
Appeal Decision

Site visit made on 8 December 2020

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal Ref: APP/V1505/W/20/3245602

Plot 351 Crays Hill Road, Crays Hill, Billericay CM11 2YP

- 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 Rothon against the decision of Basildon Borough Council.
 - The application Ref 19/01136/FULL, dated 2 August 2019, was refused by notice dated 7 October 2019.
 - The development proposed is a 4 bedroom, 2 storey house with a basement and triple garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework);
 - The effect of the proposed development on the openness of the Green Belt;
 - The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on biodiversity; 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

3. The appeal site comprises an area of woodland protected by Tree Preservation Order 23/00. It is located outside the settlement of Crays Hill and is within the Green Belt.

Inappropriate development in the Green Belt

4. The Framework in paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 of the Framework makes it clear that

new buildings are inappropriate development, subject to a limited number of exceptions.

5. The appellant's statement makes no reference to the proposal meeting any of the specified exceptions listed under paragraph 145 of the Framework. Exception e) allows for 'limited infilling in villages'. The Framework does not provide a definition of the term 'infilling', however the term is generally understood to denote the development of a relatively small gap within an otherwise built-up frontage. The exception does not apply in this case as the site is outside of the defined village. Furthermore, as the appeal site is within a large area of woodland, the proposed dwelling would not be seen as infilling a small gap in a built-up frontage.
6. I am satisfied from the evidence and my observations on site that none of the exceptions listed under paragraph 145 of the Framework would apply in this case. For these reasons, the proposal would be inappropriate development in the Green Belt.
7. The Council has not identified any adopted development plan policies relating to Green Belt protection that would be conflicted by the proposal. I attach little weight to conflict with policies in the emerging Local Plan given their stage of preparation and the absence of information regarding the potential for unresolved objections. Nevertheless, the policy within the Framework is an important material consideration and I attach substantial weight to the harm that would arise to the Green Belt by virtue of inappropriateness.

Openness of the Green Belt

8. The Framework advises that openness and permanence are the essential characteristics of the Green Belt. Openness can be defined as an absence of built form and can have both spatial and visual aspects.
9. The proposed development would involve the erection of a 2 storey detached dwelling and driveway in an open wooded area that is currently free of development. The scale of the proposed dwelling, together with the associated hard surfaced area would cause a loss of spatial openness of the site. Furthermore, whilst surrounding trees may limit visibility of the proposed dwelling to some extent, the removal of trees and the creation of a vehicular access would nevertheless enable visibility of the proposed development from Crays Hill Road. The proposal would therefore spatially and visually encroach into the countryside. In these respects, I find that the proposal would cause harm to the openness of the Green Belt.

Character and appearance

10. The northern end of Crays Hill Road consists of a linear arrangement of dwellings on both sides of the road. The set back of the houses from the road and the landscaping in the front gardens provides a green and spacious character to the area. Moving away from the settlement towards the south, there is a wooded area that lines both sides of Crays Hill Road. The appeal site forms part of this undeveloped wooded area, which provides a green edge to the settlement and contributes to its verdant rural setting.

11. The appellant has submitted a Tree Survey and Constraints Report¹ (the arboricultural report), which provides a survey of trees on the appeal site. This includes a number of Category B (moderate quality) Oak trees and various lower quality Category C trees. The arboricultural report is not an arboricultural impact assessment and so it does not provide an appraisal of the effect of the proposed development on the trees.
12. Whilst the proposal does not provide precise details, it is evident that it would involve the removal of a significant number of trees, including Category B Oak trees, which would create a hole in the treescape. I appreciate the appellant's comment that the Category C trees are categorised as low quality, however, collectively they contribute to the verdant nature of the area. The introduction of built form into this undeveloped wooded area would result in urbanisation and encroachment into the countryside, which would cause significant harm to the natural landscape and the rural setting of the settlement.
13. I recognise that there would be some scope for replacement planting, however there are limited details before me, and this would not adequately mitigate the harm that would be caused by the proposed development.
14. For these reasons, I conclude that the proposed development would cause significant harm to the character and appearance of the area. The proposal would therefore be contrary to Policies BAS C5 and BAS BE12 of the Basildon District Local Plan Saved Policies 2007 (the Local Plan), which, amongst other things, state that existing woodlands should be retained; and planning permission for new residential development will be refused if it causes material harm to the character of the surrounding area. The proposal would also conflict with the Framework, which states, amongst other things, that planning decisions should recognise the intrinsic character and beauty of the countryside and ensure that developments are sympathetic to local character.

Biodiversity

15. Paragraph 99 of Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System advises that it is essential that the presence or otherwise of protected species and the extent to which they might be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations will not have been addressed on making the decision. Circular 06/2005 advises that the need to ensure that ecological surveys are carried out should only be left to conditions in exceptional circumstances. The Circular continues at paragraph 99 that "bearing in mind the delay and costs that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development".
16. Due to the wooded nature of the site there is a reasonable likelihood of protected species, including bats, nesting birds, badgers and reptiles, being present and affected by the development and so I consider that an ecological assessment is required. No formal ecological survey report work has been submitted with the proposal to demonstrate that there would be no harm to wildlife features and how any loss to biodiversity would be mitigated and enhanced.

