



Appeal Decision

Site visit made on 20 February 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2023

Appeal Ref: APP/V1505/W/22/3306189

146 Highcliffe Drive, Wickford SS12 0JG

- 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 G Diebelius against the decision of Basildon Borough Council.
 - The application Ref 22/00730/FULL, dated 18 May 2022, was refused by notice dated 12 July 2022.
 - The development proposed is one detached two-bedroom bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the proposal is inappropriate development in the Green Belt, having regard to local and national planning policy;
 - if it is inappropriate development, its effect on the openness of the Green Belt;
 - the effect of the proposal on the character and appearance of the area; and
 - whether any harm by reason of inappropriateness, or any other harm, is clearly outweighed by other considerations to amount to very special circumstances required to justify the proposal.

Reasons

3. Though not cited in the Council's decision notice, I have been provided with a copy of the Basildon District Local Plan 1998 (the LP) saved policy BAS GB1. It defines the boundary of the Green Belt and reflects relevant aims of the Framework for the Green Belt. No other Green Belt LP saved policies have been referred to by the main parties.
4. The most relevant policy for development in the Green Belt is therefore National Planning Policy Framework (the Framework) paragraph 149. It sets out that the construction of a new building in the Green Belt should be regarded as inappropriate, unless it complies with a specified exception. Two exceptions apply in this case – paragraph 149 e) for limited infilling in villages and paragraph 149 g) for 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.

Whether inappropriate development

Limited infilling in villages

5. The site is a large, broadly rectangular parcel of mostly undeveloped land next to a detached bungalow at No.146 Highcliffe Drive. It is in an area of former 'plotland' development in the countryside beyond the western extremities of Wickford town. The proposed detached bungalow would sit towards the front of the site facing this narrow rural lane.
6. The LP and the Framework do not define 'limited infilling'. As a single dwelling, modest in size the bungalow would be a limited form of development. Taken with No.146 and the property to its north, it would form one end of a short row of sizeable permanent buildings and face a small group of similar buildings on the east side of the lane.
7. However, the few dwellings or other sizeable permanent buildings in the lane alternate along both sides, with none to the immediate south of the site. Their intermittent arrangement is interspersed with fields, paddocks, small shaws of trees or large gardens. Some of this land contains small domestic outbuildings or stables of a temporary nature, including to the south of the site. There is no development next to the site to the west. Clusters of buildings in Durley Avenue to the north and rows of closely spaced dwellings in Studland Avenue to the south are not in the lane and do not face onto it.
8. The site is therefore not bordered on both sides by sizeable permanent buildings or a continuously built-up frontage of residential development. Nor does it form a small gap or break in the continuity of any meaningful frontage of buildings along the west side of the lane. It is also not sufficiently enclosed by development to be in a group of buildings. Accordingly, the proposal would not amount to infilling so it is not necessary for me to consider whether the site is in a village. I have been referred to a recent allowed appeal decision for a new bungalow in Branksome Avenue¹ elsewhere in this plotlands area but that proposal was for limited infilling so is not comparable to the current appeal.

Limited infilling or the partial or complete redevelopment of previously developed land

9. The Framework defines previously developed land (PDL). It embraces land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. The bungalow would not be infilling for the reasons set out above.
10. The front of the site is a compacted gravel hardstanding. It is consolidated on levelled ground, constructed with edges bound by raised kerbs or sets, is well maintained and inherently more than temporary in nature. This development by way of engineering operations is a permanent structure and so this part of the site is PDL. However, the bungalow would not be sited in the hardstanding so not on any of this PDL.
11. A lawful development certificate refers to the hardstanding with existing use as a 'roofing contractor's yard' (the yard LDC)². Behind the hardstanding, separated by a fence and hedgerow, most of the site is mainly covered by

¹ APP/V1505/W/21/3278853

² 19/00809/LDC

grass. While all the site is owned by the appellant there is no evidence that the grassed part is associated with the yard, serves it in any necessary or reasonably useful way or forms part and parcel of it. Most of the site, including where the bungalow would be sited, is therefore not in the curtilage of this developed land so for this reason is not PDL.

12. Another lawful development certificate relates to a proposed 'outbuilding for a swimming pool' at '146 Highcliffe Drive' (the outbuilding LDC)³. The appellant states that this building would be located on the site. To be permitted development⁴ it (and at least the part of the site it would occupy) must be within the curtilage of the existing bungalow at No.146, which is a permanent structure. However, I have not been provided with a copy of any relevant plans. I do not know what part of the site is within this residential curtilage or whether the proposed bungalow would be sited on any such PDL.
13. Consequently, although the proposal would partially or completely redevelop the site, I am not satisfied that the appellant has demonstrated that the entire site is PDL.
14. Bringing these two strands together, I find that the proposal does not meet the exception in Framework paragraph 149 e) or the exception in paragraph 149 g). It also conflicts with LP saved policy BAS GB1. Consequently, it would be inappropriate development in the Green Belt.

