would generate a very modest increase in vehicle movements. I also note that Essex County Council Highways department has not objected to the proposal. Consequently, I consider that concern over highway safety would not be a robust reason to dismiss the appeal.

Conditions

26. The Council has suggested a list of 13 conditions. With amendments, I consider that they meet the tests set out in the Planning Practice Guidance (PPG). A condition specifying the approved plans is necessary in the interests of certainty. Conditions dealing with external materials and a landscaping scheme are required to safeguard the character and appearance of the area. However, having regard to the advice at PPG paragraph ID 21a-007-20140306, I will amend the conditions to require the approval of the details of the materials prior to their use, and the landscaping scheme prior to the completion of the buildings, rather than prior to the commencement of development. In addition, I will impose a condition dealing with the erection of boundary enclosures in order to safeguard the character and appearance of the area and the living conditions of neighbouring occupiers. The appellant has suggested such a condition.
27. Exceptionally in view of the sensitivity of the site and its Green Belt location, a condition withdrawing permitted development rights for extensions and alterations to the roofs of the dwellings and the erection of outbuildings is necessary to protect the character of the area and the living conditions of adjoining residential properties.
28. Conditions dealing with the layout of the proposed access and the location of any gates, the closure of the existing crossover, the surfacing of the access and surface water drainage are all required in the interests of highway safety. Conditions controlling the storage of construction materials and the provision of wheel washing facilities during the construction phase are also required in the interests of highway safety. Having regard to the extent and nature of the previous use of the site, a condition to secure a scheme to deal with land and water contamination is necessary for public health reasons.

Conclusion

29. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR

**Schedule of conditions attached to
Appeal Ref: APP/V1505/W/16/3152036
239 Noak Hill Road, Billericay, Essex CM12 9UN**

- 1) The development hereby permitted shall begin not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3001-01A Sheets 1, 2 and 3, dated January 2016.
- 3) Prior to their use in the development hereby permitted, details of all materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Prior to the completion of the buildings hereby permitted a scheme of landscaping, which shall include details of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development, shall be submitted to and approved by the local planning authority. All planting, seeding and turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following occupation of the buildings, or completion of the development, whichever is sooner. Any trees or shrubs or other elements of landscaping dying within five years of planting, shall be replaced by the developers or their successors in title.
- 5) Fences, walls or other means of enclosure shall be erected along the boundaries of the site (and individual plots) prior to the occupation of the dwellings, in accordance with details which shall have been previously submitted to, and approved in writing by, the local planning authority. The approved means of enclosure shall thereafter be permanently retained.
- 6) Notwithstanding the provisions of Part 1 of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking or re-enacting this Order) no extensions or roof alterations (Classes A to C) shall be added the dwelling houses or outbuildings be erected within the curtilage (Class E).
- 7) Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of the highway verge and shall be provided with an appropriate dropped kerb crossing of the footway and highway verge.
- 8) Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the highway verge.
- 9) The existing vehicular access at the northern end of the site frontage shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge, footway and kerbing, prior to the occupation of the proposed dwellings.
- 10) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 11) There shall be no discharge of surface water onto the highway.

- 12) Prior to commencement of the development, details of the areas to be used for loading, unloading, reception and storage of building materials shall be submitted to and approved in writing by the local planning authority. The storage of materials during the construction phase shall be in accordance with the approved details.
- 13) Prior to commencement of the proposed development details of a wheel cleaning facility within the site and adjacent to the egress onto the highway shall be submitted to and approved in writing by the local planning authority. The wheel cleaning facility shall be provided at the commencement of the development and maintained during the period of construction.
- 14) The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the local planning authority (LPA) and until the measures approved in that scheme have been implemented. The scheme shall include all of the following measures:
 - a) A desk-top study carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two copies of the desk-top study and a non-technical summary shall be submitted to the LPA without delay upon completion.
 - b) If identified as being required following the completion of the desk-top study, a site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed, taking into account the site's existing status and proposed use. Two copies of the site investigation and findings shall be forwarded to the LPA without delay, upon completion.
 - c) Thereafter, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site shall be submitted and approved by the LPA, and all requirements shall be implemented and completed to the satisfaction of the LPA. No deviation shall be made from this scheme without the express written agreement of the LPA. If, during redevelopment, contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and agreed in writing with the LPA.
 - d) Two full copies of a full closure report shall be submitted to and approved by the LPA. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met. The closure report shall include a completed certificate, signed by the developer, confirming that the required works regarding contamination have been carried out in accordance with the approved written method statement. A sample of the certificate to be completed is available in Appendix 2 of Land Affected by Contamination: Technical Guidance for Applicants and Developers.