
Appeal Decision

Site visit made on 12 December 2016

by P W Clark MA MRTPI MCMI

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

Decision date: 22 December 2016

Appeal Ref: APP/B5480/W/16/3158066

131 Shepherds Hill, Romford, Havering RM3 0NR

- 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 & Mrs R Wallis against the decision of the Council of the London Borough of Havering.
 - The application Ref P0093.16, dated 20 January 2016, was refused by notice dated 2 August 2016.
 - The development proposed is construction of a new 4 bedroom detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are;
 - Whether the proposal would be inappropriate development in the Green Belt
 - The effect of the proposal on
 - The openness of the Green Belt
 - The supply of and demand for education provision
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations and, if so, whether this would amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

3. The proposal would be within the Green Belt which here washes over two lines of dwellings fronting both sides of Shepherds Hill as it climbs up away from the boundaries of Harold Wood at Cockabourne Bridge across the Ingrebourne River. Paragraph 89 of the National Planning Policy Framework (NPPF) advises that the construction of new buildings is inappropriate in the Green Belt. Exceptions include limited infilling in villages or limited infilling of previously developed sites.
 4. This is less restrictive than policy DC45 in the Council's Core Strategy and Development Control Policies DPD (the Local Plan) adopted in 2008 but the
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NPPF, published in March 2012, advises that where there is conflict between the Framework and earlier adopted plans, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. That material consideration is a reason why policy DC45 need not be strictly applied in this case.

5. The site of the proposal is presently garden land. This is excluded from the definition of previously developed land in the Glossary of the NPPF and so the proposal cannot be regarded as limited infilling of a previously developed site.
6. The Council does not regard Shepherds Hill as a village because its facilities are limited to those of a public house. But it is a sizeable settlement, only separated from Harold Wood, which does have comprehensive facilities, by a narrow strip of open land and the River Ingrebourne. It has been regarded as a village in a previous appeal decision (APP/B5480/A/12/2188200), a conclusion which seems to have been followed by the Council in a more recent decision for a dwelling between 115 and 119 Shepherds Hill.
7. In contrast to those two decisions where the sites were clearly embedded within surrounding development, the current appeal site abuts built development on only two sides, facing numbers 117 and 123 across the lane giving access to the site and abutting numbers 125-131 (odd) to its south. But it is within the curtilage of number 131 and within the general alignment of the boundary between the Shepherd's Hill settlement and the open countryside to the north. I therefore consider it to be an example of infill within a village, falling within one of the exceptions to policy defined in the NPPF and so I conclude that it would not be inappropriate development within the Green Belt.

Openness

8. A proposal may be not inappropriate development in the Green Belt yet may still affect its openness. In this case, the site is presently open, undeveloped garden land with a visually open boundary towards the countryside to the north. However, the courts have held¹ that where development is found to be not inappropriate in the Green Belt, it should not be regarded as harmful to its openness; the question of impact on openness is no longer an issue.

Other considerations

9. Because I have concluded that the proposal would not be inappropriate development in the Green Belt, the question of whether there would be any other considerations which would outweigh such harm does not arise. I therefore move on to consider other identified issues.

Education provision

10. The Council's Commissioning Plan for Education Provision 2015/16 – 2019/20 provides clear evidence that there would be substantial deficiencies in both primary and secondary school capacity within a few years, even if this proposed development did not add to the demand. No provision has been made within the appeal proposals to address the increased demand which the proposal would make.

¹

Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

11. The appellant is correct in asserting that it is government policy, set out in a Written Ministerial Statement of 28 November 2014, that tariff style contributions should not be sought in respect of sites of ten units or less. The Council asserts that its request for a contribution of £6,000 towards education provision is not based on a tariff but it appears to be based on a tariff established in its Planning Obligations SPD, reduced only for stated viability reasons. In the absence of a specific proposal to spend the money on school provision serving this proposed development, it has the characteristic of contributing to a pool of money intended to fund the provision of general infrastructure in the wider area which is proscribed by government Guidance².
12. However that may be, it remains the case that there is likely to be a deficiency in the provision of education facilities in the area, which this proposed development would exacerbate and for which there are no proposals to remedy. In these circumstances I must conclude that the proposal would have an unacceptable effect on the demand for and provision of school places in the locality. It would therefore be contrary to Local Plan policies DC29 and DC72 which seek contributions from developers to certain types of infrastructure, including education provision.
13. This conclusion is consistent with other appeal decisions (3152013, 3140418 and 3153745) which all post-date the decision of the Court of Appeal in May 2016 confirming the legality of the government's policy and with appeal decision 3141745 which concluded, as I do in the present case, that the proposal would have a harmful effect on educational needs but that the Council had not demonstrated how the funding would be directed to facilities relating to the appeal development.
14. It differs from decision 3149666 which concluded that adequate provision of local infrastructure would be made and from decision 3134623 (preceding the Court of Appeal judgement) which concluded that the contribution sought would be in conflict with the CIL regulations but that the lack of an obligation could not be construed as a reason to dismiss that appeal. It also differs from decision 3000813 which concluded that infrastructure contributions should not be sought. However, each application is considered on its merits and in the present case, there is evidence of a shortage of facilities and the proposal would exacerbate that with no remedy proposed. It is for this reason alone that I dismiss the appeal.

P. W. Clark

Inspector

² Paragraph: 015 Reference ID: 23b-015-20160519