



Appeal Decisions

Inquiry held on 11-12 November 2022

Site Visit made on 12 November 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2023

Appeal A Ref: APP/B1550/C/21/3275229

Land Rear of 128 Rawreth Lane, Rayleigh, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Phil Hinchcliffe, Westlake Properties Ltd against an enforcement notice issued by Rochford District Council (the LPA).
- The enforcement notice was issued on 26 March 2021.
- The breach of planning control as alleged in the notice is, without planning permission:
 1. The material change of use of land from storage of 1 caravan, 1 shipping container, 1 car (blue Jaguar) to a mixed use of open storage of 1 caravan, 1 shipping container, 1 car (blue Jaguar) and use as a yard comprising the associated open storage of plastic road barriers; road safety signage; traffic cones; waste skip; additional shipping container; importation, deposit and open storage of waste (land shown edged bold the attached plan).
 2. The erection of poles and installation of lighting shown in the approximate positions marked A, B, C, D and E on the attached plan.
- The requirements of the notice are:
 1. Cease the use of the site for the mixed use of open storage of 1 caravan, 1 shipping container, 1 car (blue Jaguar) and as a yard comprising associated open storage of plastic road barriers; road safety signage; traffic cones; waste skip; additional shipping container; importation, deposit and open storage of waste.
 2. Remove from the site all paraphernalia associated with the use of the site as a yard namely and not limited to plastic road barriers, road safety signage, traffic cones, waste skip, trailers, plant/machinery, pipes, bricks, paving stones and spoil brought onto the site.
 3. Scrap off from the ground the asphalt heaped in the approximate position hatched blue on the attached plan.
 4. Remove the shipping container shown in the approximate position stippled blue and labelled K.
 5. Cease the use of external lighting on the site and remove the poles and lighting shown in the approximate positions marked A, B, C, D and E on the attached plan.
 6. Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Appeal B Ref: APP/B1550/W/21/3275474

Land at Hooley Drive (Rear of 128 Rawreth Lane), Rayleigh

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Mr Phil Hinchcliffe, Westlake Properties Ltd against Rochford District Council.
- The application Ref 20/00592/OUT is dated 30 June 2020.
- The development proposed is residential development comprising two detached dwellings (outline planning application – all matters reserved).

Summary of Decision: The appeal is allowed.

Appeal A

1. At the Inquiry, the LPA submitted that it no longer wished to contest Appeal A insofar as it relates to the material change of use element of the alleged breach stated in the notice. The LPA is satisfied that it has been demonstrated both that the Land could lawfully be used for a use falling within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (UCO), and that the use alleged in the notice fell within Class B8 of the UCO. S55(2)(f) of the Act makes clear that, in the case of land which is used for a purpose of any class specified in an order made by the Secretary of State (i.e. the UCO), the use of the land for any other purpose of the same class does not amount to development. Since the alleged material change of use does not amount to development, it does not amount to a breach of planning control.
2. The parties agreed that the appellant's ground (c) appeal should thus succeed in respect of the material change of use. On the basis of all the evidence before me, including that which I heard at the Inquiry, I agree that the alleged material change of use does not amount to development for the purposes of the Act. Thus, it follows that it does not amount to a breach of planning control under S171A(1)(a) of the Act. I conclude therefore that the appeal on ground (c) should succeed insofar as it relates to the material change of use.
3. The appellant submits that it does not seek to appeal on any grounds under S174 in respect of the erection of poles and installation of lighting aspect of the breach. Thus, the appeal on grounds (d), (a), (f) and (g) set out in section 174(2) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.
4. For the reasons given above, I shall uphold the enforcement notice, subject to a correction to delete the reference to the material change of use from the breach of planning control stated in the notice and subject to variations to delete requirements 1-4 and 6 which relate to the material change of use.

Appeal B

Main Issues and Reasons

5. Appeal B is an appeal against the failure of the LPA to determine an outline planning application for residential development comprising two detached dwellings. The LPA's position initially was that, had it made a decision, it would have refused planning permission. Its reasons for doing so were: the development is inappropriate development in Green Belt; the development harms the openness of the Green Belt; the development fails to provide

suitable mitigation for impacts on the integrity of the Crouch and Roach Estuaries (Mid-Essex Coast Phase 3 (SPA) (Ramsar) (SSSI) and the Essex Estuaries (SAC) European sites; and that there are no other considerations which clearly outweigh the harm to the Green Belt, and other harm, so as to amount to the very special circumstances required to justify the development.

