

Appeal Decision

Site visit made on 5 April 2022

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal Ref: APP/V1505/W/21/3272280

Grimshill Farm House, Southend Road, Great Burstead, Billericay, CM11 2PP

- 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 Vince Millen of Millen Homes Ltd against the decision of Basildon Borough Council.
 - The application Ref 20/01274/FULL, dated 9 October 2020, was refused by notice dated 29 January 2021.
 - The development proposed is development of 5 affordable chalet bungalows.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made for planning permission and listed building consent for alterations, extension or demolition of a listed building. The Council issued separate refusals of planning permission and listed building consent. However, although the appeal site is within the setting of a listed building, no works are proposed to the building itself or to any curtilage listed buildings. Both the appellant and the Council have confirmed by emails dated 24 and 25 March 2022 respectively that the appeal is against the refusal of planning permission only and I have determined the appeal on this basis.
3. The appeal site is within the Metropolitan Green Belt. At the time of submitting the application and the appeal the site formed part of a large area of land identified in the Basildon Borough Revised Publication Local Plan 2014-2034 to be taken out of the Green Belt and allocated for around 190 homes under Policy H20. However, the Council has subsequently withdrawn the Revised Local Plan and commenced preparation of a new Local Plan for the borough. The policies in the former Revised Local Plan (including Policy GB11) are therefore no longer relevant to my assessment of the scheme which falls to be determined having regard to the policies in the Basildon Local Plan (the Local Plan) saved under the *Planning and Compulsory Purchase Act 2004* in 2007.
4. The proposal is for 5 shared ownership affordable dwellings. The appellant submitted a draft Unilateral Undertaking (UU) with the application. The UU contained provisions for securing the affordable housing, for the payment of contributions towards healthcare and the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS), and for the completion and management of open space within the scheme. However, the UU has not been signed or dated. I am therefore unable to take it into account in my decision. I return to this matter below.

Main Issues

5. The main issues are:

- i) whether the proposed development would be inappropriate development in the Green Belt;
- ii) whether the proposed development would preserve the setting of Grimshill Farm House;
- iii) the effect of the proposed development on the character and appearance of the area; and
- iv) whether any harm, by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposed development.

Reasons

Inappropriate development

- 6. The saved Green Belt policies in the Local Plan do not address the provision of affordable housing and relate primarily to alterations to existing dwellings. They are thus not directly relevant to the proposed development and the Council therefore relies on the provisions of the National Planning Policy Framework (the Framework) in its first reason for refusal.
- 7. Paragraph 147 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a list of specific exceptions.
- 8. The appeal site forms part of the private residential garden of Grimshill Farm House and contains a permanent building. The house and its large garden do not reflect the pattern of, and are separated from, the development to the north-west and south of the appeal site. The site thus lies outside a built up area and has a greater affinity to the countryside. For the purposes of the Framework, residential gardens outside built up areas are not excluded from the definition of previously developed land.
- 9. The exception therefore relevant to this case is that set out in g): limited infilling or the partial or complete redevelopment of previously developed land which would either 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.

149 g) – first clause

- 10. Paragraph 137 of the Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is not defined in the Framework but the Planning Practice Guidance (PPG) states that the assessment of impact on openness requires a judgement based on the circumstances of the case. Account should be taken of spatial

and visual aspects, the duration of the development and the degree of activity likely to be generated.

11. In this case, the appeal site is within the edge of the Green Belt and currently part of a swathe of open Green Belt land to the east and south of Billericay, South Green and Great Burstead. The site accommodates a large garage building, an area of hardstanding and an archway feature with gates to the garden. However, the majority of the site comprises an extensive open garden which contributes to the openness of the countryside beyond the built up area.
12. The openness of the garden can be appreciated from the public highway. The provision of 5 dwellings, access road and parking areas would introduce a significantly greater footprint of permanent built development and associated activity on the site. The proposed dwellings on Plots 1 and 2 to the front of the site would be clearly visible from the highway with that on Plot 3 also partially visible through the access. The upper parts of the dwellings on Plots 4 and 5 would be visible from the footway to the south of the site.
13. Moreover, effects on openness are not confined to physical works. All of the plots would require boundary treatment and the use of the gardens would introduce a variety of domestic paraphernalia such as sheds, play equipment and tables and chairs. The parking of vehicles would also adversely affect openness.
14. This combination of factors means that the proposed development would have a greater impact on the openness of the Green Belt than the existing development. The proposal would thus fail to satisfy the exception in the first clause of paragraph 149 g) of the Framework.

