
Appeal Decision

Site visit made on 26 February 2020

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2020

Appeal Ref: APP/H1515/W/19/3234463

Original Part Vegetable Plot & Commercial Woodyard, Chelmsford Road, Blackmore Essex CM4 0SF

- 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 Trustees of A and G Meadows C/O Backhouse Solicitors Ltd against the decision of Brentwood Borough Council.
 - The application Ref 18/01932/FUL, dated 7 December 2018, was refused by notice dated 22 March 2019.
 - The development proposed is described as, 'change of use from part vegetable plot and commercial wood yard into 9 dwellings (2 no semidetached and 5 detached units) all with single or double garages and gardens, includes improving existing vehicular and pedestrian access onto Chelmsford Road and new access from Spriggs Lane both onto new access roads within site and landscaping'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Brentwood Borough Council against Trustees of A and G Meadows. An application for costs was also made by Trustees of A and G Meadows against Brentwood Borough Council. These applications are the subject of separate Decisions.

Procedural Matter

3. While I note the address on the decision notice, I have used the address from the application form in the interests of certainty.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (Framework) and any relevant development plan policies, including its effect on openness;
 - whether the proposed development would provide a suitable location for housing with particular regard for accessibility of services and facilities;
 - the effect of the proposed development on highway safety and whether the proposal would provide adequate parking provision;

- the effect of the proposed development on the ecology of the site and surrounding area;
- the effect of the proposed development on the existing trees and hedges on the site;
- the effect of the proposed development on the character and appearance of the area including the setting of Elm Farm, a Grade II Listed Building;
- the effect of the proposed development on the living conditions of the occupiers of mobile home units 5, 7 and 9 with particular regard for privacy; and
- would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriateness

5. From the evidence before me the site lies within the Metropolitan Green Belt. While I acknowledge paragraph 137 of the Framework, even if the appeal site constitutes brownfield land, this would not change the designation of the land as Green Belt. Consequently, the proposed development must be assessed within the context of this designation. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
6. I acknowledge Policy GB3 of the Brentwood Replacement Local Plan Adopted August 2005 (LP). However, this Policy refers to developments within a number of settlements that are not within the Green Belt. From the evidence before me, the site lies outside of the settlement boundary of Blackmore and within the Green Belt. Therefore, this policy is not relevant to this proposal.
7. The Framework states that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority is one of the listed exceptions.
8. Previously developed land is defined in the Framework as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. The site is largely undeveloped with some overgrown vegetation. However, there are a number of existing structures on the site. While they may be disused with some vegetation growing around them, this is not to an extent where they

- have blended into the landscape. I acknowledge that large parts of the site are undeveloped and that the existing structure may be unlawful. However, given the definition in the Framework and that existing structures on the site are clearly visible, I consider the site to constitute previously developed land.
9. However, the issue of whether the development would be inappropriate in the Green Belt will be determined by my conclusion on the effect on Green Belt openness.
 10. A fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to keep land permanently open. Openness in terms of the Green Belt has a spatial as well as visual aspect. The existing development above ground includes a timber structure and a small number of disused green houses. In contrast, the proposal would introduce nine two-storey dwellings, as well as garages, parking areas, gardens and other domestic paraphernalia that would urbanise the site and adversely affect the spatial openness of the Green Belt.
 11. Since the site is largely undeveloped and the existing structures are located near its periphery, the land is largely open with some trees and vegetation near the boundaries that offer glimpses to the open countryside beyond and allow some visibility into the site from the road. Given the quantity, height and massing of the proposed dwellings, they would significantly diminish the visual openness of the Green Belt and would have a much greater impact on the openness of the Green Belt than the existing development, contrary to the aims of the Green Belt policy.
 12. Paragraph 145e) of the Framework provides limited infilling in villages as an exception to development that is considered inappropriate development in the Green Belt. Given the location of the site near a group of dwellings, the site can be considered to be within village in the terms of the Green Belt policies of the Framework. Since there is built development consisting of mobile homes and a dwelling to one side, and a dwelling on the other side along the road, the proposal could be considered infilling. However, while the proposal would extend roughly in line with the rear of the adjacent Elmcourt Park and I acknowledge the case law mentioned by the appellant, given the scale of the development, consisting of nine two-storey dwellings and garages, the proposal would not be limited.
 13. I acknowledge that the development would not be major development in the terms of the Framework, however, it does not necessarily follow that it would therefore be limited. Therefore, for the foregoing reasons, the proposal would not meet this exception and would be inappropriate development in the Green Belt.
 14. Consequently, the proposal would have an adverse effect on the openness of the Green Belt and would therefore be inappropriate development in the Green Belt in the terms of the Framework, specifically paragraphs 145e) and g) and none of the other exception criteria apply. Therefore, it would conflict with LP Policies GB1 and GB2 which together restrict development in the Green Belt.

