
Appeal Decision

Site visit made on 12 December 2016

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 16th January 2017

Appeal Ref: APP/W1525/W/16/3156657

**Former Garden of Mill Cottage, Mill Road, Stock, Ingatestone,
Essex, CM4 9RU**

- 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 Gary Mead against the decision of Chelmsford City Council.
 - The application Ref 16/00268/FUL, dated 17 February 2016, was refused by notice dated 18 April 2016.
 - The development proposed is erection of single dwellinghouse.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Chelmsford City Council against Mr Gary Mead. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - Whether the proposed development is inappropriate development in the Green Belt for the purposes of the *National Planning Policy Framework* and the adopted Development Plan, and;
 - The effect of the proposal on the character and appearance of the locality, including on the countryside, and;
 - The effect of the proposed on local biodiversity, and;
 - The effect of the proposed development on protected trees, and;
 - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances needed to justify it.

Reasons

Whether inappropriate development

4. The *National Planning Policy Framework* (the Framework) sets out national policy on Green Belts, and is an important material consideration. The Government attaches great importance to Green Belts. Paragraph 87 of the
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Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In local policy terms the Green Belt policies of the Framework are reflected in Policies CP5, DC1 and DC12 of the *Core Strategy and Development Control Policies Development Plan Document 2001-2012*, adopted February 2008 (CS).

5. The appellant points to the fact that these policies do not specifically reflect the wording of the Framework and were adopted after 2004 and prior to 2012/13. In accordance with Paragraphs 214 and 215 of the Framework, the appellant contends that these policies should be afforded 'reduced' weight. A similar point has been made by the appellant in respect of the difference between the aim to '**protect** the intrinsic character and beauty of the countryside', as sought in Policy CP5, and '**recognising** the intrinsic character and beauty of the countryside' as set out in Paragraph 17 of the Framework¹.
6. Paragraph 215 of the Framework, when read plainly, does not seek the re-iteration of national policy in local plans *per se*, but instead an evaluation as to the degree of consistency between the two. In this case, whilst the wording between local and national policy is not identical, I find that the development plan policies are broadly consistent with those of the Framework, and should therefore be afforded great weight, as indicated by Paragraph 215 of the Framework.
7. Returning to Green Belt policy specifically, Paragraphs 89 and 90 of the Framework indicate limited exceptions to inappropriate development. In consideration of those listed in Paragraph 90, the exceptions are of limited relevance in this case and it is not suggested by the parties that the proposal would fall into any of those exceptions. I see no reason not to concur in this instance. In terms of Paragraph 89, the appellant considers that the proposal would be an exception under the provisions of the second to last bullet point, referring to 'limited infilling in villages'. This term is not, whether in full or part, defined within the Framework.
8. Policy DC12 of the CS (which is referred to in Policy DC1 of the CS) indicates that residential infilling could be that '*the site is a small gap in an otherwise built up frontage*'. Similarly, the appellant considers that 'limited infilling' is the '*infilling of a gap between two residential properties, by small to moderate scale development*'².
9. With regard to the term 'limited infilling in villages', I consider that the proposal is limited insofar as it relates to a single dwellinghouse. In terms of infilling I note the positions of the main parties. However, the proposal in this case would see the erection of single dwelling within a wide frontage facing onto the highway, with the LPA's figures suggest this is about 80 metres for the appeal site³, with a total gap between Nos 148 and 150 Mill Road of about 100 metres. The sizeable width of the gap between the existing developments either side of the appeal site provides a clear, significant and distinct gap between these parts of the built-up frontage. Moreover, the appeal site itself is a large open area with mainly low level fencing or hedgerows on its boundaries.

