



Appeal Decision

Site visit made on 10 August 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2022

Appeal Ref: APP/V1505/W/21/3278587

Land West of Windsor Lodge, Windsor Road, Basildon SS13 2LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mrs Diane James against the decision of Basildon Borough Council.
 - The application Ref 21/00363/PIP, dated 7 March 2021, was refused by notice dated 2 July 2021.
 - The development proposed is the construction of 4 x 3 bedroom chalet bungalows, with provision of off-street parking.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. The Council's objections relate to the location and land use proposed. I have determined the appeal accordingly.

Main Issues

4. Taking the above into account, the main issues are whether the site is suitable for residential development in terms of location and land use, with particular regard to: i) whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; ii) the effect of the proposal on the openness of the Green Belt; iii) the effect of the proposal on the Blackwater Estuary Special Protection Area and Ramsar site (the SPA); 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 required to justify the proposal.

¹ Paragraph: 012 Reference ID: 58-012-20180615

Reasons

Whether Inappropriate

5. The appeal site is an undeveloped area of land located within the Green Belt. Paragraphs 147 and 148 of the Framework advise that substantial weight should be given to any harm to 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. I have not been informed of any relevant development plan policies.
6. Paragraph 149 of the Framework advises that the construction of new buildings should be regarded as inappropriate in the Green Belt, unless such development falls within a list of several exceptions. It has not been suggested that any of those exceptions would apply to the proposal, and I see no reasons to find otherwise. The proposal would therefore constitute inappropriate development in the Green Belt.

Openness

7. Windsor Road is one of a small collection of narrow lanes accessed off Pound Lane, which appear to be made up of a mix of detached bungalows, chalets, travellers' plots, and commercial sites interspersed with open plots of grass, scrub, and woodland, as described within the Council's officer report.
8. The open parcel of land which forms the appeal site is located amongst plots occupied by various small-scale single and 2 storey buildings. This part of the Green Belt is therefore rural and sparsely developed. The appeal site is an open plot, which is typical for the locality. The proposal would introduce 2 pairs of semi-detached houses with associated off-street parking, each fronting onto Windsor Road or Grange Road.
9. Paragraph 137 of the Framework states: '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'. Paragraph 138 identifies five purposes Green Belts serve, including, amongst other things, to check the unrestricted sprawl of large built-up areas, to prevent neighbouring towns merging into one another, and to assist in safeguarding the countryside from encroachment. Openness is therefore an essential characteristic of the Green Belt, which has spatial and visual aspects.
10. By introducing 4 dwellings with associated parking to the appeal site and increasing the overall density of development along Windsor Road and Grange Road, the openness of this part of the Green Belt would be reduced spatially and visually. The level of harm which would be caused to the openness of this part of the Green Belt would be moderate on account of existing development within the appeal site's immediate surroundings.

The SPA

11. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to manage mitigation measures associated with development which has the potential to have significant effects

on Habitats Sites² through increased recreational pressure. The appellant's Statement to inform a Habitat's Regulations Assessment³ (SHRA) explains that the appeal site is located within the Zone of Influence of the SPA, as defined by the RAMS.

12. Natural England do not appear to have been consulted on the application but following the Habitats Regulations Assessment Record Template and guidance produced by Natural England, the SHRA concludes that a proportionate financial contribution in line with the RAMS could provide appropriate mitigation to address the likely significant effects of the proposal on the interest features of the SPA through increased recreational pressure.
13. There is no mechanism before me to secure the payment of a financial contribution in accordance with the RAMS to act as appropriate mitigation against the likely significant effects of the proposal on the SPA. I have not been provided with any evidence that a financial contribution under the terms set out above has already been paid, either. As such, I am unable to conclude that the proposal would not be likely to have a significant effect on the interest features of the SPA.
14. I would need to undertake an Appropriate Assessment in accordance with the Habitats Regulations if I was minded to grant permission in principle for the proposal. However, as I have found the proposal would result in harm to the Green Belt, there is no need for me to consider this matter further, unless if any other considerations indicate permission in principle should be granted.

Other Considerations

15. The appellant is an elderly person who lives with her daughter and granddaughter away from the appeal site. The appeal site is located adjacent to Windsor Lodge, where the appellant's son lives with 5 of the appellant's grandchildren, 3 of whom are adults. It is the appellant's intention that her daughter and 3 adult grandchildren would reside in the 4 houses proposed, which would 'fulfil their residential needs'. This, it is claimed would constitute the 'very special circumstances' referred to by the Framework as necessary to outweigh the substantial weight I must assign to the harm I have identified which the proposal would cause to the Green Belt.
16. I note the number of people said to be residing within Windsor Lodge and the benefits that would result from 4 houses for family members being developed next door to an existing family member's residence. However, no information has been provided to explain why the appellant's family's residential needs can only be fulfilled through the proposal. It has not been suggested that all family members need to live close to each other in accordance with any cultural traditions and/or for practical support, for example.
17. As my decision has the potential to affect a person with a protected characteristic⁴ under the Equality Act 2010, I must have due regard to the equality principles set out therein⁵. Although no evidence has been provided to

² Any site which would be included within the definition at regulation 8 of The Conservation of Habitats and Species Regulation 2017 (as amended) (the Habitats Regulations)

³ Dated March 2021, reference 20088 R1 v1 by Huckle Ecology Ltd

⁴ As defined in section 149(7) of the Equality Act 2010

⁵ (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and

support the appellant's claims, there would be clear benefits to her and all family members resulting from the proposal, if it was to be secured for their occupation as proposed. No mechanism is before me to secure the occupation of the proposed dwellings for those people, but even if that were the case, I cannot be certain those benefits could not be provided by other, more appropriate means. On balance, I consider greater weight should be afforded to the public interest of ensuring compliance with the advice of the Framework, as set out above, which seeks to protect the Green Belt from inappropriate development which would harm its openness.

18. No evidence has been provided which demonstrates the need for 4 houses by the appellant, her daughter and grandchildren at the appeal site would outweigh the substantial weight the Framework advises I should assign against the proposal. Based on the information available, there are no very special circumstances which would outweigh the harm the proposal would cause to the Green Belt and it would be proportionate and necessary to dismiss the appeal.
19. Dismissing the appeal would interfere with the appellant's and her family's rights to peaceful enjoyment of their possessions, and to a private and family life and home, under Article 1 of the First Protocol and Article 8 as set out under the Human Right Act 1998. However, those are qualified rights; interference with them in this instance would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the Green Belt.
20. Since no evidence has been provided which outweighs the harm identified, it is proportionate and necessary to refuse to grant planning permission. There will be no violation of the appellant's or her family's human rights. The protection of the public interest cannot be achieved by means that are less interfering with their rights.

Conclusion

21. The proposal would constitute inappropriate development in the Green Belt and it would also harm the openness of the Green Belt. I cannot be sure that the proposal would not be likely to have a significant effect on the interest features of the SPA in the absence of financial contributions being secured for appropriate mitigation measures. For the reasons set out above, and taking all other matters raised into account, the harm identified would not be outweighed by any other considerations and the very special circumstances required to justify the proposal have not been demonstrated. The appeal is therefore dismissed.

L Douglas

INSPECTOR

persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.