6. However, the LPA submitted at the Inquiry that it no longer contested Appeal B. This was for two reasons. Firstly, the appellant submitted a draft planning obligation to secure a financial contribution towards measures to mitigate the effect of the proposed development on European sites. The LPA is satisfied that the contribution is appropriate and complies with the requirements in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) (May 2020). A signed and executed copy of the planning obligation was submitted to the Planning Inspectorate following the close of the Inquiry within the agreed timescale.
7. Secondly, the continued lawful Class B8 use of the site, absent of any conditions or limitations, would amount to inappropriate development in the Green Belt; would harm the openness of the Green Belt; would result in harm to the living conditions of neighbouring residents and to the character and appearance of the area.
8. The LPA accepts there is a reasonable prospect of the Class B8 use continuing in the event that Appeal B does not succeed, thus resulting in a genuine fallback position. The LPA's position, therefore, is that the continuation of the Class B8 use would be more harmful than the proposed development of two detached dwellings.
9. The parties therefore agreed that, to negate the greater harm arising from the use, it is necessary for a planning obligation which requires the appellant to cease use of the land for Class B8 storage use once they have a lawfully implementable planning permission for residential development.
10. It is on that basis the LPA now consider there are other considerations which clearly outweigh the harm to the Green Belt by reason of inappropriateness and the harm to openness of the Green Belt, such that very special circumstances exist to justify the development in Green Belt policy terms.

Inappropriate Development

11. Paragraph 147 of the National Planning Policy Framework (the Framework) sets out that inappropriate development is by definition harmful to the Green Belt. Paragraph 149 of the Framework makes clear that the construction of new buildings is inappropriate development. The site lies within the Green Belt. The proposed development of two dwellings does not meet any of the exceptions listed under paragraph 149 or 150 of the Framework. As a result, I conclude that the proposal amounts to inappropriate development in the Green Belt. In accordance with paragraph 148 of the Framework, I afford substantial weight to the harm to the Green Belt which arises by reason of inappropriateness.

Openness

12. Paragraph 137 of the Framework indicates that 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. The concept of Green Belt openness has a spatial aspect as well as a visual aspect.

13. The proposal would introduce a significant extent of built form upon the site where presently little exists. Both in footprint and volume measures, the introduction of two detached dwellings on the site will erode the spatial aspect of Green Belt openness. Moreover, whilst the scale of the dwellings is not substantial, and they are located close to existing built form, the proposal would nevertheless extend the envelope of built form northwards beyond the existing houses on Rawreth Lane, resulting in harm to the visual aspect of openness.
14. I conclude, therefore, that the development will result in moderate harm to Green Belt openness, in conflict with Policy GB1 of the Rochford District Council Local Development Framework Core Strategy 2011 (the CS) which seeks to direct development away from the Green Belt.

Habitats and Biodiversity

15. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) transposes into UK law the Habitats Directive¹. It requires decision makers to undertake appropriate assessment where significant effects on a European site are likely and to only give consent if there are no adverse effects on the integrity of a European site.
16. Policy ENV1 of the CS states that the Council will maintain, restore and enhance sites of international, national and local nature conservation importance. Policy DM27 of the Rochford District Council Local Development Framework Development Management Plan 2014 (the DMP) states that proposals should not cause harm to priority species and habitats. Development will only be permitted where it can be demonstrated that the justification for the proposal clearly outweighs the need to safeguard the nature conservation value of the priority habitat, and/or the priority species or its habitat. In such circumstances, DM Policy DM27 sets out that the LPA will secure a legal agreement to minimise the disturbance to the priority species and/or habitats.
17. The appeal site lies within the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS) zone of influence of the Crouch and Roach Estuaries SPA, Ramsar, SSSI and the Essex Estuaries SAC European sites. The sites are internationally important for breeding and non-breeding birds and their habitats in coastal areas. All sites are heavily used for recreational activities such as walking, sailing, bird-watching, jet skiing, dog walking and fishing. The evidence indicates that the majority of the activity is undertaken by people living in Essex.
18. There is no dispute between the parties that the proposal would give rise to additional pressure on the European sites through the recreational activities of future residents. Whilst when considered alone, the effect is unlikely to be significant given the number of residents generated by the development, the in combination effects with other schemes in the area, would likely have direct and indirect effects on the European sites. It is thus necessary to carry out appropriate assessment.