Location

15. From the evidence before me, the nearest settlement of Blackmore has modest services and facilities such that future occupiers of the proposal would be

dependent on the private vehicle for daily requirements. Furthermore, Chelmsford Road largely lacks streetlights and footpaths such that walking or cycling to other settlements for access to services would not be practical and public transport options are not before me that would remove the reliance on the private vehicle for day-to-day needs. Therefore, since nine dwellings could give rise to a moderate number of daily trips by private vehicle, the proposal would give rise to negative environmental impacts.

16. I acknowledge that occupiers of other properties including at Elmcourt Park nearby are also reliant on the private vehicle. While I note the evidence relating to a planning application at Elm Farm, further details are not before me and in any event, these points would not justify the adverse environmental effects that would arise from the proposal in this respect.
17. Consequently, the proposed development would not provide a suitable location for housing with particular regard for accessibility of services and facilities. Therefore, it would conflict with the Framework in this particular regard.

Highway safety and parking provision

18. The proposal would utilise the existing access to the site on Chelmsford Road and create a new access on Spriggs Lane. While I note that the appellant has stated that there would not be two accesses onto Chelmsford Road from the site and Elm Farm, the proposed drawings nevertheless indicate that the existing access on Chelmsford Road would serve both the proposed scheme and the adjacent Elm Farm with a boundary fence separating the two.
19. From the evidence before me, the gate adjacent to that serving the appeal site serves Elm Farm land. The status of this part of the access is unclear from the drawings and this access could therefore potentially be used by vehicles. Therefore, given the close proximity of these accesses immediately adjacent to each other, the proposal would be likely to give rise to confusion between vehicles entering and exiting the two accesses, particularly as they could be approaching and leaving the site in different directions along Chelmsford Road. This would increase the risk of collisions and result in an unacceptable impact on highway safety.
20. Spriggs Lane is a narrow single carriageway. From the evidence before me, the visibility from the proposed access along the road in both directions would be limited such that when exiting the site, there would be an increased risk of collisions. In addition, vehicles travelling along the road would be unlikely to have adequate visibility of the access to slow down in time to avoid vehicles exiting the site. Therefore, the proposed access onto Spriggs Lane would have an unacceptable impact on highway safety.
21. While I acknowledge the other developments with accesses onto Chelmsford Road and Spriggs Lane, further details are not before me and in any event, each case must be determined on its individual merits.
22. Turning my attention to parking provision, from the evidence before me, the tandem parking spaces for units 1 and 1A appear to be of adequate dimensions to allow two vehicles to be parked without including the garage. Therefore, even if these garages are of an inadequate size to constitute a parking space, since these properties would have two bedrooms each, they would provide adequate parking provision.

23. Consequently, the proposed development would have an unacceptable impact on highway safety. Therefore, it would conflict with LP Policy T2 in this particular regard which resists development that would have an unacceptable detrimental impact on the transport system which cannot be resolved by agreed mitigation measures.

Ecology

24. Since a large part of the site is undeveloped and there are trees, hedgerow and vegetation along the boundary as well as disused structures on the site, it is likely that the proposal would have a significant effect on the ecology of the site. I note the neighbours' comments and that some of the site was cleared to gain access for site visits. However, given the rural location and nature of the appeal site, there is a need for an ecological survey to be carried out in order to determine whether or not there are protected species on the site and to identify any possible remediation strategies.
25. I have considered the use of a suitably worded condition to secure an ecological survey along with any potential associated mitigation. However, there is insufficient evidence before me to assess whether protected species are present on the site and if so what the effect of the proposed development might be. There is no substantive evidence that the proposed development would not be harmful to any protected species or habitat or that any such harm could be mitigated. On that basis this matter could not be reasonably controlled by way of a planning condition.
26. I acknowledge that the Council did not request an ecological survey to be carried out in order to determine the application. However, whether or not the Council required such a survey at the application stage has no bearing on my determination of this appeal, and for the reasons outlined above an ecological survey is necessary.
27. While I note that the appellant has indicated that trees and hedges will be retained and some landscaping works are proposed, from the evidence before me, at least some hedgerow would need to be removed to construct the access onto Spriggs Lane. Therefore, since there has not been an ecological survey there has not been a demonstration that the proposal would not harm the ecology of the site.
28. For the reasons given above, the appellant has failed to demonstrate that the proposed development would not be harmful to the ecology of the site and surrounding area. Therefore, it would conflict with LP Policy C5 which requires among other things that satisfactory measures must be taken prior to the start of any development to protect landscape features during development.

Existing trees and hedges

29. The site is largely undeveloped with trees and hedgerow along the boundaries which contributes to the spaciousness of the area and provides an attractive setting for the settlement. From the evidence before me, the trees on the site are not subject to Tree Preservation Orders. However, given their moderate size and prominent position along the boundary, the trees on the site provide a significant positive contribution to the green and spacious aspect of the site.
30. As mentioned above, while the appellant has indicated that trees and hedges will be retained, from the evidence before me, at least some hedgerow would

need to be removed to construct the access onto Spriggs Lane. Furthermore, there is little evidence before me to demonstrate that the proposal would not harm the trees and hedgerow that are to be retained. While I acknowledge that the appellant was in the process of generating an arboricultural method statement, none was provided either during the application process or the appeal process.

31. I have considered the use of a condition requiring an arboricultural method statement to be submitted prior to the commencement of development. However, since there is insufficient evidence to demonstrate that any harm would be mitigated, there is no certainty that such a condition would be effective.
32. Consequently, the proposed development would harm the existing trees and hedges on the site. Therefore, it would conflict with LP Policy C5 which requires a method statement for arboricultural work on site among other things.

Character and appearance and setting of a listed building

33. The area is primarily characterised by linear ribbon development consisting of detached and semi-detached single and two storey dwellings along Chelmsford Road with open countryside beyond. Elmcourt Park which consists of single storey mobile homes set behind linear development, deviates from the prevailing pattern of development, but since the mobile homes are single storey, they do not have a significant effect on the rural spacious character and appearance of the area.
34. While the site is screened to an extent by hedges and trees, given its open, undeveloped nature it reads as part of the wider pleasant countryside, which provides an attractive setting for the settlement.
35. The proposal for nine dwellings would not only involve the erection of houses, but also would include significant areas of new road, paved driveways and domestic gardens that would substantially alter the landscape character of the area. While I acknowledge some local support for the proposal and the history of the site, given the layout and density of the proposed dwellings as well as their mass, the proposal would be contrary to the prevailing pattern of development and would therefore have a detrimental effect on the spacious rural character and appearance of the area.
36. I note the Council's concerns regarding the house typologies and proposed materials of the proposed dwellings. However, from the evidence before me, the proposed dwellings individually would broadly reflect the traditional forms and varied materials of nearby dwellings. Nevertheless, given the layout and number of proposed dwellings, this would not override the harm to the rural spacious character and appearance of the area.
37. Elm Farm is a Grade II Listed two storey dwelling, the significance of which lies in the evidence of historic rural vernacular architecture. Given its prominence on Chelmsford Road and its proximity to the appeal site, Elm Farm would be viewed in the rural context of the appeal site. Therefore, while I note that Elm Farm would not be prominent from within the site and vice versa, the site provides an attractive open rural setting for Elm Farm.
38. The scheme consists of nine two-storey dwellings and an internal road such that it would have an urbanising effect on the site. Therefore, while I

acknowledge that the boundary treatment of the site would partially screen the proposed dwellings, and that the proposal is not within the curtilage of the listed building, given the significant urbanisation of the site that would arise from the proposed scheme, it would adversely affect the rural setting of Elm Farm.

39. I note reference to a bungalow site, however limited details are before me and in any event, each case must be determined on its individual merits. I also note that the Questionnaire indicates that the proposal would not affect the setting of a Listed Building. However, from the wider evidence I am satisfied that this is an error and the Council considers the proposal to harm the setting of the Listed Building.
40. Consequently, the proposed development would harm the character and appearance of the area and would have an adverse effect on the setting of Elm Farm, a Grade II Listed Building. Therefore, it would conflict with LP Policy CP1 which among other things require developments to not have an unacceptable impact on visual amenity or the character and appearance of the surrounding area. It would also conflict with LP Policy C16 which relates to development within the vicinity of a listed building and requires that proposals would not detract from its character or setting.
41. The development would have a harmful effect on the setting of the Listed Building. The harm would be less than substantial. In accordance with paragraph 196 of the Framework, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
42. Bearing in mind the statutory duty¹ to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, the identified harm carries substantial weight against the proposed development.
43. I note reference to the dwellings being for elderly people and single person/starter homes. However, there is no mechanism suggested to secure such measures and I attach very limited weight to this point. I acknowledge that there would be economic and social benefit through contribution of future occupiers to the village. However, since the proposal is for nine dwellings, the public benefit in this regard would be modest.
44. Therefore, the benefits claimed by the appellant and the modest weight attributed to the benefit of contribution to the local community do not outweigh the substantial weight attached to the harm to the setting of the Listed Buildings.

Living conditions

45. Mobile home units 5, 7 and 9 of Elmcourt Park are situated close to the boundary with the appeal site, and proposed dwellings 1 and 1A would be sited within 6m of the boundary on the other side. Given the modest distance to the boundary, the first-floor rear windows of these dwellings would overlook the gardens of the mobile home units of Elmcourt Park and the gable window of unit 7. However, since one of the windows of these proposed dwellings would be for a bathroom, and the other window would be for a bedroom that is dual

¹ S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

aspect, a condition could be reasonably attached to require that these windows are obscure glazed.

46. While I acknowledge the evidence regarding perceived overlooking, LP Policy CP1ii) refers to overlooking and lack of privacy rather than perceived overlooking. Therefore, the proposed development would not conflict with this particular part of the policy.
47. Consequently, the proposed development would not harm the living conditions of the occupiers of mobile home units 5, 7 and 9 with particular regard for privacy. Therefore, it would not conflict with LP Policy CP1ii) which requires, among other things, that the proposal would not have an unacceptable detrimental impact on the general amenities of nearby occupiers by way of overlooking or lack of privacy.

Other Considerations

48. I note the concerns regarding the service provided by the Council. However, these matters do not carry weight in favour of the proposal which must be determined based on its planning merits.
49. I also acknowledge reference to the application being made in outline. However, from the wider evidence I am satisfied that this was an error and that the application was determined by the Council as a full planning application.
50. I acknowledge local concerns including those relating to flooding and water treatment. However, the Council did not object with respect to these matters and from the evidence before me I see no reason to disagree. Therefore, these matters carry limited weight against the proposal.
51. I note other developments including those at Red Rose Lane, Spriggs Lane and Gander Farm. However, limited details are before me, and in any event each case must be determined on its individual merits.
52. I note comments regarding housing supply and development plan requirements including that small and medium sites can make an important contribution to meeting the housing requirement, sites that are physically well-related to existing settlements, should be encouraged and that housing should be located where it will enhance or maintain the vitality of rural communities. I also acknowledge the three overarching objectives of the planning system including the social objective. However, the Green Belt policies in the Framework provide a clear reason for refusing the development proposed. Therefore, even if the Council were not able to demonstrate a 5-year supply of deliverable housing sites and its policies for the supply of housing were out-of-date, the presumption in favour of granting planning permission in those circumstances found in paragraph 11(d) of the Framework does not apply.
53. Consequently, these considerations, along with the other matters identified in the evidence either individually or collectively, do not clearly outweigh the identified harm to the Green Belt so as to amount to the very special circumstances necessary to justify the development.

Conclusion

54. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. The substantial weight to be given to Green Belt harm is not clearly outweighed by the other considerations sufficient to demonstrate very special circumstances given that those benefits are reasonably modest commensurate to the scale of the development proposed and other identified harms.
55. For the reasons given above the appeal should be dismissed.

R Sabu

INSPECTOR