149 g) – second clause

15. The South Essex Strategic Housing Market Assessment 2017 identifies an affordable housing need within the borough, acknowledged by the Council. However, in the absence of a mechanism before me to secure the provision of affordable homes, I cannot be certain that the proposed development would contribute to meeting that need.
16. I consider that a planning obligation is necessary to provide legal certainty to ensure that appropriate occupancy criteria are defined and enforced and that the proposed dwellings remain affordable to first and subsequent occupiers. The PPG advises that a positively-worded condition requiring the appellant to enter into a planning obligation is unlikely to be enforceable and thus satisfy all the tests set out in paragraph 56 of the Framework.
17. The PPG further advises that a negatively-worded condition requiring a planning obligation to be entered into before certain development can commence may be appropriate in exceptional circumstances where there is clear evidence that the delivery of the scheme would otherwise be at serious risk. The proposed development is not a particularly complex scheme and I have no evidence that there would be a serious risk to delivery.
18. As it stands therefore, the proposed development would fail to satisfy the exception set out in the second clause of paragraph 149 g) of the Framework.

Findings

19. Taking all the above into consideration, I find that the proposed development would be inappropriate development in the Green Belt, contrary to national policy to protect it. This is a matter to which the Framework requires me to attach substantial weight.

Setting of Grimshill Farm House

20. Grimshill Farm House is listed as Grade II. In determining this appeal I must have special regard to the desirability of preserving the setting of this listed building. The Framework sets out that great weight should be given to the conservation of a designated heritage asset and that any harm to the significance of such an asset should require clear and convincing justification. The Framework recognises that development within the setting of heritage assets can affect their significance.
21. The National Heritage List for England entry for the property (identified as Elm Cottages in the entry) describes it as an 18th century timber framed and weatherboarded house of one storey with attics. Although named as a farm house, the Heritage Statement submitted with the application (Janice Gooch Heritage Consultancy 2020) suggests that it was more likely to have been a worker's cottage or cottages. Its significance lies in its historic and architectural interest as a good example of a simple, attractive, vernacular building and a rare survival of this type of property.
22. The proposed development would not be within the original curtilage of the building as the appeal site was incorporated into the garden of the property in 1966. The proposal would restore the original curtilage. However, curtilage is not the same as setting and as the house is experienced from the appeal site, the site is within the setting of this designated heritage asset.
23. The wider setting of the building includes built development to the north-west and south, but otherwise predominantly open land reflecting the historic agricultural origins of the cottage. The appeal site contributes significantly to this understanding of the listed building in its original context as the main orientation of the building is towards the site. The historical maps demonstrate that the appeal site has remained predominantly open throughout the lifetime of the building and the Heritage Statement notes that there is no evidence that there were farm buildings on the site.
24. I acknowledge that the dwellings have been designed with the upper floor in the roofspace to respect the low height of the listed building. Nevertheless, the proposed development would encroach closer than the existing development to the north-west. The regular, engineered layout of the proposed development would clash with and detract from the simple informality of the listed building and its setting.
25. Furthermore, the building is visible from the public highway, from where it can be appreciated in its setting. The proposed development would be sited between the highway and the principal elevation of the building. Even though the appellant contends that the layout would allow views through to Grimshill Farm House, the development would restrict these views and so diminish the ability to appreciate the significance of the building.

26. I therefore conclude that the proposed development would fail to preserve the setting of Grimshill Farm House. In the terms of the Framework, this harm would be less than substantial. In accordance with paragraph 202 of the Framework, this harm must be weighed against the public benefits of the proposal.
27. The proposed development would make only a limited contribution to the housing stock of the borough. The contribution to the local economy from the construction and expenditure by future occupiers would be similarly limited. The restoration of the original curtilage to the listed building would aid the understanding of its historical development but be a very minor public benefit.
28. With the measures set out in the Low Impact EcIA (Hybrid Ecology Ltd 2020) secured by condition the development could potentially increase the biodiversity value of the site. However, as there is little detail in this regard I give this limited weight as a benefit of the scheme. With no mechanism to secure the proposed dwellings as affordable homes, I am unable to give any weight to the provision of such homes as a public benefit of the scheme.
29. These benefits, in combination, are not sufficient to outweigh the great weight that should be given to the conservation of the designated asset in this balance. Moreover, I am not persuaded that there is a clear and convincing justification for the harm to this asset. Accordingly, the proposal conflicts with the policies of the Framework that seek to conserve and enhance designated heritage assets.

Character and appearance

30. There is an inevitable degree of overlap between my assessments of the effects on openness and the setting of Grimshill Farm House above and this issue. Nevertheless, consideration of the effect of the proposed development on the character and appearance of the area is a different exercise and was a separate reason for refusal.
31. The character of the appeal site relates more to the countryside than the built up areas to the north-west and south. Together with The Green, an area of open space opposite the site, it forms a break in the built development to the north-west and south of the site. The site contributes positively to the character and appearance of the area.
32. The proposed layout has been designed to retain existing trees around the periphery of the site. The proposed dwellings would be of a form and scale that reflect that of the majority of other dwellings in the vicinity, and an appropriate palette of materials could be secured by condition. Nevertheless, the scheme would result in a significant extent of built development on the site and significant loss of the green corridor across Southend Road. The rigid layout of the dwellings, access road and parking spaces would be at odds with the informality of Grimshill Farm House and its garden setting.
33. I therefore conclude that overall the proposed development would be moderately harmful to the character and appearance of the area. Accordingly, in this respect, it would conflict with Policy BAS BE12 of the Local Plan which seeks to protect the character of the surrounding area. The proposed development would also conflict with paragraph 130 c) of the Framework which requires developments to be sympathetic to local character and history.