¹ Council Directive 94/43/EEC 1992

19. The qualifying features of the SPA and Ramsar site are overwintering waterbird assemblage which require low levels of disturbance for feeding. The qualifying features of the SAC are sandbanks, estuaries, mudflats, swards, salt meadows and scrubs.
20. The conservation objectives for the SPA and Ramsar sites are: to maintain or restore the extent, distribution, structure and function of the habitats; supporting processes on which the habitats rely; the population of the qualifying features; and, the distribution of the qualifying features within the site. The conservation objectives for the SAC are to maintain or restore the extent, distribution, structure and function of the natural habitats; and, the supporting processes on which the qualifying habitats rely.
21. The LPAs within the zones of influence have developed a mitigation strategy to deliver measures to deal with direct and in-combination effects of recreational disturbance upon the sites. The approach is endorsed by Natural England who were consulted on the original planning application. The RAMS is a strategic approach to mitigation which includes measures such as the provision of information and education, fencing, restrictions on pedestrian access and monitoring. I am satisfied such measures would overcome the likely effects on the sites arising from the recreational activities carried out at the sites by future residents. The RAMS sets out that measures will be funded by financial contributions from residential development on a tariff based approach at a cost per dwelling. The current tariff is set at £137.20 per dwelling.
22. The appellant has submitted a planning obligation under S106 of the Act which commits the appellant to pay to the LPA £137.20 per dwelling towards RAMS prior to the commencement of development. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. As a result, it accords with Regulation 122 of the Community Infrastructure Levy Regulations.
23. Moreover, the contribution would be suitable mitigation towards maintaining the integrity of the sites. With the mitigation, the likely significant effects would be avoided. I conclude, therefore, that the development would not adversely affect the integrity of the European sites. As such the development would comply with CS Policy ENV1 and DMP Policy DM27.

Other Considerations

24. It is now common ground between the main parties that the appeal site can lawfully be used for Class B8 storage use. I have come to the same conclusion in respect of Appeal A. As a result, there is a fallback position available to the appellant in the event that residential development is not allowed. I heard at the Inquiry how the site forms part of the appellant company's property portfolio. It was said that, whilst currently vacant due to the end of a tenancy with a highway maintenance company, there had been interest in letting the site in the future for storage use. Examples were given of such communications. As such, I find the appellant's evidence sufficiently compelling that there is a real prospect of the storage use continuing in the event this appeal fails.
25. A Class B8 storage use on the site amounts to inappropriate development in the Green Belt since it does not fall within the exceptions under paragraph 149

and 150 of the Framework. Given the potential spread and height of materials associated with the storage use, I consider that the effect on the openness of the Green Belt will be similar in extent, both in spatial and visual terms, to that of the proposed dwellings. In addition, a Class B8 storage use can be carried out on the land without any limitations or conditions restricting the nature of materials being stored nor the heights of such storage. Moreover, there is nothing to restrict the hours of operation on the site.

26. As such, the unfettered storage use would likely give rise to harmful effects on the living conditions of the occupants of the adjacent houses on Rawreth Lane due to the proximity and potential noise arising, particularly at times of the day when neighbours may expect lower levels of background disturbance. As a result, I am satisfied that the cumulative harm arising from the lawful Class B8 storage use would be worse than that arising from the appeal proposal.
27. The appellant has put forward a planning obligation under S106 of the Act which requires the cessation and abandonment of the Class B8 storage use upon the obtaining of a lawfully implementable planning permission for two dwellings on the Land. Such an obligation would ensure that there is no possibility of the storage use continuing on part of the land following residential development upon it. It would also ensure that the continuing harm arising from the existing lawful use would be mitigated. I am thus satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. As a result, it accords with Regulation 122 of the Community Infrastructure Levy Regulations. As a result, the existence of the fallback position is something to which afford very substantial weight.
28. For the reasons above, I consider other considerations in this instance clearly outweigh the total harm to the Green Belt from the appeal proposal by reason of inappropriateness and harm to openness.
29. I conclude, therefore, that very special circumstances exist which justify the development. The development therefore complies with the development plan taken as a whole, as well as paragraph 148 of the Framework.

Conditions

30. It is necessary to impose time limit conditions on the submission of the reserved matters and commencement of the development. The parties agree that a 1 year period for the submission of details for reserved matters is necessary to prevent further harm to the Green Belt as a result of the current Class B8 storage use on the site. I agree that a shorter than usual timescale is justified in this instance.
31. Paragraph 54 of the Framework states that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. I nevertheless consider it necessary in this instance to restrict permitted development rights for extensions to the dwellings as well as alterations or additions to the roofs to prevent a loss of openness to the Green Belt. For the same reasons, I consider a condition restricting permitted development rights for outbuildings necessary.
32. In the interests of promoting sustainable forms of transport, it is necessary for the appellant to produce a Travel Information Pack for future residents to be

agreed with the LPA. It is also necessary to impose a condition preventing surface water run-off onto the highway both in the interests of highway safety and to prevent flooding impacts off-site.

33. It was discussed at the Inquiry that it would be necessary to require the submission and agreement of a construction method statement or management plan to deal with various potential impacts from the construction phase of the development. I agree such a condition is necessary to ensure the construction phase does not unduly impact on the living conditions of neighbouring residents or highway safety.
34. It is necessary in the interest of promoting sustainable energy use and travel that a condition is imposed requiring details of electric vehicle charging measures to be agreed and installed within the development. Finally, it is necessary to impose a condition which requires work to halt if unexpected contamination is found on the site to prevent harm to human health. Work can only resume in such circumstances where a risk assessment, and if necessary, remediation works, are carried out.
35. Conditions put forward in respect of external materials and landscaping are not necessary since both those matters are reserved for future consideration. A condition relating to the provision of a compliance statement for the importation of materials is not necessary since control for such matters falls under environmental permitting legislation.

Conclusions

36. For the reasons given above I conclude that the appeal should be allowed.

DECISIONS

Appeal A

37. It is directed that the enforcement notice be corrected by:
- deleting the words, "1. The material change of use of land from storage of 1 caravan, 1 shipping container, 1 car (blue Jaguar) to a mixed use of open storage of 1 caravan, 1 shipping container, 1 car (blue Jaguar) and use as a yard comprising the associated open storage of plastic road barriers; road safety signage; traffic cones; waste skip; additional shipping container; importation, deposit and open storage of waste (Land shown edged bold the attached plan) 2." from paragraph 3 of the notice;
38. And the enforcement notice be varied by:
- Deleting paragraphs 5(1), 5(2), 5(3), 5(4) and 5(6) in their entirety from the notice.
 - Deleting the numbering "5." from before the word "Cease" in paragraph 5 of the notice.
39. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

40. The appeal is allowed and outline planning permission is granted for residential development comprising two detached dwellings at Land at Hooley Drive (Rear of 128 Rawreth Lane), Rayleigh in accordance with the terms of the application, Ref 20/00592/OUT dated 30 June 2020 and the plans submitted with it, subject to the conditions set out in the Schedule of Conditions to this decision.

J Whitfield

INSPECTOR

APPEAL B - SCHEDULE OF CONDITIONS

- 1) 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.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 1 year 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) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, roof alterations or roof additions shall be constructed on the dwellinghouses hereby approved.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no buildings shall be erected within the curtilages of the dwellinghouses hereby approved.
- 6) Prior to first occupation of the dwellinghouse hereby approved, a Residential Travel Information Pack for sustainable transport which includes six one day travel vouchers, as well as a timetable for its implementation, shall be submitted to and approved by the Local Planning Authority. Thereafter, the Travel Information Pack shall be implemented in accordance with the agreed details.
- 7) There shall be no discharge of surface water from the site onto the highway at any time.
- 8) 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:
 - i) the parking of vehicles of site operatives 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;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii) delivery, demolition and construction working hours;
 - viii) measures to maintain free and unobstructed access to bridleway number 69.

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

- 9) No development hereby approved shall be carried out until a scheme for the installation of electric vehicle (EV) charging points in the development has been submitted to and agreed in writing by the Local Planning Authority. Thereafter EV charging points shall be implemented in accordance with the agreed scheme prior to the first occupation of the development hereby approved.
- 10) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

APPEARANCES

FOR THE APPELLANT:

Giles Cannock of Kings Counsel

He called:

Mr Phil Hinchcliffe Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Graham of Counsel

DOCUMENTS

- 1 Appellant's Opening Submissions
- 2 LPA's Opening Submissions
- 3 Draft S106 Unilateral Undertaking
- 4 CIL Compliance Statement
- 5 Statement of Common Ground
- 6 LPA's Closing Submissions
- 7 Appellant's Closing Submissions
- 8 Signed and Executed S106 Planning Obligation - Ecology
(Received 5/12/22)
- 9 Signed and Executed S106 Planning Obligation – Land Use
(Received 5/12/22)