¹ Prepared by Greenwood Arboriculture Ref. GA 261 dated 23 January 2019

17. I therefore conclude that in the absence of an ecological assessment of the appeal site, it is not possible to ascertain the effect of the proposed development on protected species. The proposal would therefore fail to comply with Policy BAS C5 of the Local Plan, which seeks to retain existing woodlands. The proposal would also be contrary to chapter 15 of the Framework, which, amongst other things, states that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Other considerations and the Green Belt balance

18. For applications involving the provision of housing, the Framework advises that where the results of the Housing Delivery Test (HDT) have been substantially below requirements for the last 3 years, the policies which are most important for determining the appeal will be out-of-date for the purposes of paragraph 11d) of the Framework. The HDT 2019 measurement shows that the Council's housing delivery was 44%, which is substantially below requirements for the last 3 years. This then means granting permission unless, as in this case within the Green Belt, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
19. In the context of the significant housing shortfall, the proposed development would make a contribution of one dwelling towards housing supply. The proposal would create some employment at construction stage and the occupiers of the proposed dwellings would provide economic support to local facilities and services. These benefits weigh in favour of the proposal, however, this would be limited by the small amount of development.
20. The appellant has indicated that the appeal site was put forward for the Council's Housing and Economic Land Availability Assessment 2018. Notwithstanding that, the Framework sets out that local planning authorities should establish Green Belt boundaries in their Local Plans. Once established, Green Belt boundaries should only be altered in exceptional circumstances through the preparation or review of the Local Plan. The Council is in the process of making a new Local Plan, however there is no evidence before me to show that the site is proposed to be removed from the Green Belt as an identified housing land allocation. Even if there were proposed changes, given the status of the emerging Local Plan this would not change the Green Belt status of the land at the present time.
21. The appellant states that the emerging Local Plan does not make adequate provision for self-builders due to concerns about the viability of self-build sites identified by the Council, however the evidence before me contains little information in relation to those sites. Local authorities have a duty to keep a register of people seeking to acquire serviced plots within the area for self-build and custom house building projects, and to grant enough planning permission to meet the identified need. There is no substantive evidence before me to demonstrate that the Council is not meeting the registered demand for such plots. Furthermore, in the absence of a legal agreement, there is no mechanism to guarantee that the proposal would meet the statutory definition² of self-build or custom housebuilding and it could be constructed as a regular market dwelling. In view of this uncertainty, whilst the addition of a single unit

² See Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016)

- of accommodation would be a limited benefit, in these circumstances little weight can be given to the appellant's reference to the self-build aspect of the proposal.
22. The appellant has drawn my attention to other proposals approved by the Council for development in the Green Belt. I have limited details of those planning permissions before me and I am not aware of the specific circumstances. Nevertheless, I am not bound by previous decisions made by the Council and I have determined the appeal on its own planning merits.
23. The appellant questions the validity of the Tree Preservation Order (the TPO), however Section 284 of the Town and Country Planning Act 1990 as amended makes clear that the validity of an order cannot be challenged in any legal proceeding except by way of application to the High Court within 6 weeks of the TPO being confirmed. Therefore, this is not a matter for consideration in the current appeal. In any case, even if the trees at the appeal site were not protected this would not alter my findings on the merits of the appeal in respect of the effect of the proposal on the Green Belt, the character and appearance of the area and ecology.
24. The dwellings opposite the appeal site maintain a sizeable separation to the existing trees and so they are not significantly affected by a lack of light. The proposed removal of trees would therefore be of no benefit in this regard. Furthermore, I note that there are telephone lines close to the trees, however, if necessary, this could be resolved by means other than the removal of trees.
25. Whilst the environmentally sustainable design approach is commendable, the features proposed are relatively well-known techniques for achieving sustainable construction. There are limited details of the proposed sustainability features and the expected carbon emissions from the development. I therefore do not find the proposal to be of exceptional quality or truly innovative design.
26. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have found that the proposed development would be inappropriate development in the Green Belt and it would cause a loss of Green Belt openness. I therefore attach substantial weight to the harm to the Green Belt, in accordance with paragraph 144 of the Framework. In addition, I have found that the proposal would be harmful to the character and appearance of the area, and in the absence of an ecological assessment there would be potential harm to ecology on the site.
27. Overall, the other considerations identified in support of the scheme, even when taken together, do not clearly outweigh the totality of the harm to the Green Belt and other harm. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal is therefore contrary to the Framework, which seeks to protect the Green Belt and this provides a clear reason for refusing the development proposed.

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

C Osgathorp INSPECTOR