Other considerations

34. I have set out the modest benefits of the scheme above. The Framework recognises that small and medium sites can make an important contribution to meeting the housing requirement of an area and supports the development of windfall sites. Facilities and services within Billericay and public transport services are reasonably accessible from the site. Sustainable building design measures could be secured by condition.
35. The appellant draws my attention to other appeals for sites in Benfleet (APP/M1520/W/20/3264788) and Wickford (APP/V1505/W/21/3286455) which were allowed. However, neither of these sites were in the setting of a listed building and the site in Wickford was an infill plot surrounded by existing housing. These factors distinguish these previous appeals from that before me, and they have therefore not been determinative in my decision.

Other Matters

Flood Risk

36. In addition to the main issues considered above, the Council also refused the application for the lack of sufficient drainage information and potential effect on flood risk in the area. The appeal site is located within Flood Zone 1, land with a low probability of river or sea flooding. The Lead Local Flood Authority has not confirmed that the site is at risk from overland / surface water flooding and no evidence has been provided to me of any such risk.
37. Although no drainage plans were submitted with the application, the Design and Access Statement sets out that the development would have attenuation tanks to prevent flooding in downpours and SUDS surfacing on the parking areas and access road. The appellant also submitted a surface water storage volume estimation with the appeal.
38. The Council has not provided any evidence that it would not be possible to satisfactorily drain the site so as to not increase the risk of flooding. I therefore consider that this matter could be addressed by a condition requiring the submission of a drainage scheme and the implementation / retention of the approved details.

The Essex Coastline

39. The appeal site is within the zone of influence of the Essex coastline, which is of importance for its internationally important numbers of breeding and non-breeding birds and their coastal habitats. This importance is reflected in the designation of several habitats sites; a Special Area of Conservation (SAC), Special Protection Areas (SPA) and Ramsar Sites¹. The coast is a major destination for recreational use such as walking, sailing, bird-watching, jet skiing and fishing. Disturbance from these activities is an issue for all the Essex coastal designated habitats sites. The development of 5 additional dwellings within the zone of influence would therefore be likely to have a significant effect on the integrity of these sites.

¹ Essex Estuaries SAC, Stour and Orwell Estuaries SPA and Ramsar, Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, Crouch and Roach Estuaries SPA and Ramsar, Foulness Estuary SPA and Ramsar, Benfleet and Southend Marshes SPA and Ramsar, Outer Thames Estuary and Marshes SPA and Ramsar

40. In such circumstances, the Conservation of Habitats and Species Regulations 2017 (as amended) require a decision maker to undertake an Appropriate Assessment (AA) before giving any permission. In doing so I can have regard to mitigation measures. I return to this matter below.

Green Belt Balance

41. I have set out the modest benefits of the proposal above. However, the proposed development would be inappropriate development in the Green Belt and would result in a moderate loss of openness. Paragraph 148 of the Framework requires me to give substantial weight to any harm to the Green Belt. Added to this is the harm to a designated heritage asset and to the character and appearance of the area.
42. The other considerations do not clearly outweigh the harm to the Green Belt and other harms I have identified above. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal would therefore conflict with national policy for Green Belts as set out in the Framework.

Planning Balance

43. The appellant suggests that the Council has only a 2.4 year housing land supply (HLS). Furthermore, the 2021 Housing Delivery Test measurement is 41%, indicating that the delivery of housing is substantially below the borough's requirement. The withdrawal of the Revised Publication Local Plan means that the shortfall is unlikely to be addressed in the near future. Consequently, paragraph 11 of the Framework is engaged.
44. However, I have found that the proposal would result in harm to the Green Belt and a designated heritage asset. Accordingly, the application of policies in the Framework that protect these areas and assets of particular importance provides a clear reason for refusing permission for the development proposed having regard to paragraph 11 d) i) in accordance with footnote 7 of the Framework. As such, the proposal would not be the sustainable development for which paragraph 11 of the Framework indicates a presumption in favour.
45. In these circumstances, it is not necessary for me to undertake an AA in respect of the effects of the proposal on the integrity of the Essex coastline designated habitats sites. Furthermore, as I am dismissing this appeal partly for other reasons, I have not pursued the matter of the incomplete UU further with the appellant.

Conclusion

46. I have found above that the proposed development would conflict with the development plan taken as a whole. There are no considerations, including the provisions of the Framework, that indicate that a decision should be taken other than in accordance with the development plan. For this reason, and having had regard to all other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR