The Planning Inspectorate

# 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/H1515/W/16/3154871**
**4 Nags Head Lane, Brentwood, Essex CM14 5NJ**

- 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 Paul Savill against the decision of Brentwood Borough Council.
- The application Ref 16/00208/FUL, dated 13 February 2016, was refused by notice dated 7 April 2016.
- The development proposed is 5 new detached dwellinghouses.

## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Brentwood Borough Council against Mr Paul Savill. This application is the subject of a separate Decision.

## Main Issues

3. 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 character and appearance of the area
    - The need to travel and the use of sustainable transport modes
    - The living conditions of potential future residents in terms of noise
    - Flood risk
    - Bats
    - Highway safety
- 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*

4. The proposal would be within the Green Belt which here washes over a line of isolated ribbon development which extends continuously along the north-western side of Nags Head Lane from approximately the borough boundary to the south as far as the railway line to the north, interrupted only by the M25 motorway. 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.

5. Policy GB4 in the Council's Brentwood Replacement Local Plan adopted on 25 August 2005 (the Local Plan) has a slightly different approach, defining established areas of frontage ribbon development (including the site) where new residential development on genuine infill plots will be allowed subject to other criteria being satisfied. The 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 applies in this case.

6. The site of the proposal is presently largely garden land which is excluded from the definition of previously developed land in the Glossary of the NPPF. But the proposal encompasses the demolition of the dwelling presently on the site and so comprises previously developed land in part. Accordingly, the proposal cannot be excluded from consideration as limited infilling of a previously developed site.

7. The Nags Head Lane settlement has few or none of the features normally denoting a village but it is a sizeable settlement nonetheless. The appeal site abuts built development on its south and the decidedly urban features of a major motorway to its west and a four track railway line to its north. It is within the curtilage of number 4 Nags Head Lane and would not extend development beyond existing limits into the wider countryside. It cannot be excluded from consideration as limited infill in a village.

8. The above reasons are unique to this site. They lead me to conclude that the proposal should be regarded as falling within the exceptions to inappropriate development within the Green Belt listed in NPPF paragraph 89. It should also be regarded as a genuine infill plot complying with Local Plan policy GB4.

*Openness*

9. A proposal may be not inappropriate development in the Green Belt yet may still affect openness. The courts have held[1] that where development is found to be not inappropriate in the Green Belt, it should not be regarded as harmful to openness; the question of impact on openness is no longer an issue.

10. However, in this case, my finding that the proposal cannot be excluded from the exceptions to inappropriate development listed in paragraph 89 of the NPPF

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

depends in part on its consideration as a previously developed site. NPPF paragraph 89 qualifies this exception by a consideration of impact on the openness of the Green Belt and the purposes of including land within it and so, in this particular case, a consideration of openness is still necessary.

11. There are two elements to a consideration of openness; an absence of physical development and also a visual perception of openness. Other than the existing dwelling, the site is presently undeveloped garden land and so there would be an increase in built form. The net difference in terms of increased footprint would be in the order of 472 sq m, not something to be ignored.

12. The second element of openness is visual. As already noted, the site is enclosed by existing development from which it is largely screened by trees, a motorway and a railway embankment. There is very little sense of openness when present on site and so, very little sense of openness which would be lost were the development to proceed.

13. The five purposes of Green Belt are set out in paragraph 80 of the NPPF. In the particular circumstances of this case, because it is already garden land, development of the site would have no effect on the sprawl of large built-up areas or the coalescence of neighbouring towns. It would not encroach onto the countryside and does not form part of the setting of any historic town. The site is already urbanised by virtue of its existing development; its recycling is what is proposed in this appeal. There would therefore be no impact on the purposes of including land within the Green Belt as a result of this proposal.

14. I therefore conclude that although there would be a measurable increase in the presence of built development, its limited visual impact would result in little or no harm to the openness of the Green Belt and none to the purposes of including land within it. Therefore, my earlier finding that the proposal would not be inappropriate development within the Green Belt remains and the Court's finding that the question of impact on openness is no longer an issue holds good in this case.

*Character and appearance*

15. Existing development along Nags Head Lane is very varied. It includes both bungalows, chalet bungalows with development in the roof space and full height two storey houses. Roof forms are variously gable-ended, gable-fronted, hipped and half-hipped. Materials include yellow, red and brown brick, render and half-timbering. Yet not every house differs from its neighbour; numbers 9 and 10 are in matching, though not identical styles and materials.

16. Although each plot of the appeal proposal is nominally a different house type, in reality their similarities would be greater than their differences and so the proposal would have a uniformity and consistency unlike that of the rest of Nags Head Lane. But it would be tucked away out of sight, in an enclave forming its own character and so, not harming the character of the rest of the Lane.

17. As presented the proposal would have an acceptable effect on the character and appearance of the area. But, as noted below, the proposal as presented is incomplete in that it shows no details of the intended 3.2m high noise barrier which the appellant's Noise Impact Assessment recommends as necessary. Approximately as high as the eaves of the proposed houses and to be

constructed of sheet metal on one side and perforated metal on the other and of an extent which is unknown but which would have to be great to be effective, it would clearly be an intrusive erection, even if details of its supporting structure are unknown.

18. I therefore conclude that the effect of the proposal in its totality would be unacceptable and would fail to comply with parts (i), (iii) and (viii) of Local Plan policy CP1 which require developments not to have an unacceptable detrimental impact on visual amenity or the character and appearance of the surrounding area, to be compatible with its location and surrounding development in terms of size, siting, scale, style, design and materials and to take account of the need to conserve or enhance the character and appearance, amongst other matters, of the site and surrounding area.

*Sustainable transport*

19. As already noted, Nags Head Lane is a settlement almost devoid of facilities. Some limited local facilities are available on Brook Street which is about a 15 minute walk away, linked to the site by a narrow footway along Nags Head Lane. But it is clear that for most day to day needs such as employment, schooling and shopping and for less frequent health, spiritual or recreational needs, residents of the proposed development would have to travel and would be largely reliant on less sustainable transport modes in order to do so.

20. However, the government recognises (in paragraph 29 of the NPPF) that the opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Decisions on developments which generate significant amounts of movement should take account of whether the opportunities for sustainable transport modes have been taken up and they should be located where the need to travel will be minimised and the use of sustainable modes can be maximised. However, I am not convinced that a development which would result in just four additional houses would give rise to a significant amount of movement and in any event, both paragraphs 32 and 34 of the NPPF advise that judgement should depend on the nature and location of the site, particularly in rural areas.

21. I therefore conclude that although the development would give rise to a need to travel and would not maximise the use of sustainable transport modes and so would conflict with Local Plan policy CP29(i) and (ii), that should not be a bar to development on its own but should be a factor to be considered in the overall evaluation of the proposal.

*Living conditions*

22. A four-track main line railway, elevated on an embankment runs along the north side of the site. The M25 motorway which is here three lanes wide in each direction with additional slip roads is about 20m from the west end of the site. Between them, these two noise sources produce a noise environment which the appellant's own noise consultant classifies as one where planning permission should not normally be granted.

23. The appellant's consultant argues that a form of construction which would result in acceptable living conditions inside the proposed houses would be technically achievable and could be required by condition. I have no reason to disagree but the development proposed would consist of four-bedroomed

houses where children and those desiring an active outdoor lifestyle might be expected to live, so the external environment would be important to them.

24. My experience on site was that the intermittent noise of passenger trains passing on the nearer pair of tracks was loud but bearable because of short duration. Freight trains were unacceptably louder but less frequent. Near to the site of the present house the noise from the motorway was relatively muffled and tolerable but at the western extremity of the site it was not only incessant but unbearable despite the existence of an earth bund and a close-boarded fence which I could see on the motorway's boundary.

25. The appellant's noise consultant argues that a noise barrier, 3.2m in height would suffice to result in acceptably reduced noise levels in garden areas. To be at their most effective, noise barriers need to be close to the noise source. The site is at least 20m from the motorway at its closest. The effectiveness of the proposed barrier at that distance is not demonstrated within the noise impact assessment so I am not convinced that even at the height suggested the noise barrier would provide an adequate obstruction to the more diffused noise path experienced at such a distance.

26. At approximately the same height as the eaves of the proposed dwellings, it would be a substantial structure. To be effective, noise barriers have to be continuous and of a length sufficient to ensure that noise does not spread around the end of the barrier. The consultant does not define its length or position but these are unlikely to be compatible with the retention of the trees which are shown by the appellant's consultant arboriculturalist's Tree Retention Plan to be kept at the western end of the site and, as noted above, are unlikely to result in an acceptable visual appearance.

27. But in any event, no such device is shown on any of the plans of the proposal. Without details of its position and extent, it could not be known to be acceptable in all respects and so, it would not be appropriate to require its provision by condition. Without a condition requiring the provision of an acceptable noise barrier, it is clear that the development of the site would result in living conditions quite unacceptable for potential future residents. The development would be contrary to Local Plan policies CP1(ii) and PC4 which require development not to have an unacceptable detrimental impact on the general amenities on the occupants of the proposed development by way of general disturbance amongst other matters and which would not permit residential development where the occupants would experience either significant internal or external noise disturbance. This alone would require the appeal to be dismissed even if all other matters were acceptable.

*Flood risk*

28. The Environment Agency's Surface Water Flooding Map shows that the entire site is at risk of flooding from surface water. There are four levels of risk, ranging from High to Very Low. The map is at a small scale but it is nevertheless clear that a substantial part of the site would be at High Risk. This is confirmed in paragraph 12.2 of the appellant's own consultant's Flood Risk Assessment dated January 2016.

29. Section 11.3 of the same report notes that modelling of both a 1 in 75 year event and a 1 in 200 year event demonstrated that there was a medium risk of flooding on site to depths ranging from 10cm to 1m. To deal with the risks, the

appellant's consultant recommends a combination of raising finished floor levels within the proposed dwellings by at least 300mm above current site levels together with underground containment or an attenuation pond to deal with the increased run-off from the greater quantity of impermeable surfaces proposed.

30. The spot heights for the site shown on the submitted drawings show that the site falls from about 49.75 aod in front of the present house to about 47.3 aod at the western extremity of the site. In consequence, implementation of the recommendation that finished floor levels should be at least 300mm above current site levels would mean that, at the lower end of the site, houses would need to be raised about 2.7m above the ground level at that point. This does not appear to be shown on any of the submitted plans for the proposal.

31. Moreover, the position shown on the submitted drainage plan for an underground attenuation system is at the lowest end of the site, at greatest risk of flooding, which would overwhelm and thus render nugatory any underground attenuation system placed in that position.

32. I conclude that the proposal would have a quite unacceptable risk of flooding. Although no specific Local Plan policy is quoted in the reasons for refusal, national policy is clear that vulnerable development should not be located in flood risk areas unless no other sites are available and that if development has to be located in an area at risk of flooding it would be made appropriately flood resistant and resilient, including safe access and escape routes. None of these prerequisites are demonstrated in this appeal proposal. This alone would require the appeal to be dismissed even if all other matters were acceptable.

*Bats*

33. On the strength of a bat dropping found on a window sill, the appellant's own Ecological Appraisal and Bat Scoping Report identifies that the existing building has moderate – high bat potential. It recommends that 2-3 bat emergence surveys be done to establish whether the existing house is used as a bat roost. There is no information to show that this recommendation has been followed.

34. Bats are a protected species, so, without the information which bat emergence surveys would have provided, I cannot be sure that the proposal which would involve the demolition of the existing building identified as potentially valuable to bats would not have an unacceptable effect on the habitat of a protected species. The development would therefore be contrary to Local Plan policy CP1(viii) which requires a proposal to take full account of the need to conserve biodiversity, amongst other matters.

*Highway safety*

35. The submitted plans show a shared surface access way meeting Nags Head Lane at an angle slightly adrift of ninety degrees. No dimensions or sightlines are indicated on the plans. The junction would be on the outside of a slight bend, which is favourable for visibility. At this point the property boundaries are set back from the carriageway so that sightlines appear reasonably good, even though there is no drawing to prove the point.

36. The dimensions of parking spaces and garages (2.5m x 5m and 3m x 6m respectively) would be less than sought by the County Highway Authority (2.9m x 5.5m and 3m x 7m respectively) but would still be considerably in

excess of the dimensions suggested in figure 8.18 of MfS so I am not convinced that the shortfall would be significant.

37. A note on the Fire Brigade Access Plan asserts that there would be a 3.7 minimum width of road between kerbs. The proposed site plan shows an access of a width which scales off at approximately 4.8m. The government's Manual for Streets (MfS) suggests that this would be adequate for two cars or one car and one lorry to pass but not for two lorries to pass. Although this might not be a common event in an access serving only five dwellings, its curved alignment means that there would not be visibility from end to end and so a width of 5.5m would be required as indicated in the response from the County Highway Authority.

38. I conclude that, because of this last point, the effects of the proposal on highway safety would be unacceptable. The development would be contrary to Local Plan policies CP1(iv) and T2(ii). These require developments to comply with the County Highway Authority's guidance and to provide a satisfactory means of access and satisfactory parking and servicing arrangements.

*Conclusions*

39. Because I have concluded that the proposal would not be inappropriate development in the Green Belt, the need for other considerations to outweigh both that harm and any other harm does not arise. Yet, another balancing exercise of a different kind is necessary.

40. I note that the Council cannot demonstrate a five-year supply of deliverable housing sites. That implies that relevant policies affecting the supply of housing are out of date. Government policy contains a presumption in favour of sustainable development. For decision making this means that where relevant policies are out of date, planning permission should be granted unless specific policies in the NPPF indicate that development should be restricted or unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole.

41. Obviously, to a degree, this proposal would go towards meeting the Council's housing deficiency. But the net benefit (four additional houses) would be small. On the other hand, the adverse impacts of expecting people to live in a location with a potential for flooding, where they would need to travel for most daily needs, enduring quite unacceptable conditions of noise and served by an access not meeting requirements for highway safety would be great, far outweighing the benefits of housing provision. It follows that the proposal cannot be regarded as a sustainable development and so I dismiss the appeal.

*P. W. Clark*

Inspector