
Appeal Decision

Site visit made on 12 June 2017

by Rachel Walmsley BSc MSc MA MRTPI

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

Decision date: 05 September 2017

Appeal Ref: APP/B5480/W/17/3170026

Plot of Land, Bower Farm Road, Havering Atte Bower, Essex RM4 1QR

- 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 Howard against the decision of the Council of the London Borough of Havering.
 - The application Ref P1693.16, dated 19 October 2016, was refused by notice dated 15 December 2016.
 - The development proposed is erection of 3 bed chalet-style home with garage.
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Decision

1. The appeal is dismissed.

Procedural matter

2. There is a discrepancy within the appellant's evidence concerning full or outline planning permission. However, the Council's evidence pertains to an application for full planning permission and in the absence of any substantive evidence to suggest the contrary, I have considered the appeal on the same basis.

Main Issues

3. These are:
 - (i) whether the proposal would be inappropriate development in the Green Belt;
 - (ii) the effect of the proposal on the openness of the Green Belt;
 - (iii) whether the proposal would made adequate provision for education infrastructure;
 - (iv) the effect of the proposal on the character and appearance of the Conservation Area and local area;
 - (v) whether or not there are other considerations weighing in favour of the proposal; and, if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

4. The appeal site concerns a wooded area that is accessed off Bower Farm Road, an un-made track that is rural in character given the presence of hedgerows and trees and fields. The site is within the Metropolitan Green Belt and the Havering-atte-Bower Conservation Area (CA).

Whether the proposal would be inappropriate development in the Green Belt

5. Policy DC45 of the DPD¹ permits new buildings within the Green Belt provided, amongst other matters, they involve limited infilling. This is broadly consistent with the National Planning Policy Framework (the Framework) which at paragraph 89, makes an exception for limited infilling. However, paragraph 89 goes a step further to say that the limited infilling is to be within villages.
6. The village of Havering-atte-Bower constitutes mainly ribbon development formed of properties along North Road and Orange Tree Hill. Indeed, many common features of a village including a church, a village green and a school are served by these roads. The appeal site fronts Bower Farm Road which runs behind the village described. Therefore, in the absence of any evidence which delineates the envelope of the village, I find that the appeal site is outside the village. As the appeal site is not within the village, the development would not be one of the exceptions listed in paragraph 89 of the Framework. Consequently the proposal would be inappropriate development in the Green Belt. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt.

Effect on openness of the Green Belt

7. Although mostly wooded, the appeal site is undeveloped and therefore is open in character, contributing to the open and rural character of the area. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. Openness derives from an absence of built form. By virtue of the new dwelling being a solid and permanent structure in a place where there is currently no development, the dwelling would reduce the openness of the Green Belt. With the dwelling would be a detached garage and areas of hardstanding forming the driveway and amenity areas around the edges of the dwelling. These additions would reinforce the building's presence on the site and therefore exacerbate the harm identified to openness. It is on this basis that the harm to openness would be significant. Paragraph 88 of the Framework indicates that substantial weight should be given to this harm.

Education infrastructure

8. Policies 8.2 of the London Plan² and DC72 of the DPD encourage the use of financial contributions to address strategic and local development priorities and help provide the infrastructure that is necessary to mitigate the impact of development. Policy DC29 of the DPD, together with the Supplementary Planning Document on Planning Obligations³ (the SPD), are more specific, supporting payments for school infrastructure, including primary and secondary

¹ London Borough of Havering, Core Strategy and Development Control Policies Development Plan Document (Adopted 2008)

² The London Plan, The Spatial Development Strategy for London, Consolidated with Alterations since 2011 (March 2016)

³ Planning Obligations, Supplementary Planning Document (February 2013). London Borough of Havering Local Development Framework.

- education facilities. These policies are broadly consistent with paragraph 203 of the Framework which explains that planning obligations may be sought to mitigate the impacts of new development.
9. There is no evidence before me to suggest that the appeal proposal would generate any demands on specific schools, such that the contribution sought could reasonably be regarded as being directly related to it. Indeed, the evidence implies that the financial contribution has less to do with mitigating the impact of the development than it has with securing a generic contribution towards unspecific education infrastructure projects in the area.
 10. Following the Court of Appeal judgement dated 11 May 2016⁴, legal effect is given to the policy set out in the Written Ministerial Statement (WMS). It explains that section 106 planning obligations should not be sought to secure contributions from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1000 sqm (gross internal area). Paragraphs 013-017, 019-023 and 031 of the Planning Practice Guidance (the Guidance) elaborate, stating that affordable housing and tariff style contributions should not be sought from the small scale developments identified.
 11. I am required to determine the appeal in accordance with the development plan unless material considerations indicate otherwise. The WMS, as an expression of Government planning policy, is a material consideration to which I must give considerable weight.
 12. Technical Reports 1 and 2⁵, which inform the SPD, identify the standard charge for application per dwelling; in this case a sum of £6000 towards education provision. The £6000, as acknowledged within the Council's Statement, is from a tariff style based list. Whilst this list is not a charging schedule, it is a figure derived from a fixed sum of £20,444 per dwelling towards infrastructure and discounted to take account of viability. The Guidance explains that tariff style contributions are those that contribute to pooled funding pots intended to fund the provision of general infrastructure in the wider area. The financial contribution would be used in this way, to fund the provision of general education infrastructure.
 13. In my judgement, therefore, the £6000 towards education infrastructure would be a tariff style contribution. As the development is for less than 10 dwellings, I find, in line with the WMS and the Guidance, that a financial contribution towards education facilities within the area would not be appropriate.
 14. I am also mindful of the pooling restrictions set out in the Community Infrastructure Levy (CIL) Regulations. These prohibit the pooling of more than five planning obligations towards a single infrastructure project. The Council states ongoing monitoring would ensure that no more than five separate contributions would be used on any particular project. Nonetheless, in the absence of any clarity about what the obligation would be spent on, there can be no certainty on the basis of the evidence before me that the obligation sought would not fall foul of the pooling restrictions.

⁴ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

⁵ Planning Obligations Supplementary Planning Document: Technical Report 1: Assessment of Infrastructure Costs (adopted February 2013) and Technical Report 2: Viability Assessment (adopted February 2013)

15. I am aware of recent appeal decisions that post-date the Court of Appeal's judgement and that conclude differently on this matter. However, the WMS does not appear to have been a consideration in these appeals and, therefore, I do not consider them to set precedents that I am bound to follow.
16. In short, there is an absence of any firm evidence linking the effects of the appeal with an adverse impact upon a specific education facility; there is a failure to demonstrate that the obligation would meet the CIL Regulation pooling test; and a material consideration, in the form of the WMS is powerful enough in this instance to override relevant development plan policy. I conclude, therefore, that there is no requirement for the appeal proposal to make a contribution towards education infrastructure.

Character and appearance of the Conservation Area and local area

17. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that '*special consideration shall be paid to the desirability of preserving or enhancing the character or appearance of the area.*' Meanwhile, policy DC68 of the DPD seeks to preserve or enhance the character of a Conservation Area and in particular supports development that does not involve the loss of trees which contribute to the character or appearance of it. Paragraphs 132 and 133 require a proposed development to be assessed against the significance of the conservation area and with regards to an assessment of harm.
18. With regards to the impact of the development on the CA, the Council's concerns relate to the loss of the trees and the effect this would have on the character and appearance of it. In light of the evidence before me, I find no justifiable reason to consider the effect of the development on the CA in any way other than with regards to trees.
19. The appeal site is to the north-west of the CA. With the site largely hidden from view and the Conservation Area Character Appraisal⁶ saying little about the contribution trees make to the character of the CA, the appeal site makes a limited contribution to the character and appearance of the CA overall.
20. Whilst the development would result in the loss of some of the trees within the site, a number would be retained. Trees would, therefore, remain a feature of the site and as a result would continue to contribute to the verdant character of its surroundings. When taking into account the less than significant contribution the site makes to the CA, the proposal would leave the character and appearance of the CA unharmed; that is to say preserved.
21. The site is screened from public views from the village given its position behind existing properties. It is most visible from Bower Farm Road, however, views would be limited to those from the lane itself, by people passing the site on foot or by car. With the proposed dwelling set back into the site, together with its secluded nature and the proposed retention of trees, the house would not have a discernible effect on the character and appearance of the area. More noticeable would be the detached garage to the front of the site and the associated driveway and hard landscaping. However, the site plan indicates that soft landscaping and tree retention would help integrate the development

⁶ London Borough of Havering, Havering atte Bower Conservation Area, Character Appraisal and Management Proposals

into its surroundings. The development would, therefore, be sympathetic to the verdant character of the area.

22. In all, I find that the development would preserve the character and appearance of the CA and would be sympathetic to the character and appearance of the area. The proposal would not, therefore, be contrary to policy DC68 of the DPD nor paragraphs 132 and 133 of the Framework with regards to heritage assets, nor policies DC61 and DC60 of the DPD which seek to avoid the loss of trees of amenity value and require development to maintain, enhance or improve the character and appearance of the local area.

Other considerations

23. It is common ground between parties that the Council does not have a 5 year supply of housing land. Whilst the Council may be able to demonstrate a 5 year supply once it adopts its new Local Plan, this stage has not been reached. One dwelling would help contribute to the Council's housing supply and should be attributed moderate weight.
24. A new dwelling constructed to 'zero carbon' level under the Code for Sustainable Homes is welcome, however, as the development is for one dwelling this benefit carries limited weight.
25. The dwelling would be close to the existing village. However, there is nothing within the evidence before me to demonstrate that the daily needs of prospective occupiers could be met without heavy reliance on the motor car. The location of the site, therefore, carries no weight.
26. Paragraph 55 of the Framework states that new isolated homes in the countryside should be avoided unless there are special circumstances. For the reasons given above, the development would be in the countryside. Whilst noting the design credentials of the development proposed, there is nothing before me to indicate that the dwelling would be of an exceptional design or innovative nature to constitute a special circumstance according to paragraph 55.
27. I have no doubt that the development would help meet a personal need. I am also aware that the development is reported to not adversely affect neighbour's amenities and on the basis of the evidence before me, I find no reason to take a different view. However I give limited weight to these matters.

Very special circumstances

28. Paragraph 87 of the Framework sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
29. I have concluded that the proposed development would be inappropriate development and would, therefore, by definition be harmful to the Green Belt. I have also concluded that the proposal would be harmful to the openness of the Green Belt. Substantial weight must be given to these harms. I have not found any other harm.

30. The issues of education infrastructure and the effects on the character and appearance of the CA and area generally are neutral considerations.
31. The harm by reason of inappropriateness, and the harm to the openness of the Green Belt are not clearly outweighed by the moderate weight that is attributed to the provision of a dwelling and the limited weights afforded to the other considerations. Therefore, the very special circumstances necessary to justify the development do not exist.
32. The degree to which housing land supply can be a very special circumstance has been tested in the Courts. Whilst noting the appellant's reference to *Suffolk Coastal District Council v Hopkins Homes*⁷ and *R (Lee Valley Regional Park Authority) v Broxbourne Borough Council*⁸, the Planning Practice Guidance confirms that unmet housing need is unlikely to outweigh the harm to the Green Belt. I concur with the appellant that the lack of a 5 year supply of housing has implications for the weight that can be attached to the Council's housing supply policies, but in the context of paragraph 14 of the Framework Green Belt is a specific policy of the Framework that indicates that development should be restricted.

Conclusion

33. For the reasons given above I conclude that the appeal is dismissed.

R Walmsley

INSPECTOR

⁷ *Suffolk Coastal District Council v Hopkins Homes* (2017) UKSC 37

⁸ *R (Lee Valley Regional Park Authority) v Broxbourne Borough Council* (2015) EWHC 185 (Admin)