¹ My emphasis

² Paragraph 77, Appellant's Full Statement of Case

³ Paragraph 30, Chelmsford City Council Appeal Statement

10. Within the site itself, there is an absence of significant built form, with the site mainly consisting of a flat grassed area to the front, and beyond the mature oaks and a low fence, an area of overgrown plants. Given the size of the gap, the proximity of neighbouring buildings and the open nature of the site, I do not consider that the proposal could accurately be described as development of a gap in an otherwise built-up frontage. The proposal cannot, therefore, be considered to be 'infill' in this instance.
11. In terms of the village, running along the western boundary of the appeal site is the Defined Settlement boundary of Stock. No 148 Mill Road adjacent to the west of the appeal site, and No 89 Mill Road, opposite on the northern side of the road, both lie within the defined settlement, whereas the appeal site itself lies outside of it. I have been referred to case law⁴ which the appellant considers, in essence, indicates that defined settlement boundaries are not determinative, but which should also take account of the facts on the ground.
12. During my site visit, I saw that there is a clear visual break between the densely built-up area within the settlement boundary – that is to the west and north of the appeal site – and the looser and more sporadic development within the Green Belt mainly to the east. This reinforces the important distinction between the two areas; with that contained within the Defined Settlement boundary appearing as a relatively close-knit settlement, whereas the area of Green Belt (including the appeal site) beyond the settlement boundary is more sporadic in form, and therefore different in both character and appearance.
13. The facts on the ground in this case, as considered above, are that the appeal site does not lie within the village; rather it lies within the Green Belt outside of the village – both in terms of the settlement boundary and in terms of immediate context within the street scene. In such circumstances, the appeal site does not lie within the confines of the village of Stock for planning policy purposes. Accordingly, the proposal, whilst limited in scope being for dwellinghouse, would not represent '*limited infilling in a village*' as set out in Paragraph 89 of the Framework. As the proposed development does not fall within any of the exceptions listed within the Framework or local plan policies it is, by definition, inappropriate development.
14. The Framework makes clear at Paragraph 79, that the essential characteristics of the Green Belts are their openness and permanence, so any reduction in these characteristics would also be harmful. In terms of openness of the Green Belt, it is clear that the currently open nature of the site, which has a distinct absence of built form, would be lost through the erection of a large six bedroomed detached two-storey house which drawing 15_706_005 Revision A, shows height of about 5.7 metres, with a total height of roughly 9.7 metres. There would also be a single storey detached double garage, with a height of about 6.4 metres and a floor area measuring about 6.9 metres by 7.1 metres, with a W.C, kitchenette and home office areas, as shown on drawing 15_706_006 A, within the roof. Given such dimensions and the nature of the development, I do not consider that it would be of a 'small to moderate scale' in terms of its physical size as the appellant suggests. Accordingly, the proposal would result in the loss of the open nature of the site and therefore

⁴ Paragraph 82, Appellant's Statement of Case, Appendix B1 - *Julian Wood v Secretary of State and Gravesham Borough Council 2015 EWCA Civ 195*. See also Appeal Ref 2186760, Land Adj. the Sea-Ho PH dated 11 September 2015, Inspector C Parker

significantly erode openness of the Green Belt. The proposal would therefore have an adverse impact on the openness of the Green Belt.

15. Accordingly, as it does not fall into one of the exceptions listed in Paragraph 89 or 90 of the Framework, the development proposed would be inappropriate development, as defined by the Framework. As such, the proposed development would be contrary to Policies CP5, DC1 and DC12 of the CS and those of the Framework, which, amongst other aims cited previously, seek to maintain the national and local planning purposes of the Green Belt.

Character and appearance

16. The appeal scheme would introduce a large six bedroom detached dwelling and garage in an area that was a former garden area serving Mill Cottage. This area is distinctly rural in character, and sits outside of the settlement of Stock; both in policy and 'on the ground' terms, as considered earlier within this decision. The appellant considers that the impact would be low on the area as the proposed dwelling is well-proportioned when considered in the context of nearby dwellings.
17. However, the nature of the proposal in this case is such that the rural character of the site would alter dramatically. Not only is there likely to be obvious changes in the appearance with the large dwelling, detached double garage, driveway and landscaping, but the existing character of the site, which appears as an open grassed area to the front and a long grassed area beyond the post and rail fence within the countryside, would be eroded. This erosion of the character and appearance would be exacerbated by the overall scale and size of the detached dwelling and also the associated domestic paraphernalia that one would typically see with private residential dwellings such as patio areas, outdoor seating areas and so on. Such features and the more permanent structures proposed, when taken as a whole, would harm the character and beauty of the countryside and the street scene more generally.
18. I therefore conclude that the proposed development would have a materially harmful impact on the character and appearance of the locality, including on the countryside. Accordingly the proposal is contrary to Policy CP5 of the CS, which amongst other aims seeks to protect the intrinsic character and beauty of the countryside. It would also conflict with one of the Core Planning Principles of the Framework, which includes that planning should recognise the intrinsic character and beauty of the countryside.

Local Biodiversity

19. The Council indicates that the main concern over local biodiversity relates to the effect of the proposed development on Great Crested Newts (GCN). My site visit confirmed that since the Biocensus Ecological Assessment (BEA) was undertaken and published in November 2015, the appearance of the site has altered. For example, the site photos on page 17 shows an area of cleared ground and a grassed area. At the time of my site inspection, the cleared area was now grassed and the grassed area now had tall grass, with a post and rail fence separating the two areas.

What this means in practice, is that the nature of the site, from a cleared or short grassed area, has changed significantly. Indeed, it has changed to an extent that the low level of physical protection afforded to species from long

grass for example at the time of the original report is drastically different now. I am also mindful that there are local water sources, such as the pond within the grounds of Mill Cottage. The combination of the trees and water sources, together with the rural location, means the site has the potential to contain habitats that could serve both protected and non-protected species.

20. The Framework indicates that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity and that opportunities to incorporate biodiversity in and around developments should be encouraged (Paragraph 118). This is confirmed by Paragraph 17 of the Framework, which details the core planning principles and indicates that planning should contribute to conserving and enhancing the natural environment (bullet point 7).
21. The national *Planning Practice Guidance* (the Guidance) indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate.⁵ In this case, the type of development is the redevelopment of the site and the erection of a new dwelling, double garage, driveway and landscaping on the site. In terms of location, the site is within the countryside and surrounded by a mixture of open fields with tree and hedgerow lined boundaries, with an accessible water source nearby. In this respect, the area could provide a diverse and rich potential habitat for protected species; including for GCN.
22. The absence of a species specific ecological scoping survey for GCN means that the possible level of this potential protected species is not known, beyond the BEA view that the site should be considered to have a low potential to support GCNs and other amphibians. However, this was on the basis of a walk-over survey in October 2015 and the nature of the site physically has altered since then. The type and location of development in this case means that there may be a significant impact on biodiversity, and the evidence to the contrary is lacking in this case.
23. *Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system (the Circular)* remains the government's main guidance relating to protected species. Put simply, Paragraph 99 of the Circular indicates that before planning permission is granted the presence or otherwise of protected species should be established, and coverage under planning conditions should be in exceptional circumstances. Whilst I note the potential use of planning conditions in terms of further surveys, the 'exceptional circumstances' described by the Circular for using such conditions do not exist in the case before me. At the same time, it explains that developers should not be required to undertake surveys unless there is a reasonable likelihood of the species being present and affected by the development.
24. In this case, there are nearby habitats which could provide a home for a number of protected species, such as GCN and the appellants own survey indicates that at November 2015 there was a low potential for the site to support GCN on the basis of the state of the site at that time. Whilst there is no conclusive evidence that protected species are present, either on or near to

⁵ Paragraph: 016Reference ID: 8-016-20140612, Revision date 12.06.2014, *Planning Practice Guidance*

the site, the lack of species specific scoping surveys means that there is an unacceptable level of uncertainty about how the proposal may affect local biodiversity. The Framework, Guidance and Circular make clear the importance the government attaches to conserving and enhancing biodiversity. The lack of establishing the existence of protected species such as GCN and what mitigation may be required, means that insufficient information exists for a decision-maker to satisfactorily conclude that the proposed development would not result in material harm to local biodiversity.

25. Accordingly, I conclude that the proposed development would be contrary to the provisions of the Framework, as supported by the Guidance and the Circular, which amongst other aims seek to conserve and enhance the natural environment.

Impact on protected trees

26. With regards to trees, on the appeal site there are two mature oak trees subject to a Tree Preservation Order numbered TPO/2015/025. The Council considers that the root protection areas (RPAs) of these trees are likely to extend into the area shown as driveway. This is due to the stem diameter of the trees, which when used to calculate the root area, would mean that that shown on drawings 15_706_002 and 15_706_003 as RPAs would be inadequate. The Council also point to the lack of a full Arboricultural impact assessment, which could detail any potential impact.
27. To the contrary the appellant points to drawing 15_706_003A (contained in Appendix A1), which shows the RPAs. In this respect, the appellant considers that the driveway would be located adjacent to the RPAs, rather than within the RPAs. What is more, a condition could be used to secure the protection of these trees and their RPAs.
28. Section 197 of the TCPA sets out that LPAs have a duty to ensure that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. Clearly, in this instance no one is suggesting the removal of the protected trees. The question is whether the driveway would have an adverse impact on the RPAs or, put another way the roots, of these trees.
29. The Council is correct that roots are an integral part of trees, and any damage to them can be irremediable. However, there are a number of solutions that the appellant might be able to employ once the precise extent of the RPA is agreed between the parties. For example, it may be possible to use a no-dig drive surface, or relocate the driveway so that it would be further from the trees and their RPAs. These are solutions that can be addressed or sought through the use of planning conditions.
30. I therefore conclude that the proposed development would not have a materially harmful impact on protected trees that could not be mitigated through the potential use of appropriately worded planning conditions. I therefore find that the proposal would accord with Policy DC14 of the CS, which, amongst other aims, seeks to refuse permission for any development that would be liable to cause demonstrable harm to protected trees unless conditions can be imposed requiring the developer to take steps to secure their protection.

Other considerations

31. There is some disagreement between the parties on the issue of housing land supply. The appellant considers that the Council cannot demonstrate a five year supply of housing sites, as detailed in their written submissions. In support the appellant points to a number of appeal decisions, case law, and their own assessment of the Council's position. To the contrary, the Council considers that a supply of deliverable housing sites can be demonstrated at the present time, as established in their written submissions.
32. I have taken full account of the contents of paragraphs 14 and 49 of the Framework. Nevertheless, in this instance I have found that the proposal would constitute inappropriate development within the Green Belt and be harmful for other reasons. Therefore, even if there were not such a supply; and the evidence is conflicting in both respects, the contribution that the development would make to housing land supply would not outweigh the harm the scheme would cause.
33. In this case, the proposal would not accord with the development plan, and there is no justification for making an exception to the restrictive policies referred to above. It should, nonetheless, be noted that the proposal would contribute one dwelling to housing supply, but this is a benefit of the proposal which should be afforded only limited weight given its scale.

Conclusion

34. Paragraph 88 of the Framework requires decision-makers to ensure that substantial weight is given to any harm to the Green Belt. In this case the proposal is inappropriate development and would reduce openness of the Green Belt. Added to this is the other harm identified, which includes the material harm to character and appearance, and the lack of information on protected species, as sought by both development plan policies and the Framework.
35. Other considerations weighing in favour of the development must clearly outweigh this harm. Principal among these is the contribution to local housing supply. Whilst I acknowledge these, and all other considerations put forward by the appellant, Paragraph 88 makes clear that all development in the Green Belt is subject to stringent national planning policy tests, which I have applied.
36. In light of this, I conclude that those considerations put forward which weigh in favour of the proposal fail to clearly outweigh the substantial harm by reason of inappropriateness and the other harm I have identified. The very special circumstances needed to justify the proposal do not therefore arise, and the proposal conflicts with Policies CP5, DC1 and DC12 of the CS, and the Policies of the Framework, the aims of which I have aforesaid.
37. Accordingly, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR