
Appeal Decision

Site visit made on 11 April 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 12th June 2017

Appeal Ref: APP/H1515/W/17/3166967

Pheasant Lodge, Ongar Road, Kelvedon Hatch, Brentwood CM15 0DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mr B & S Reddan and Bunton against the decision of Brentwood Borough Council.
 - The application Ref 16/01501/OUT, dated 26 October 2016, was refused by notice dated 21 December 2016.
 - The development proposed is the construction of two single storey dwellings on former commercial storage land.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application form states that the application was submitted in outline, with all matters reserved. Whilst the planning statement that accompanied the application describes the application as in outline with siting, scale and access to be determined at this stage, the Council determined the application on the basis that, in accordance with the application form, all matters were reserved. This approach was not challenged by the appellants in their appeal statement. I have therefore dealt with the appeal on the same basis as the Council. I have therefore taken the illustrative plans that have been submitted into account only insofar as they are relevant to my consideration of the principle of the development on the appeal site.
3. The Supreme Court judgement in relation to two cases (Suffolk Coastal DC v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East BC [2017] UKSC 37) was issued on 10 May 2017. The parties were invited to comment on the bearing this judgement has on the appeal and the comments received have been taken into account in this decision.

Main Issues

4. The main issues are;
 - whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework ('the Framework') and development plan policy and ;
 - the effect of the proposal on the character and appearance of the area; and,
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other
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considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Inappropriate development

5. The appeal site is land to the rear of Pheasant Lodge and is located within the Green Belt. Policy GB1 of the Brentwood Replacement Local Plan 2005 ('Local Plan') opposes the construction of new buildings, other than those appropriate to a Green Belt, except in very special circumstances. Policy GB2 of the Local Plan requires that new development does not conflict with the purposes of including land within the Green Belt and does not harm openness. Paragraph 89 of the Framework advises that, other than in relation to certain exceptions, the construction of new buildings in the Green Belt is inappropriate. Of these exceptions, two are of relevance to the appeal proposal: limited infilling in villages (paragraph 89, fifth bullet point) and the redevelopment of previously developed sites (paragraph 89, final bullet point).
6. In relation to limited infilling in villages, in contrast to the approach of the Framework, policy GB4 of the Local Plan supports infill residential development within certain Established Areas of Development comprising tight knit frontage ribbon development. Ongar Road is identified as such an area. However, the site is located to the rear of linear development along the road, next to a neighbouring outbuilding, and has open countryside to the north and east. As a result, in my judgement, it does not constitute a gap between built development and so does not represent a genuine infill site in accordance with this policy. The proposal is therefore contrary to policy GB4. Even if I had found that this was not the case, policy GB4 in not restricting infill to villages is inconsistent with the Framework. As paragraph 215 makes clear, where there is more than a limited degree of conflict between the Framework and the approach of the development plan greater weight should be given to the Framework. I therefore afford greater weight to paragraph 89 of the Framework which in this regard the proposal would also be contrary to.
7. In relation to the redevelopment of previously developed sites, the Framework allows for the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. It is common ground that the appeal site, which is covered by hardstanding and is used for commercial storage in relation to the shop at Pheasant Lodge, is previously developed land. Given the current uses, which I have no reason to suppose are unlawful, I have no reason to disagree.
8. The site is bounded by Pheasant Lodge and the shop to the front, a concrete panelled wall along its side and rear boundary, and a large outbuilding to the rear of Park View. As a result, it is well contained and there would be no harm to any of the purposes of the Green Belt as a consequence of the development proposed.
9. In terms of openness, the Framework states that the essential characteristic of Green Belts is their openness and permanence. In this case, the only built development on the appeal site consists of a concrete panelled fence around its perimeter.

10. In the 1990s there is photographic evidence that a large marquee occupied much of the appeal site. However, from the late 1990s onwards the submitted photographs show only a small marquee, gas cylinders and, in one photograph, a skip. Collectively, these objects occupied only a small proportion of the site. As a result of the shop increasingly relying on internet based sales and supplies, the planning statement advises that external storage has become less intense. The Council as part of its application site visit in late 2016 noted only the presence of some parked vehicles on the site and the storage of some gas bottles along the site access. During my site visit, I also only saw some parked vehicles and gas bottles on the site. Reference has been made to marquees and external storage occupying a large part the site for many months of the year. However, the evidence that has been submitted and the site visits do not support this to be the case.
11. My attention has been drawn to a recent appeal decision¹. In it the Inspector found that a container which appeared to be permanently placed on a hard surfaced area should be taken into account in relation to the final paragraph 89 exception regarding redevelopment of previously developed sites. As a consequence, the appellant is of the view that marquees on the site should be similarly considered. However, when erected the marquees remain in place only for some months each year. As a result, in my judgement, unlike the container mentioned, as a matter of fact and degree they should correctly be treated as a temporary feature, rather than a permanent building. Consequently, I have not taken marquees into account in relation to this exception. Taking all these matters into account, the effect on openness of the boundary fence and use of the site for storage is therefore limited.
12. Even if I had found differently in relation to the marquees and taken them into account, given that the evidence is that due to changes in the retail trade marquees only occupying a small part of the site have been erected in recent years and that they are only present for some months of the year, their effect on openness would be limited and would not have altered my conclusion in relation to this issue.
13. The appellant submitted plans with the application illustrating how a pair of semi-detached one bedroom bungalows could occupy the site. As the application is in outline the appellants are not tied to the detail shown on this plan. However, given that the plans show bungalows occupying the appeal site I have treated this as indicative of their intentions. The application has accordingly been assessed on this basis. The erection of two semi-detached bungalows, each with a ridge height of 4.59m, length of 6.9m and an overall joint width of approximately 16m, with the parked cars of future occupiers and the retention of hard standing for access and parking, would have a significant impact on openness. As a consequence, this part of the Green Belt would be considerably less open than its current use for storage associated with the shop, hardstanding and fence.
14. For the reasons given above, the proposal would be contrary to policies GB1 and GB2 of the Local Plan and paragraph 89 of the Framework. The proposal therefore represents inappropriate development and such development would, by definition, be harmful to the Green Belt as described in paragraph 87 of the Framework.

