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# Appeal Decision

Site visit made on 4 January 2023

**by C Harding BA(Hons) PGDipTRP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 April 2023**

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**Appeal Ref: APP/M1595/W/21/3287059**

**Tyelands Farm House, South Hill, Langdon Hills SS16 6JD**

- 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 R Whitehead against the decision of Thurrock Borough Council.
  - The application Ref 21/01186/FUL, dated 2 July 2021, was refused by notice dated 8 September 2021.
  - The development proposed is the erection of a replacement dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of a replacement dwelling at Tyelands Farm House, South Hill, Langdon Hills SS16 6JD in accordance with the terms of the application, Ref 21/01186/FUL, dated 2 July 2021, and the plans submitted with it, subject to the conditions set out in the Schedule of Conditions below.

## Preliminary Matter

2. The appeal is accompanied by a draft unilateral undertaking on behalf of the appellant. I will return to this later in my decision.

## Main Issues

3. The main issues are:
  - whether the proposal would be inappropriate development in the Green Belt having regards to the National Planning Policy Framework ('the Framework') and any relevant development plan policies, and;
  - the effect of the development on the Thames Estuary and Marshes Special Protection Area and Ramsar site ('the SPA').

## Reasons

### *Inappropriate Development*

4. The Framework attaches great importance to Green Belts. 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.
5. At Paragraph 149, the Framework states that the construction of new buildings within the Green Belt will be inappropriate, subject to exceptions. Such exceptions include, at Paragraph 149(d) the replacement of a building,

provided the new building is in the same use and not materially larger than the one it replaces, and at Paragraph 149(g), the limited 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.

6. Policy CSSP4 of the Thurrock Core Strategy and Policies for the Management of Development Plan Document ('the DPD') states that the purpose, function and open character of the Green Belt will be maintained. Policy PMD6 of the DPD states that planning permission for replacement buildings in the Green Belt will only be permitted provided the replacement building is not materially larger than the original building. These policies reflect the advice contained within the Framework.
7. The proposed development would see the existing single storey bungalow at the appeal site demolished, along with a detached garage, storage unit and two outbuildings. The proposed dwelling would be of a chalet style, incorporating two storeys of accommodation.
8. The proposed development would be in the same use as the existing dwelling. It is identified within the evidence that the proposed dwelling would represent a reduction in footprint from the existing building, including the associated outbuildings that would also be demolished. However, it would result in a structure which would be higher than the existing bungalow, with accommodation over two floors.
9. The judgement as to whether a proposed replacement building is materially larger than the structure it would replace is primarily an objective one by reference to size. Floor space, footprint, built volume, height and width can all be relevant factors.
10. In this context, in achieving a reduced footprint for the proposed dwelling, floor space would be accommodated in a second storey. However, on the basis of the evidence available to me, I consider that the total floor space of both storeys of the proposed development would not exceed that of the existing dwelling, which on an objective assessment and despite being of a greater height, would not be materially larger than the building that it would replace. Accordingly, it would meet the exception to inappropriate development set out at Paragraph 149(d) of the Framework.
11. The Council have also indicated that the proposed development would fail to meet the exception set out at Paragraph 149(g), however as I have concluded that the proposal would not amount to inappropriate development for other reasons, I am not required to consider whether it would also meet the exception set out in Paragraph 149(g) in detail.
12. The proposed development would not be inappropriate development in the Green Belt and would therefore not cause harm to it. Accordingly, it would not conflict with Policies CSSP4 and PMD6 of the DPD, which together seek to maintain the purpose, function and character of the Green Belt.

#### *The SPA*

13. The SPA is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The evidence indicates that bird populations within the

SPA are vulnerable to recreational pressures. The current appeal concerns a dwelling, and due to its proximity to the SPA there is a reasonable likelihood that its residents would access the SPA for recreational purposes.

14. However, the proposed dwelling would replace a dwelling that already exists, and as a result, there would be no net increase in the number of residential units within the zone of influence of the SPA. Consequently, the proposed development would not lead to increase recreational pressure upon the SPA.
15. I am therefore satisfied that the appeal proposal would not adversely affect the integrity of the SPA.
16. The appellant has provided a draft unilateral undertaking in relation to providing mitigation for any harm to the SPA that may result from the proposal. As I have concluded that the proposal would not adversely affect the integrity of the SPA, no mitigation would be required.
17. Accordingly, the unilateral undertaking is not necessary to make the development acceptable in planning terms and as a result, would fail the tests set out at Paragraph 57 of the Framework. It is therefore not necessary for me to consider this further, and I have not afforded the unilateral undertaking any weight in reaching my decision.

### **Other Matters**

18. I have had regard to a previous appeal decision<sup>1</sup> relating to the erection of two dwellings on the site. However, the proposal before me is for a single replacement dwelling and is therefore not directly comparable to the scheme considered by the previous Inspector.

### **Conditions**

19. I have made amendments to the Council's suggested conditions, where necessary, in order to ensure clarity and compliance with the tests set out in Planning Practice Guidance (PPG) and the Framework. Where necessary, I have received agreement from the appellant with regards to pre-commencement conditions in accordance with Section 100ZA(5) of the Town and Country Planning Act 1990.
20. In addition to the standard time limit condition, I have attached a condition requiring adherence with the approved plans in the interests of clarity and securing a satisfactory form of development in the interests of the character and appearance of the area.
21. I have attached a condition requiring details of a Construction Method Statement in the interests of preserving the living conditions of the occupiers of nearby residential properties. A condition is attached relating to the protection of existing trees within the site in the interests of the character and appearance of the area. These conditions are required to be pre-commencement so that these details can be agreed before any works take place. Conditions relating to details of external materials and boundary treatments are required in the interests of the character and appearance of the area.
22. A condition requiring the removal of buildings proposed to be demolished before any above ground construction of the proposed dwelling is attached in

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<sup>1</sup> APP/M1595/W/19/3232156

the interests of preserving the openness of the Green Belt, as is the condition requiring the relating to the demolition of the existing dwelling on the site within 28 days of the first occupation of the proposed dwelling.

23. I have not attached the Council's suggested conditions in relation to the removal of permitted development rights. The Framework, at Paragraph 54, advises that planning conditions to restrict national permitted development rights should not be used unless there is clear justification for doing so. The principle of permitted development is established by secondary legislation, and in doing so, no restriction is imposed on development within the curtilage of a dwelling in the Green Belt. Therefore, there is no clear justification for removing such rights in relation to the proposed development, and conditions to do so would be both unnecessary and unreasonable.

### **Conclusion**

24. The proposed development would not be inappropriate development in the Green Belt, as it would constitute a replacement building which would not be materially larger than the building that it would replace. As the proposal would not be inappropriate development in the Green Belt, and hence there would be no harm caused to it, it has not been necessary for me to take into account other identified considerations. The proposed development would not adversely affect the integrity of the Thames Estuary and Marshes Special Protection Area and Ramsar site.
25. In light of the above reasoning, and having regard to all matters raised, I conclude that the appeal should be allowed.

*C Harding*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be begun not later than the expiration of 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan 0-001

Proposed Site Plan 0-002

Existing Site Survey 0-010

Section Through Site Existing and Proposed 3-300 Rev A

Proposed Plans & Elevations – House Type 2 HT2-1-300

3. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
  - Wheel washing facilities and the sheeting of vehicles transporting aggregates leaving the site;
  - Delivery, demolition and construction working hours, including the hours and duration of any piling operations;
  - Measures to control the emission of dust and dirt during construction.

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

4. No site clearance, preparatory works or development shall take place until a scheme for the protection of retained trees (Tree Protection Plan) and the appropriate working methods (Arboricultural Method Statement) in accordance with paragraphs 5.5 and 6.1 of British Standard 'BS 5837 : Trees in relation to design, demolition and construction – Recommendations' (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall only be carried out in accordance with the approved protection scheme and working methods.
5. No development above ground level shall take place until the buildings other than the existing dwelling which are shown to be demolished, have been demolished.
6. No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
7. Prior to the occupation of the dwelling hereby approved, details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted to and approved in writing by the Local Plan Authority. Thereafter, the development shall be

carried out in accordance with the approved details and maintained as such thereafter.

8. Within 28 days from the date of the first occupation of the dwelling hereby approved, the existing dwelling on the site shall be demolished and all material removed from the site.

**\*\* END OF CONDITIONS \*\***