
Appeal Decision

Site visit made on 28 February 2023

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2023

Appeal Ref: APP/V1505/W/22/3292206

Land west of Upper Park Road, Wickford, SS12 9EN

- 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 William Thomas Anderson against the decision of Basildon District Council.
 - The application Ref 21/00863/OUT, dated 24 May 2021, was refused by notice dated 9 September 2021.
 - The development proposed is residential development for 43 dwellings and associated works.
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Decision

1. The appeal is dismissed.

Procedural Issues

2. The appeal is for outline planning permission with all matters reserved. Accordingly, whilst the appeal was accompanied by a series of layout plans these are treated for illustrative purposes only.
3. The Council's decision letter refers to both the Saved policies of the Basildon Local Plan 1998 and those emerging in the Revised Publication Local Plan 2014-2034. The draft plan was withdrawn by the Council in March 2022, after the Council's decision on the application. Its policies carry no weight. For this reason, my decision refers to the Saved Policies only.
4. In its first reason for refusal the Council identifies a conflict with Saved Policy BAS BE12. This policy refers to new residential development, alterations or extensions of existing dwellings and is not strictly relevant to the Green Belt issue.

Main Issues

5. The appeal raises the following as main issues:
 - the effect of the proposal on openness and the purposes of including land within the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - whether or not the appeal scheme would adversely impact on protected species and protected habitats;

- whether or not the scheme would lead to an increase in flood risk;
- whether or not the appeal scheme includes the provision of necessary infrastructure directly required by this development, and
- whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations such as to provide the very special circumstances required to justify development in the Green Belt.

Reasons

Whether or not the appeal scheme is inappropriate development in the Green Belt

6. The National Planning Policy Framework (the Framework) identifies the protection of the Green Belt as a core planning principle. It says one of the fundamental aims of the Green Belt is to keep land permanently open, and openness is one of its essential characteristics. Paragraph 138 of the Framework identifies that the Green Belt serves five purposes. In turn these are a) checking the unrestricted sprawl of large built up areas, b) prevention of neighbouring towns merging into one another, c) assisting in safeguarding of the countryside from encroachment, d) preserving the setting and special character of historic towns, and e) assisting in urban regeneration.
7. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There is no dispute between the parties that the appeal scheme would be inappropriate development in the Green Belt.
8. Although there is no definition of 'openness' within the Framework, the Guidance¹, refers to assessments of openness as being informed through consideration of spatial and volumetric aspects, the duration of the development and the degree of activity likely to be generated. Whilst only a suggested framework for consideration it is useful to inform consideration of issues involved in this appeal.
9. The appeal site comprises several paddocks grazed by horses. I acknowledge the history of the site going back to the Second World War referred to by the appellant but there is no development across the whole of the site and it lies in the Green Belt.
10. The appellant refers to the background studies used to inform the withdrawn local plan which identify that the site would not contribute to purposes included in Paragraph 138 a), c) and d). However these studies have not been tested through the Examination process and accordingly I give them limited weight in the determination of this appeal.
11. From the site's wider context it is clear that whilst there is some development which extends south from Wickford towards the A127 to the edge of Basildon the site lies in a wedge of largely open land area which is undeveloped. The scheme would, if I were minded to allow this appeal lead to the coalescence of development in this area.
12. For these reasons, I find therefore that the site in its current state contributes to Purpose 138b). Furthermore, I find that the site would contribute to Purpose

¹ Planning Practice Guidance 001 reference ID:64-001-020190722

138e) in that its loss for development would not assist in the recycling of other land within the Borough for housing.

13. Whilst this is an outline scheme the scale of development proposed in terms of both its spatial and visual impacts would be significant on the site and by extension the surrounding Green Belt. There would be a loss to the permanence and openness of the Green Belt as defined by Paragraph 137 of the Framework.
14. For these reasons, I conclude that the appeal scheme represents inappropriate development and would conflict with the purposes of the Green Belt as defined by Paragraph 138 of the Framework.

Character and appearance

15. The appeal site occupies land located on the south west corner of the junction of Upper Park Road with Cranfield Park Road. North of the site there are several areas of residential development comprising flats and short terraces of two storey dwellings. In contrast to the south and east of the site development is low density comprising single storey chalet style detached dwellings interspersed with paddocks with some commercial development.
16. Within this context the location of 43 dwellings would represent a stark contrast. Whilst I am treating the layout plans as only indicative they show a scheme which would comprise a range of dwelling types with detached and semi detached properties located in the middle and southern part of the site with terraced and a 2- 3 storey block of flats along its northern edge alongside Cranfield Park Road.
17. The Council has identified that the scheme would conflict with Saved Policy BAS BE12, which requires that new residential development should be refused if it causes material harm to the character of the surrounding area including the streetscene.
18. I recognise that the site lies in an area within which the character of surrounding development varies considerably and that the submitted plans are indicative only. However, whilst the form of development suggested by these plans identifies closely with those to the north of the site it doesn't reflect development which accords with the character of land to the south of Cranfield Park Road.
19. In conclusion, on this main issue I find that the appeal scheme conflicts with Saved Policy BAS BE12 which seeks to ensure that new development reflects the character and appearance of the surrounding area.

Ecology

20. The appeal is accompanied by MAGIC² surveys of both priority species and habitats. I find that this high level of survey does not fully address the requirements of the Framework in whether there are legally protected species on the site. This level of detail would be required to determine the baseline position in order to calculate the level of biodiversity net gain. It should be available in advance of any decision to allow development on this site

² Natural England on line survey information

21. For this reason, I conclude that in the absence of appropriate surveys to determine whether the site includes protected species the scheme conflicts with Paragraph 180d) of the Framework.

Flood Risk

22. The appeal was accompanied by a Flood Risk Assessment. This identifies that parts of the site lie in Flood Zones 1 and 2.
23. The Framework requires a sequential test to be applied to development proposals which directs development away from those areas identified as being at high risk of flooding. If it proves not possible to achieve this then an 'exceptions' test should be further applied.
24. The FRA included with the appeal is based on the Housing, Economic Land Availability Assessment prepared for the withdrawn emerging local plan. However, this was part of a different process and the exception test has not been addressed.
25. Whilst I accept that a drainage strategy could be conditioned, this outstanding matter is a requirement for a FRA which could fully address the requirements of the Framework. For this reason, I conclude that the appeal scheme conflicts with Paragraph 167 of the Framework.

Infrastructure requirements

26. The Council identify that the appeal scheme would be liable for contributions towards affordable housing, education and towards a mitigation package required by the Essex Coast Recreational Disturbance, Avoidance and Mitigation Strategy (RAMS).
27. These measures are required by Saved Policies C1 and S5 of the Local Plan. Together these policies require the protection of important habitats and the provision of affordable housing. I regard these policies as consistent with Paragraph 57 of the Framework in requiring planning obligations which would be necessary, directly related and fairly and reasonably related in scale and kind to the appeal scheme.
28. The appeal was accompanied by a viability study which concludes that the scheme would be viable when assessed against scenarios which vary on the percentage of affordable housing. Accordingly, the scheme includes 14 affordable units.
29. I find that in the absence of a planning obligation which could give effect to the direct provision of affordable housing and contributions to education services the scheme conflicts with Saved Policies C1 and S5 of the Local Plan.
30. If I were allowing this appeal an Appropriate Assessment would be required although no mechanism to address mitigation has been submitted with the appeal. However, as I am dismissing this appeal, I do not have to complete this exercise. Paragraph 180 of the Framework states that if significant harm to biodiversity is likely to arise and cannot be avoided or adequately mitigated then planning permission should be refused.
31. For these reasons, I conclude that the appeal scheme conflicts with Saved Policies C1 and S5 of the Local Plan and Paragraph 180 of the Framework.

Whether Very Special Circumstances exist

32. I find that the appeal site fulfils Green Belt Purposes defined by Paragraph 138 of the Framework. The appeal scheme is inappropriate development in the Green Belt.
33. Whilst the provision of additional market and affordable housing would partially address the shortfall in housing land supply and address need this would be insufficient to overcome the harms which would arise from this scheme derived from its conflict with Green Belt purposes.
34. The appellant has submitted an appeal decision³ made by an Inspector colleague of mine for housing in the Green Belt in another part of the country. I am not fully acquainted with this site. It would appear, however, that very special circumstances existed in that case because the harm to the Green Belt was clearly outweighed by other considerations. This is not the situation in the appeal before me.
35. I find that the other considerations do not clearly outweigh the harm that I have identified to the Green Belt. Consequently, the very special circumstances necessary to justify development do not exist.

Planning balance and conclusions

36. Both parties recognise that there is a severe deficit of housing land as required by the Framework. These circumstances, together with the age of the most important policies deems that they are out of date. The tilted balance is not invoked, however, because the Framework at Paragraph 11d(i) and footnote 7 protects both areas and assets of particular importance, which include the Green Belt and protected habitat sites, and provides a clear reason to dismiss the appeal.
37. The fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 219, which amongst other things, states that the closer that local policies are to policies in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed out of date for reason of an inadequate land supply to still carry significant weight.
38. Saved Policy BAS BE12 is entirely consistent with Paragraph 130 of the Framework of the Council's Development Plan. I find Policies CC2 and CC4 in respect of flood risk and the provision of Sustainable Drainage are consistent with Paragraphs 159-169 of the Framework.
39. Policy C1 is consistent with Paragraphs 181-182 of the Framework in requiring appropriate protection and mitigation for habitats. I accord significant weight to the conflict between the appeal scheme and this policy.
40. Policy S5 is broadly consistent with Paragraph 63 of the Framework in seeking affordable housing although the policy is unclear on whether this should be secured on or off site and it is unspecific on the type of affordable housing sought. For these reasons, I find accord moderate weight between the appeal scheme and this Saved Policy.

³ APP/B1930/W/20/3265925 & APP/C1950/W/20/3265926

41. Whilst the provision of additional market and affordable housing is to be welcomed, I accord significant weight to the scheme's conflict with Saved Policies BAS BE12, S5, C1, CC2 and CC4 with regard to the adverse impact of the proposed scheme on the character and appearance of the area, the lack of detail in respect of flood risk and SUDS and the absence of mitigation in respect of the SPA and the absence of a commitment to the provision of affordable housing.
42. Overall, I conclude that the harm caused in this case would significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. As such the proposed development does not benefit from the Framework's presumption in favour of sustainable development.
43. Bearing all of the above in mind, there are no material considerations, would indicate that the decision in this case should be taken otherwise than in accordance with the Development Plan. Accordingly, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Stephen Wilkinson

INSPECTOR