¹ Appeal ref APP/H1515/W/16/3154151

Character and appearance

15. Pheasant Lodge is located at the end of a line of closely spaced dwellings within the open countryside where houses are set close to the back edge of the pavement behind shallow front gardens. Whilst the appeal site is used for storage, other than in relation to a large outbuilding to the rear of Park View, built development in depth is not a feature of this line of dwellings. The construction of two bungalows on the appeal site to the rear of Pheasant Lodge would be at odds with the pattern of development that characterises the area. The incongruous nature of the bungalows would be seen in public views along the access to the side of the shop from Ongar Road and the roofs of the bungalows would be apparent above the height of the side boundary fence from the adjacent public footpath.
16. For these reasons, the proposed development would therefore demonstrably harm the character and appearance of the area and not constitute good design, contrary to policy CP1 of the Local Plan and a core planning principle of the Framework. Policy CP1, amongst other matters, requires that the layout of new development should be compatible with its location and surrounding development.

Other considerations

17. I have found the proposal would be inappropriate development in the Green Belt and thus should not be approved except in very special circumstances. It is therefore necessary to consider the grounds put forward by the appellants, to determine whether there are any material considerations which would amount to very special circumstances that would outweigh the harm by reason of inappropriateness, and the harm that I have identified to the character and appearance of the area.

Housing land supply

18. The Framework requires that local planning authorities annually identify a five year housing land supply. It is common ground that the Council cannot do so. The provision of two dwellings would make a small contribution towards helping address this shortfall. Whilst this is a social benefit of the scheme, I am mindful of Planning Practice Guidance which states that 'Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development on a site within the Green Belt.'² As a result, this is a consideration only of only limited weight in favour of the appeal.

Potential for storage on the site

19. Other businesses could occupy the shop and make use of the yard for storage. However, given the limited size of the shop and appeal site, and the space needed for vehicles to deliver to the storage area and manage it, I am not persuaded that there is a significant probability of storage occurring that would exceed the quantum of development represented by the appeal proposal. As a result, I attach little positive weight to the fallback position of possible future use of the site having a greater adverse impact on openness than the appeal proposal.

² Ref ID: 3-034-20141006 'In decision taking, can unmet need for housing outweigh Green Belt Protection?'

Planning permissions for housing in the Green Belt

20. Recent planning decisions of the Council have been referred to where permission was granted for housing in the Green Belt. They involved the re-use of sites that were wholly or partly previously developed land and which had involved to differing extents external storage. In these cases, against officer recommendation, the Council either found that the proposal would not constitute inappropriate development, or that very special circumstances existed that clearly outweighed the harm that would be caused.
21. It is an established principle that each application is assessed on its own particular merits. For the reasons that I have given, I have found that the proposal would be inappropriate development in the Green Belt. As to whether very special circumstances exist, as the Council exercised its judgement in relation to the evidence before it with regard to these other schemes, so must I in relation to the evidence before me regarding the appeal proposal. The fact that permission was granted for residential development on these other sites is therefore not a consideration of material weight in favour of the proposal.

Accessibility

22. Bus services operate along Ongar Road and the appeal site is within walking distance of shops and services. Although located within the open countryside, it is therefore in a reasonably accessible location. However, this is an absence of harm, as opposed to a consideration that attracts positive weight.

Economy

23. The proposed development would create some employment during the construction period and the additional residents housed by the development would to a limited extent increase local spend. However, given that the construction period would be short lived and the small scale of the scheme, I attach limited weight to this consideration in favour of the appeal.

Overall conclusions: The Planning Balance

24. The proposal represents inappropriate development, which by definition, would be harmful to the Green Belt as described in paragraph 87 of the Framework. Paragraph 88 of the Framework advises that substantial weight should be given to any harm to the Green Belt. I have also found that there would be material harm to the character and appearance of the area. Clearly, therefore the degree of harm caused would be considerable.
25. I find that the other considerations put forward by the appellant fall well short of clearly outweighing the harms identified and thus the very special circumstances necessary to justify the development do not exist. As such the proposal would be contrary to Green Belt policy contained within the Framework and policies GB1 and GB2 of the Local Plan.
26. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the Council, as is the case here, cannot demonstrate a five-year supply of deliverable housing sites. Policies GB1 and GB2 presume against new buildings within the Green Belt unless they are appropriate to a Green Belt and that development does not conflict with the purposes of including land within the Green Belt and does not harm openness. Therefore, whilst they affect the location of where housing may be developed they are not policies for the provision of housing. Consequently, policies GB1 and GB2 are not out of date.

27. In circumstances where less than a five year housing land supply exists, the Framework indicates that permission should be granted, unless there are specific policies in the Framework (such as land designated as Green Belt), which indicate that development should be restricted. Given that I have found that there are no very special circumstances, Green Belt policy provides that to be the case here. Overall, therefore, the proposal does not represent sustainable development. It is contrary to the Green Belt policies of the Local Plan and material considerations do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector