
Appeal Decision

Hearing held on 20 July 2020 and site visit carried out on 21 July 2020

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2020

Appeal Ref: APP/M1520/W/20/3246788

Land at London Road, west of Rhoda Road North, Thundersley, Benfleet, Essex SS7 1BN

- 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 White Cliffs Caravan Park against the decision of Castle Point Borough Council.
 - The application Ref 19/0231/OUT, dated 29 March 2019, was refused by notice dated 1 November 2019.
 - The development proposed is outline application for residential development comprising 22 dwellings with all matters reserved except access.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development comprising 22 dwellings on land at London Road, west of Rhoda Road North, Thundersley, Benfleet, Essex SS7 1BN in accordance with the terms of the application, Ref 19/0231/OUT, dated 29 March 2019, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was made in outline with all detailed matters apart from access reserved for later consideration. I have dealt with the appeal on the same basis, considering as illustrative the plans showing how the site might be developed. A completed Section 106 planning agreement, made between the appellant and the Council and dated 16 July 2020, was submitted prior to the Hearing. This committed to making financial contributions towards affordable housing in the Borough, recreational disturbance avoidance and mitigation measures and local healthcare facilities. This agreement is a material consideration and I deal with the matters provided for in more detail below. The main parties have agreed that the proposal would be inappropriate development in the Green Belt as defined in the National Planning Policy Framework (the Framework), and I concur with that position.

Main Issues

3. The main issues in the appeal are:
 - The effect of the proposal on (i) the openness of the Green Belt and the purposes of including land within it, (ii) local biodiversity interest, including the adjoining area of Ancient Woodland and the resident badger population and (iii) the planned management of sustainable growth within the Borough.

- Whether any Green Belt or other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

(i) The openness of the Green Belt and the purposes of including land within it

4. The appeal site is within the edge of the Green Belt and comprises an open, mainly grassed area to the side of the residential property at 379 London Road. Access to the housing proposed would be to the rear of the site, via Rhoda Road North. This road becomes an unmade bridleway just beyond the proposed entrance point to the development. It then continues onto London Road, forming the boundary to the undeveloped side of the appeal site, between it and the remainder of the Green Belt.
5. The indicative drawing shows the 22 dwellings accommodated within a single two/three storey building. The site fronts onto London Road where, on the opposite side, residential development in the Green Belt has previously been allowed and is either built or under construction. The appeal site lies to the edge of a large residential area and forms the start of a large swathe of Green Belt separating the extensive built-up parts of South Benfleet and Thundersley. Beyond the bridleway this area of Green Belt continues as a substantial parcel of what is mainly Ancient Woodland. This is a part of the original Metropolitan Green Belt, defined subsequently in the currently adopted 1998 Local Plan¹ (LP). Due to the age of this plan, with its replacement yet to have reached an advanced stage, the Council's decision relies mainly on the more recent Green Belt policy set out in the Framework.
6. As stated in paragraph 133 of the Framework, the Government attaches great importance to Green Belts where the fundamental aim of policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence. Openness is not defined in the Framework but can be taken as the opposite of urban sprawl. Consequently, in this case, there would be a loss of the undeveloped nature of the appeal site so as to result in a spatial diminution of the openness to the Green Belt. With housing occupying this site, where visible, this would also result in a loss to Green Belt openness as perceived visually.
7. The undeveloped status of the appeal site contributes to four of the five purposes of the Green Belt as set out in paragraph 134 of the Framework. The undeveloped site helps to check the unrestricted sprawl of large built-up areas, prevents neighbouring suburbs merging into one another and assists in both safeguarding the countryside from encroachment and supporting urban regeneration by encouraging the recycling of derelict and other urban land.
8. Other than in exceptions not applying in this case, paragraph 145 of the Framework requires I regard the construction of new buildings as inappropriate in the Green Belt. As advised by paragraph 143, I find inappropriate development to be, by definition, harmful to the Green Belt. Paragraph 144 requires that I give substantial weight to the harm found from the inappropriateness of the proposed housing, along with that resulting from the loss of openness described above, conflicting as this does with the purposes of

¹ Castle Point Borough Council Adopted Local Plan 1998.

the Green Belt. Therefore, the proposal conflicts with national policy through being inappropriate development which would reduce the openness of the Green Belt and thus conflict with its purpose for checking urban sprawl.

9. Whilst attaching substantial weight to that found, the actual degree of Green Belt harm arising from this proposal is mitigated by a number of factors. The site has development to three sides and represents a relatively small indent of open Green Belt into a built-up area. The site is furthermore screened by thick vegetation on its undeveloped sides and this, along with the adjacent large block of Ancient Woodland, provides a reduction in the degree of loss of visual openness to the Green Belt.
10. The overall loss of Green Belt openness, relative to that remaining in Parcel 3A², would be comparatively quite small. The bridleway provides a clearly defined boundary between the appeal site and the large extent of Ancient Woodland beyond. Any further development proposed beyond the bridleway, which forms both a permanent and readily recognisable boundary, would comprise a stark and obvious incursion into the Green Belt. With the additional protection granted by its status as Ancient Woodland, this larger extent of Parcel 3A Green Belt is clearly more defensible when compared to the appeal site.
11. The housing proposed within this relatively small area of Green Belt can be seen as a rounding-off of development, rather than a clear precursor to any further loss of the more defensible Green Belt beyond. The Green Belt that would remain undeveloped is of a size and position sufficient to carry on fulfilling the purposes ascribed to it by the Framework. The accessible Ancient Woodland means this remaining Green Belt offers a wider range of public benefits, including recreation and nature conservation, compared to the privately owned appeal site.

(ii) Local biodiversity interest, including the adjoining area of Ancient Woodland and the resident badger population
12. The Preliminary Ecological Appraisal³ (PEA), produced during the course of the application, found the native species-rich hedgerow with trees along two boundaries of the proposal to be the only habitat of local value, with none present within of greater than site value. The earth bank, poor semi-improved grassland, scattered trees, dense scrub and tall ruderal herb did however provide potential value as species habitat. There was a badger sett found in the northern part of the site, within the poor-semi improved grassland, which appeared to be active.
13. It was noted that some of these habitats could be retained as undeveloped parts of the site, and the PEA recommended further surveys following any outline permission to inform the details of the development, particularly in respect of badger activity so as to provide the basis for any subsequent protected species licence application. Enhancements were proposed in the form of bat and bird boxes, appropriate fruit tree planting and retention of log piles to support invertebrates. Subject to the further survey work and any mitigation in respect of protected species, notably badgers, along with suitable landscaping and preservation of boundary and on-site habitat, with

² As defined in the Castle Point Green Belt Review 2018

³ ACD Environmental 26 September 2019

enhancements in the form of bird and bat boxes, I find there to be no compelling grounds to resist the development based on the effects on the biodiversity value of the appeal site itself.

14. Coombe Wood, the Ancient Woodland lying beyond the bridleway running alongside the appeal site, is identified as a Local Wildlife Site. Most of this woodland is publicly accessible with a main through path loosely surfaced. Given this public access, the private appeal site plays no significant role as a protective buffer to the ecology in this woodland. The species rich hedging around the appeal site is not proposed for removal and might be preserved under agreed reserved landscaping matters.
15. Regarding any harm to the Ancient Woodland, including its characteristic ground flora, little evidence was provided over the existing impacts of visitor use, the way this was currently managed or how the additional 22 households proposed might exacerbate any presently harmful impacts on biodiversity. Whilst situated next to an entrance to Combe Wood, no detailed case was provided over the additional housing proposed leading to a harmful level of visitor pressure on this protected habitat.
16. The effect of increased visitor pressure on European protected coastal sites at a further distance from the appeal site is addressed separately in this decision. However, with regard to local biodiversity interest, I find there to be no material harm arising from this proposal such as to conflict with either LP policies EC13 and EC14 or paragraphs 170, 174 and 175 of the Framework.

(iii) The planned management of sustainable growth within the Borough

17. Paragraph 136 of the Framework states that, once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. The appeal site is currently to remain as Green Belt, a part of a wider Parcel 3A included in the emerging replacement LP. The Council's case is that the allocation of land for development on the basis of individual applications is likely to lead to poorly planned growth and would fail to deliver housing in a managed way. Its view is that, to achieve sustainable growth within the Borough, the decision on which Green Belt sites to allocate for development should be taken at a strategic level as part of the Local Plan process, which this proposal seeks to circumvent.
18. Due to the need to provide for housing, the Council has itself acted in advance of the adoption of the proposed allocations in its emerging plan, through residential development allowed in the previously developed parts of the Green Belt to the other side of London Road. The proposal is in a similarly sustainable location with regard to nearby services and facilities and, although not previously developed land, is not of a scale that would result in any material harm through prejudicing the wider strategy for sustainable growth within Castle Point, as proposed through the LP review. The case made is not over a change to the Green Belt boundary but the very special circumstances that might allow for housing within this existing designation. This case is made in the context of a very long period of housing under delivery in this Borough and a failure to adopt a Local Plan providing the Green Belt releases necessary to address this.

19. I have no reason to doubt that the Council now has an emerging LP which will make the necessary provision for meeting its housing needs through Green Belt boundary reviews and which is on course for adoption in 2021. However, this emerging plan has yet to reach a stage advanced enough for it to attract any more than limited weight. The proposal is not so substantial that to allow the appeal would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to this emerging plan. Therefore, following the advice in paragraph 49 of the Framework, the Council's case over the proposal being premature is insufficient to justify the appeal being dismissed.

(iv) Other considerations that might weigh in favour of the proposal

20. A significant consideration is the LP being many years old and unequivocally out-of-date. The present Green Belt boundary means the authority has for a number of years found difficulty in meeting its objectively assessed needs for housing. Although an emerging plan is on the horizon, its adoption remains some way off, even assuming the lack of any delay in the Council's programme. There was no detailed discussion over the current housing land supply position at the Hearing. However, there appeared little dispute over the general picture. This was one of a long period of housing under-delivery and a failure to date in replacing the 1998 LP to make the remedial Green Belt changes.
21. The appellant has drawn my attention to the most recent Housing Delivery Test figures. These show the Council to have met only 48% of the 2015-2018 requirement. Under paragraph 73 of the Framework, this would mean including a 20% buffer to specific deliverable housing sites to improve the prospect of achieving the required five year supply. Whilst the Council is planning ways to accommodate this 20% buffer, this situation can only lend further and significant weight to this proposal.
22. Whilst recognising the relatively modest windfall contribution the proposed 22 dwellings would make, I accept the general case made by the appellant over a pressing need for housing permissions in the context of a Borough where planned delivery has been problematical. This factor adds substantial weight to the benefit to housing supply from a local perspective. In turn, this exists within a national context of ensuring a sufficient amount and variety of land comes forward where needed to support the Government's objective of significantly boosting the supply of homes.
23. In paragraph 68, the Framework refers to small and medium sized sites making an important contribution to meeting the housing requirement of an area, noting that they are often built-out relatively quickly. The Council advised this was not always the case in Castle Point. However, it seems reasonable to consider this proposal as deliverable within five years, in contrast with larger housing allocations with more complex infrastructure arrangements and a gradual, phased build.
24. To promote the development of a good mix of sites, paragraph 68 seeks Councils find land to accommodate at least 10% of their housing requirement on sites no larger than one hectare. It further supports windfall developments such as this, giving weight to the benefits of using land within existing settlements for homes. These 22 dwellings would be located sustainably in respect of proximity to existing services and make a modest but rapidly

deliverable contribution towards both the Council's small-site requirement and the national objective to boost the supply of homes.

25. The proposed density of residential development would also gain support from the Framework aim to make effective use of land for housing. This is in the context of a Borough without large areas of previously developed land and which relies on the redevelopment and intensification of existing sites. Because the appeal site is less than half a hectare, the amount of Green Belt developed would be relatively small. The remainder of Parcel 3A would be more than adequate to continue providing the Green Belt purposes ascribed to it in paragraph 133 of the Framework.

Other Matters

26. I have considered the further matters raised by interested parties at the application and appeal stages, including those made at the Hearing. The scale of the proposal would not have required this scheme to be the subject of an Environmental Impact Assessment. There is no evidence to support a lack of a need for the accommodation proposed. Any adverse impacts during the building phase might be addressed by an agreed Construction Method Statement. The effects on property values in the vicinity is not a valid planning consideration. Subject to the reserved matter details, the site is capable of accommodating 22 residential units without material harm to the living conditions of any neighbouring occupier, due to effects on outlook or from over-shadowing.
27. Access to the proposed development would be via the surrounding residential streets, rather than directly onto the main A13 London Road. These streets contain frontage housing, often with drives interspersed with lengths of unrestricted kerbside parking. There is a sharp bend on entering Rhoda Road North from Thundersley Church Road. However, the character of these streets, with the intermittent on-street parking, would influence and moderate driver speeds. I consider these approach roads to have the capacity to accommodate the further housing proposed without any significant reduction in the safety of other road users, including pedestrians, cyclists and horse riders.
28. The indicative layout shows 26 car parking spaces. This is below the maximum requirement of 42 spaces under the Council's standards. However, this below maximum provision reflects the proximity of the site to public transport and other local services, lessening a dependence on private car ownership. The on-site parking indicated would be adequate and not lead to a finding of any material harm through further on-street parking causing conflict and inconvenience in the approaching streets.

Appropriate Assessment

29. I have had regard to the Essex coast Recreational disturbance Avoidance and Mitigation Strategy⁴ (Essex Coast RAMS). It aims to deliver the mitigation necessary to avoid significant adverse effects on the natural environment from the combined impacts of residential development anticipated across Essex. This is to protect the European sites along the Essex coast from the impacts of increasing visitor pressure and to avoid any adverse effects on their integrity, so as to meet the requirements of the EU Habitats Directive.

⁴ Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) Habitats Regulations Assessment Strategy document 2018-2038. January 2019. Final version incorporating Natural England comments March 2019.

30. This proposal is within the evidenced Zone of Influence defined under the Essex Coast RAMS. In combination with other housing growth, this proposal would likely have a significant effect upon these Essex coast European sites, due to increased recreational disturbance from the added population. To address this, financial contributions are offered by the appellant, based on a standard tariff set out in the Essex Coast RAMS and to support the strategic mitigation measures this proposes. I am satisfied that the level of further recreational disturbance resulting from the 22 dwellings would be effectively offset by the contributions made to these strategic mitigation measures. Subject to this payment, and having reviewed the evidence before me, I am able to ascertain that this proposal would not have an adverse effect on the integrity of the European sites along the Essex coast.

Section 106 planning agreement

31. The agreement between the appellant and the Council provides financial contributions towards, firstly, affordable housing elsewhere in the Borough, secondly, recreational disturbance avoidance and mitigation required by the Essex Coast RAMS and, thirdly, local healthcare facilities. I have considered the agreement against the advice in paragraph 56 of the Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that such obligations should only be accepted where they are necessary to make the development acceptable in planning terms, directly related to it and fairly and reasonably related in scale and kind. I am content that the agreement meets these tests and therefore is a material planning consideration in deciding this appeal. The affordable housing contribution is a positive benefit which I have weighed in the overall balance. The other contributions are by way of mitigating the effects of the proposal and are neutral factors.

Green Belt balance

32. I have considered the recent appeal decision⁵ relating to the development of edge of Green Belt land at Rhoda Road, to the other side of the A13. However, that decision to dismiss related to just a single dwelling on quite a large site. The factors weighing in the overall balance were not comparable to this case, where 22 dwellings provide comparatively greater benefits in the amount of deliverable housing in the context of a long-standing under-supply.
33. Substantial weight is given to the Green Belt harm found. However, the overall amount of Green Belt harm is moderated to a significant degree by the factors I have discussed above. With the clear boundary provided by the Rhoda Road North bridleway, the Ancient Woodland provides a more defensible area of Green Belt with a wider range of public benefits. This area would act to prevent further urban sprawl and any coalescence of South Benfleet and Thundersley.
34. In the context of an out-of-date plan, and where some sacrifice of the Green Belt is unavoidable in order to provide enough homes in the Borough, this scheme provides substantial social benefits, relative to its size, by the contribution made to housing need. The environmental harm in terms of the development of a small area of Green Belt is relatively quite limited. There would be the local economic benefits also from both the building works and additional household expenditure. Drawing all the factors together, I find that

⁵ Appeal Ref: APP/M1520/W/19/3241203 Querkus, Rhoda Road, Benfleet, Essex.

the other considerations in this case clearly outweigh the Green Belt harm identified. Looking at the case as a whole, I consider that very special circumstances exist which justify housing on this site.

Conditions

35. I have considered the conditions set out in the Statement of Common Ground in the light of the advice in paragraph 55 of the Framework. This states that these should be kept to a minimum and only imposed where necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended and/or amalgamated those found necessary, mainly for simplicity and succinctness. Conditions of an advisory nature, or which serve as reminders over reserved matter content, are not considered necessary.
36. The standard outline conditions are required, including the time limit imposed for the submission of reserved matters (1-3). Details of access form part of the proposal and, for reasons of certainty and highway safety, a condition is necessary that these are carried out to agreed engineering specifications prior to occupation (4). In the interests of sustainability, occupation is dependent upon the dwellings meeting the Council's standards for water and energy efficiency (5). To ensure adequate waste bin and cycle storage, a condition requires provision of agreed arrangements for these prior to occupation (6). To encourage sustainable transport modes, a condition is necessary to secure travel information packs for each new residence (7).
37. In addition to those specifically reserved, commencement of development should also depend on other detailed matters being satisfied. In the interests of biodiversity, a condition is necessary requiring adherence to an agreed ecological survey, mitigation and enhancement plan (8). Another condition is necessary to secure an approved sustainable drainage system for the development (9). Finally, in the interests of the satisfactory living conditions of residents in the surrounding area, a condition requiring adherence to an agreed construction method plan is also required (10).

Conclusion

38. The very special circumstances exist to support the housing proposed in this area of Green Belt, in compliance with the relevant policies of the LP and the Framework. Therefore, the application of Framework policies that protect the Green Belt do not provide a clear reason for dismissing the appeal. Any adverse impacts of permission would not significantly and demonstrably outweigh the benefits of the housing when assessed against Framework policy as a whole. Therefore, subject to the conditions discussed above, I conclude that the appeal should be allowed

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kevin Leigh	Counsel for the appellant
Martin Taylor	Avison Young
James Wells	Avison Young

FOR THE LOCAL PLANNING AUTHORITY:

Kim Fisher Bright MBA DipTP MRTPI	Castle Point Borough Council
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INTERESTED PERSONS:

Peter Everard

Lee Ryan

DOCUMENT SUBMITTED AT THE HEARING

- 1 Fox Land and Property Ltd v Secretary of State for Communities and Local Government: CA 3 Mar 2015 [2015] EWCA Civ 298. This judgement confirmed that saved LP policies GB 2-7 preserved the Castle Point Green Belt shown in the proposals map.

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) None of the dwellings hereby permitted shall be occupied until the access details shown in drawing ITP DWG/2687/001 have been completed in accordance with detailed constructional specifications that shall have had the prior written approval of the local planning authority. These access arrangements shall thereafter be retained.
- 5) None of the dwellings hereby permitted shall be occupied unless that dwelling has been shown to meet energy and water efficiency standards that accord with details that shall have had the prior written agreement of the local planning authority. These standards shall thereafter be maintained.

- 6) None of the dwellings hereby permitted shall be occupied until cycle and waste bin storage has been provided in accordance with details that shall have had the prior written agreement of the local planning authority. The cycle and waste bin storage shall thereafter be retained as approved.
- 7) None of the dwellings hereby permitted shall be occupied until each has been provided a Residential Travel Information Pack in accordance with details that shall have had the prior written agreement of the local planning authority.
- 8) No development shall take place until an ecological survey, mitigation and enhancement plan has been agreed in writing with the local planning authority. This plan shall address matters including the on-site presence of badgers, the protection of badgers and other species during construction and occupation of the development, including their ongoing movement through the site, the provision of bat and bird nesting/roosting accommodation and details of any external lighting. The agreed ecological survey, mitigation and enhancement plan shall be implemented before any of the dwellings are occupied and the measures therein shall be retained and maintained thereafter.
- 9) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for matters including:
 - i) the routing and parking of vehicles for site operatives, deliveries and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities and measures to control the emission of dust and dirt during construction;

- v) measures to protect on-site and boundary trees and vegetation;
- vi) a scheme for recycling/disposing of waste resulting from construction works;
- vii) delivery and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
