



Appeal Decision

Site Visit made on 27 October 2020

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2021

Appeal Ref: APP/V1505/W/3249059

Land between The Willows (aka Crystal Cottage) and Cranbourne, Broomhills Chase, Billericay, CM12 9TH

- 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 and Mrs Watts against the decision of Basildon District Council.
 - The application Ref 19/01373/OUT, dated 20 September 2019, was refused by notice dated 6 December 2019.
 - The development proposed is erection of 2 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 dwellings on land between The Willows (aka Crystal Cottage) and Cranbourne, Broomhills Chase, Billericay CM12 9TH in accordance with the terms of the application, Ref 19/01373/OUT, dated 20 September 2019, and the plans submitted with it, subject to the conditions included in the schedule to this letter.

Procedural Matters

2. The appeal is for outline planning permission and all matters are reserved.
3. The appeal has been accompanied by a Unilateral Undertaking which addresses payments required for the Essex Coast Recreation and Access Management Strategy (RAMS). I address this matter later in this decision letter.

Main Issue

4. The main issue is:
 - whether the proposed development would be inappropriate development in the Green Belt, including the effect the development would have on the openness of the Green Belt.

Reasons

5. New buildings in the Green Belt should be regarded as inappropriate unless meeting certain exceptions. Paragraph 145 of the National Planning Policy Framework (the Framework) 2019, identifies that whilst the development of new buildings in the Green Belt is regarded as 'inappropriate', exceptions to this include limited infilling in villages.

6. Broomhills Chase comprises an area of detached dwellings which were largely developed as 'plotlands' in the interwar years. The area retains an open character with relatively small properties in large plots interspersed around paddocks and fields. Although many of the original properties have been redeveloped they comprise single and two storeys and the area has a low density. Whilst the area has a distinct character, it is common for villages to include defined character areas. Access to Broomhills Chase is solely from Laindon Common Road, through Little Burstead.
7. The Council's Urban Characterisation Design Review (2015) identifies Little Burstead as a village. The Plotlands study included in the Council's supporting evidence for the emerging Local Plan identifies Broomhills Chase as within the settlement. Although this study was prepared for the emerging Local Plan, which I give only limited weight, this is an important source of evidence in its own right irrespective of the final policy outcome.
8. The appellant cites other sources of information such as the ONS¹ sub division report and contextual maps which seek to identify the functional relationship between the different areas of the plotlands and Little Burstead. Little Burstead includes a pub and church which although at some distance from the appeal site, are features of a traditional village settlement. Although the Framework does not define 'a village', I am satisfied that when taken together the other sources of information submitted by the appellant, provide support that the site lies within a village settlement. For these reasons I am satisfied that the plotlands at Broomhills Chase form part of Little Burstead, which is a small village.
9. The appeal site occupies part of a paddock beyond which are open fields. Detached residential properties lie opposite and on both sides. The Framework, does not specify what is meant by 'limited infilling' and for this reason and in the absence of evidence to the contrary provided by the Council, I am satisfied that the appeal proposal represents limited infilling in line with paragraph 145e) of the Framework.
10. For these reasons, the proposal would not be inappropriate development in the Green Belt having regard to the Framework, as it would represent limited infilling. For this reason, a consideration in respect of 'openness' is not necessary.

Essex Coast Recreation and Mitigation Strategy

11. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage². This responsibility now falls to me within this appeal.
12. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of European sites either alone or in combination with other plans or projects.
13. The site falls within the 13 kilometre 'Zone of Influence' for the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS). This site qualifies as

¹ Office for National Statistics

² People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17

being internationally important for wintering birds, wildfowl and wading birds including little terns, bitterns and brent geese. The Essex Coast includes the Essex Coast Natura 2000 and includes several Special Protection Areas which include the Colne, Blackwater, Stour and Orwell estuaries. The latter of these is a designated Ramsar site. There is a further Denge SPA and Ramsar and the Essex estuaries Special Area of Conservation.

14. These sites are used for public recreation and there is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have likely significant effects on the aforementioned qualifying features of the Special Protection Area (SPA)s due to the increased recreational use.
15. After carefully reviewing the evidence I agree that this would be the case and therefore it is incumbent upon me to undertake an Appropriate Assessment. As part of this process, I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow development to proceed in the knowledge that the conservation objectives of this site would not be compromised.
16. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the RAMS. This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location.
17. The main parties agree that the mitigation can be delivered via the appellant entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (the Act). The appellant has supplied a completed Unilateral Undertaking agreement with all requisite signatories upon it which addresses the additional 2 dwellings which the new scheme includes.
18. The Undertaking, submitted with the appeal, through the provision of financial contributions, would therefore serve to mitigate the recreational impacts arising from the proposal.
19. On this basis, I am able to conclude that the required mitigation would be properly secured and that the proposals would not have an adverse effect on the identified SAC either alone or in combination with other projects.

Interested parties

20. I have considered the representations from interested parties objecting to the scheme. The proposal is not inappropriate development as it represents limited infilling in a village which is an exception under paragraph 145 of the Framework.

Conclusions

21. For the above reasons and having regard to all other matters I hereby allow this appeal.

Conditions

22. I have included conditions relating to the submission of reserved matters and the relevant time limits associated with their submission and the

commencement of development. I have also included a condition specifying the relevant plan for reasons of certainty.

23. I have included a condition in respect of land contamination and if found the need for remediation work. I have not included a condition restricting permitted development of the dwellings hereby permitted, suggested by the Council, as the 2 plots are large and the extension or alteration of a building, as allowed by the Town and Country Planning (General Permitted Development) (England) Order 2015, could be controlled by the conditions included in the Order without adversely impacting on the character and appearance of the area or the living conditions of surrounding occupiers.
24. Other conditions seek to provide biodiversity enhancements in line with the submitted ecology survey and allow access through the site for local wildlife given the site's location close to the edge of this village settlement and close to Little Burstead Woods Local Wildlife site. Importantly, I have included a Construction Environmental Management Plan to ensure that construction activities are sensitive to the surroundings of this site.

Stephen Wilkinson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall take place no later than 2 years from the date of approval of the last reserved matters to be approved.
- 2) Details of the access, 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.
- 3) 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.
- 4) The development hereby permitted shall be carried out in accordance with the approved plans 'Site Location Plan' insofar as this plan concerns matters that are not reserved for later consideration.
- 5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.
- 6) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological survey and Assessment (Essex Mammal Surveys, September 2019), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an Ecological Clerk of Works (ECoW) to provide onsite ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details. They shall also include precautionary mitigation for mammals and appropriate site lighting for bats and other nocturnal species.

- 7) No development should commence until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority.

The CEMP (biodiversity) should include the following:

- Risk Assessment of potentially damaging construction activities too little Burstead Woods LoWS.
- Identification of 'biodiversity protection zones'
- Practical measures (both physical measures and sensitive working practises) to avoid or reduce impacts during construction, (may be provided as a set of method statements).
- The location and timing of sensitive works to avoid harm by biodiversity features
- The times during construction when specialised ecologists need to be present on site to oversee works
- Responsible persons in lines of communication
- The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similar competent person
- Use of protective fences exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 8) A biodiversity enhancement layout, providing the finalise details and locations of enhancement measures which should include retaining gaps for hedgehogs, 2No. bird boxes, 2No. solitary bee hives and a hedgehog nest in line with the ecological survey and assessment, (Essex Mammal Surveys, September 2019) shall be submitted to and approved in writing by the local planning authority.

The enhancement measures shall be implemented in accordance with the approved details and all feature shall be retained in that manner thereafter.