



Appeal Decision

Site visit made on 15 December 2022

by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal Ref: APP/V1505/W/21/3281405

Land rear of Pickwick, Gardiners Lane North, Crays Hill, Billericay CM11 2XA

- 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 C Jeakins against the decision of Basildon Borough Council.
 - The application Ref 21/00211/FULL, dated 11 February 2021, was refused by notice dated 5 July 2021.
 - The development proposed is described as 'Revised Application for Erection of Dwelling in Lieu of Existing Garage, Shed and Stable'.
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Decision

1. The appeal is allowed and planning permission is granted for erection of dwelling in lieu of existing garage, shed and stable at Pickwick, Gardiners Lane North, Crays Hill, Billericay CM11 2XA in accordance with the terms of the application, Ref 21/00211/FULL, dated 11 February 2021, and the plans submitted with it, subject to the conditions set out in the following Schedule.

Applications for costs

2. An application for costs was made by Mr C Jeakins against Basildon Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council has confirmed that the emerging Local Plan referenced in the submissions has been withdrawn from examination. The draft policies in that document have not therefore been determinative in my decision.
4. The appeal site is within the zone of influence of the Blackwater Estuary Special Protection Area (SPA). I have a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) as competent authority to carry out an assessment to test if the proposal could significantly harm the designated features of the SPA.
5. The appeal was accompanied by a unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act to facilitate a contribution towards the carrying out of habitat mitigation projects for the SPA in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). The UU has been updated during the appeal process and the Council has had the opportunity to comment on it. I will return to this below.

Main Issues

6. The main issues are therefore:

- i) whether the proposal would be inappropriate development in the Green Belt having regard to national and local policies, including the effect of the proposal on the openness of the Green Belt;
- ii) the effect of the proposal on the character and appearance of the area;
- iii) the effect of the proposal on the integrity of the Blackwater Estuary SPA; and
- iv) if the proposal is inappropriate development, 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.

Reasons

Whether inappropriate development

- 7. The National Planning Policy Framework (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. It further states that the construction of new buildings should be considered inappropriate in the Green Belt, other than in the case of certain exceptions.
- 8. Policy BAS GB1 of the Basildon District Local Plan Saved Policies refers to the boundaries of the Green Belt but does not set out any criteria relevant to new development in the Green Belt.
- 9. Framework paragraph 149g) allows for limiting infilling or the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. The Framework sets out that openness is one of the essential characteristics of Green Belts. The courts have held that the consideration of openness is capable of having both spatial and visual aspects.
- 10. The appeal site comprises part of the garden of Pickwick including a garage, stables and a shed. From the evidence before me, including my site visit, I am satisfied that the larger outbuildings are permanent structures and that the site can be considered previously developed land.
- 11. The proposal would replace all of the existing outbuildings with a single storey dwelling. This would consolidate development in one location, reducing the spread of built development across the site compared to the existing situation. There is no dispute between the parties that the proposed dwelling would be smaller in both footprint and volume than the combined total of the outbuildings to be removed. The roof ridge would be the same height as the existing garage but the eaves would be significantly lower, commensurate with the eaves of the stables. This would limit the visual bulk of the building. The proposal is therefore significantly smaller than the chalet-style dwelling considered by a previous Inspector¹. Accordingly, it would not have a greater impact on openness than the existing situation in spatial terms.

¹ APP/V1505/W/20/3247736

12. The site already contains domestic paraphernalia associated with its garden use including play equipment, along with an access from Southlands Road and an area of hardstanding which could be used for parking. The creation of another dwelling could result in further domestic paraphernalia being placed in the garden areas, but there is nothing to stop that occurring now. Nor is there any substantive evidence before me that the subdivision would increase noise and activity beyond what could take place in the large garage and stables if these were in regular use. The current occupiers of Pickwick could choose to park on the site given the more limited space available to them at the front of their property. Consequently, it has not been demonstrated that the proposal would result in a material change in domestic activity beyond that which could already take place.
13. The garden would be subdivided at a point level with the rear boundaries of the gardens of the neighbouring three properties, with the paddock behind them remaining open. Consequently, the garden subdivision would not appear out of character in this location. Furthermore, substantial fencing along the boundary with Southlands Road and gates across the access provide considerable screening from public view.
14. Therefore, the visual impact of the subdivision and the proposed single storey building would not be readily apparent and it would not have a materially greater impact on visual openness than the existing situation.
15. Consequently, I find that the proposal would not have a greater impact on the openness of the Green Belt than the existing development in either spatial or visual terms. Accordingly, the proposal falls within Framework paragraph 149g) and would not be inappropriate development in the Green Belt. It is not therefore necessary for me to consider whether very special circumstances exist.

Character and appearance

16. Gardiners Lane North consists of ribbon development with dwellings close together. In contrast, Southlands Road has intermittent development with dwellings well-spaced and set back from the road in large plots. North of the site is a new-build dwelling set in a backland position.
17. The proposed dwelling would be set further back from Southlands Road than its immediate neighbours but in a position similar to outbuildings set behind properties along this road. Part of the roof of the single storey structure could be visible from the road, however given its limited scale and plain form, it would not be obviously identifiable as a dwelling rather than an outbuilding. Its access and parking already exist and, as set out above, the subdivision of the plot would not be readily apparent from public viewpoints.
18. In this context therefore, and provided that the existing outbuildings were removed, the proposal would not be conspicuous and would not be out of character with the grain or appearance of the local area. Removal of the existing buildings can be secured by condition.
19. There is a large tree close to the site of the proposed dwelling, which contributes positively to the character of the area. The submitted arboricultural report demonstrates that it can be suitably protected during the development, therefore there would be no adverse impact on the area in this respect.

20. Accordingly, the proposal would not harm the character and appearance of the area. I therefore find no conflict with Policy BAS BE12 of the Basildon District Local Plan Saved Policies (2007) which seeks to resist new residential development that would cause material harm to the character of the surrounding area, including the street scene.

Blackwater Estuary SPA

21. The appeal site is within the zone of influence of the Blackwater Estuary SPA as set out in the RAMS Habitats Regulations Assessment Strategy document 2018-2038 and the adopted RAMS Supplementary Planning Document (SPD) (May 2020). The SPA is one of a number of habitats sites along the Essex coast designated to protect internationally important breeding and non-breeding birds and their coastal habitats. The SPA is under pressure from recreational disturbance, which has the potential to cause ongoing adverse effects on the protected habitats and species.
22. As the proposal would increase the number of dwellings on the site, it is likely to increase the number of visitors to the SPA. Consequently, the proposal, particularly combined with other development in the area, is likely to have a significant effect on the integrity of the SPA due to greater potential for impacts from increased recreational disturbance of birds and their habitats. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SPA.
23. The RAMS identifies a detailed programme of strategic mitigation measures, to be funded by contributions from residential development schemes. It is accompanied by the RAMS SPD, which sets out an index-linked tariff per new dwelling to meet the costs of the mitigation strategy, based on the planned number of dwellings in the zone of influence until 2038. Accordingly, there is an agreed project that would address the effects associated with the proposed development and relieve pressure on the SPA. The financial contribution would be necessary to mitigate the effect of the development on the SPA, directly related to the development proposed and fairly and reasonably related to it in scale and kind.
24. The appellant has submitted a revised UU which would secure the required contribution and which is worded to take effect if permission is granted at appeal. Accordingly, mitigation required to address the level of harm likely to be caused by the development on the Blackwater Estuary SPA has been secured. The proposal would not therefore conflict with Framework policies on biodiversity and habitats sites. The Council has confirmed that it does not have a specific Local Plan policy relating to protection of habitats sites.

Other Matters

25. The proposed dwelling would be seen from neighbouring buildings, but due to the separation distance it would not dominate their outlook. The removal of the stables would move development further from Sunnyside Cottage. The proposal would be clearly visible from the garden of Amble Side, however the existing substantial garage is already seen in a similar position. With the single storey form and modest scale proposed, the dwelling would not significantly or harmfully alter the outlook from that garden.

26. The siting of the proposed dwelling would result in some shading of the garden of Amble Side during the middle of the day, however this would not be significantly greater than the existing situation and would affect only a small part of the long garden. It would be far enough from the east and west site boundaries that there would be no significant shading of other neighbours.
27. No windows are proposed facing the garden of Amble Side and the proposed dwelling would be well separated from other neighbours, so it would not result in a harmful increase in overlooking compared to the existing situation.
28. Demolition and construction activities would take place some distance from neighbouring properties and would be temporary in nature. Therefore, measures to control working methods during demolition and construction would not be necessary to safeguard neighbouring occupiers from noise and disturbance.
29. Consequently, the proposal would not significantly adversely affect the living conditions of neighbouring occupiers.
30. There is no substantive evidence before me that the proposal would harm water quality or result in the loss of wildlife or their habitats, particularly as the existing tree and other vegetation can be retained. Nor has it been demonstrated that utilities and services cannot be provided to the proposed dwelling in a suitable location and manner. Therefore, I find no harm from the proposal in these respects.
31. Green Belt development is tightly controlled and it would be difficult to replicate the specific circumstances of this proposal. Therefore, this would not form a precedent for development on adjacent land or elsewhere.

Conditions

32. I have considered all conditions suggested by the appeal parties and have made minor changes to the wording where necessary to ensure that they meet the Framework tests for conditions.
33. In addition to the conditions mentioned above and the standard implementation condition, a condition to require compliance with the approved plans is necessary in the interests of certainty. Details of materials are specified on the plans, therefore this condition would ensure appropriate materials were used, to safeguard the character and appearance of the area. A separate materials condition is not therefore necessary.
34. A condition to secure the protection measures and methods of working set out in the arboricultural report is necessary to safeguard the oak tree on site, and its contribution to the appearance of the area. A specific requirement for retention of the protective fencing is necessary as there is ambiguity in the report wording in this respect.
35. For the reasons set out above, conditions to limit working hours, require dust suppression methods and prevent on-site burning are not necessary to protect the living conditions of neighbouring occupiers. Given the history of the site for domestic use there is no substantive evidence before me of contamination. Therefore, the full suite of contamination conditions recommended by the Council is not necessary. However, as concern has been raised about the potential for asbestos to be present, a condition is necessary to require any

unexpected contamination to be identified, investigated and properly dealt with.

36. A condition to ensure car parking is provided for the new dwelling is necessary to reduce potential for on-street parking, which could impact on highway safety given the narrowness of Southlands Road. However, given the size of the site and the fact that Southlands Road is a private road, it has not been demonstrated that a condition to identify areas for reception and storage of building materials clear of the highway is necessary. I shall not impose that suggested condition therefore.
37. The appellant suggests a condition to require provision and implementation of a residential travel information pack for sustainable transport. I have not been made aware of any development plan requirement for this, therefore cannot conclude that it is reasonable or necessary. While I will not therefore impose that condition, it is open to the appellant to provide that information should they wish to do so.
38. Both the appellant and Council recommend removal of permitted development rights by condition. National permitted development rights have not been withdrawn for properties in the Green Belt and the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so.
39. The size of extensions, additions and alterations to the roof of the dwelling that could be achieved as permitted development would be limited. Permitted development rights for outbuildings prevent their location forward of a wall forming the principal elevation of the dwelling, restricting such development to only part of this site. There are therefore already appropriate controls on these types of development in the Green Belt. Consequently, it has not been clearly justified that such a condition is necessary to safeguard the Green Belt from harm or for any other purpose, and I shall not impose it.
40. The Council's officer report refers to the need for a landscaping scheme, however the site is well screened with existing boundary treatments and much of it would be hardstanding or domestic garden. Therefore, a landscaping condition is not needed in the interests of the character and appearance of the area or the Green Belt.

Conclusion

41. The proposal would not be inappropriate development in the Green Belt and, subject to conditions and the UU provided, would not result in harm in other respects. I therefore find no conflict with the development plan or national policy, and there are no material considerations which justify determining the proposal otherwise than in accordance with the development plan. Therefore, the appeal is allowed subject to the conditions set out in the following Schedule.

L McKay

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 19.5889/M002, 19.5889/P201 Revision A, 19.5889/P202 Revision A and 19.5889/P203 Revision B
- 3) The development shall be undertaken in strict accordance with the details, recommendations, Tree Protection Plan and the Method Statement for Tree Protection Measures set out in the submitted Arboricultural Report by Andrew Day Arboricultural Consultancy dated 10th February 2021 and labelled Rev 1. All protective fencing erected in accordance with those details shall remain in situ at all times until the completion of the development unless earlier removal has first been approved in writing by the local planning authority.
- 4) Any contamination that is found during the course of demolition or 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.
- 5) The dwelling hereby permitted shall not be occupied until all of the existing outbuildings on the site, as shown on drawing no 19.5889/E101 Revision A, have been demolished.
- 6) The dwelling hereby permitted shall not be occupied until two car parking spaces have first been provided within the site. Those areas shall thereafter remain available for the parking of cars.