Openness

15. Despite the hardstanding which is at ground level and a shipping container which is a temporary building, the site is mostly undeveloped and innately open.
16. In contrast, the footprint, height and building volume of the bungalow would establish additional built form on the site with appreciable vertical height and overall scale and massing where there is little at present. The site would no longer be open in any equivalent or comparative sense to its existing condition, nor would it remain unchanged. Consolidating development along the lane in this way would have a significant permanent spatial presence and, though set back, a clear visual presence facing the lane.
17. Albeit a small loss, this would reduce the openness of the Green Belt, which is one of its essential characteristics. This part of the Green Belt is vulnerable to the effects of coalescence given its proximity to development in nearby Ramsden Bellhouse to the north and west.
18. I find that the proposal does not comply with the Council's objectives for the Green Belt under LP saved policy BAS GB1. It also conflicts with Framework paragraph 147 and a fundamental aim of Green Belt policy to keep land in the Green Belt permanently open.

Character and appearance

19. The bungalow would increase the density of housing development along the lane and undermine the prevailing rural feel of the lane and this part of the countryside, though only to a small extent. It would otherwise be broadly

³ 22/00170/LDCP

⁴ Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

comparable in size, design, layout and external materials to No.146 and some other dwellings in the lane, as well as compatible in plot size and shape with some of these domestic plots. It would also be similar in these regards to some housing development elsewhere in the outlying plotland area.

20. I find that the proposal would therefore be in-keeping with the character and appearance of this area. As such it complies with LP saved policy BAS BE12 which includes that residential development should not cause material harm to the character of the surrounding area.

Other considerations

Emerging local plan

21. I have been referred to extracts from the Council's emerging Local Plan⁵. These acknowledge the potential for localised infill dwelling development in areas of established plotland in the Green Belt. A draft policy GB4 was promoted to this effect. However, the Council withdrew this plan from examination. It is not certain that this approach to housing development in the Green Belt will be maintained in a future plan. Accordingly, I give no weight to this consideration.

Lawful existing development

22. Albeit a snapshot, the hardstanding contained a commercial van, a waste skip, a shipping storage container and a small quantity of hand tools with some builders' materials. This low-key storage use on the yard LDC area could be seen from the lane. There is no apparent intent to increase storage in the yard and no information about the nature of the existing business, such as whether the yard is the only base of operations. Nor has it been shown that intensification of storage in the yard, including to the otherwise significant extent suggested by the appellant, would not result in a material change in the use of this land in relation to the yard LDC.
23. There is no scheme before me to establish the extent of storage that could take place in the yard. In practical terms storage would be limited by the modest size of the yard (for this type of use), vehicular access and circulation space and because items could not be physically stored or stacked vertically on the site in 'almost limitless' or 'unfettered proportions' as the appellant otherwise suggests. Stored items would also have a transient presence on the site and vary in quantum at any given time.
24. I am not, therefore, satisfied that storage on the hardstanding would have the same or worse permanent effect on openness as the bungalow, albeit that it would be set further back from the lane on the appeal site. As such I give limited weight to this consideration.

Removal of the lawful existing development

25. There is no objective evidence that storage in the yard and related activity, such as transport of items to and from the yard, cause unacceptable noise or disturbance to the occupiers of nearby dwellings. There are already some commercial or other non-residential uses in the lane at 132A Highcliffe Farm Yard opposite the site. Given this local mixed-use context, I am not persuaded that the

⁵ Basildon Borough Revised Publication Local Plan 2014-2034 Full Council Version, October 2018

roofing contractor's yard is, or could be, a 'non-conforming use' that should be removed. I therefore give limited weight to this consideration.

26. There is no legal agreement before me that seeks to 'waive' the appellant's ability to operate the roofing contractor's yard. No exceptional circumstances have been suggested for a negatively worded planning condition requiring the appellant to enter into such a planning obligation for reason of risk of delivery of the development, which is otherwise discouraged by Planning Practice Guidance (PPG). Furthermore, it would not be lawful to unilaterally impose a condition that sought to derogate the appellant's property rights (the benefit of the yard LDC) or require that this land be formally given up from such use other than by the voluntary act of a planning obligation. It is not clear if the yard is used by the appellant or rented to another person or business.
27. Consequently, the prospect that a planning obligation (or condition) in these terms would meet all the relevant tests of the Framework and PPG, and could be achieved or enforced, is uncertain. As such I give no weight to this consideration.

Lawful proposed development

28. A lawful development certificate relates to the proposed siting of a caravan on the hardstanding as an office ancillary to the roofing contractor's yard (the caravan LDC)⁶. It would have a footprint of 120m² and volume of 308m³. Taken together with the outbuilding LDC (90m² and 283m³) this could result in built form of 210m² and 591m³ on the site. The bungalow would have a footprint of 83m² and building volume of 252m³. However, these measures are not the only relevant factors.
29. I have not been provided with a copy of any relevant plans for the caravan LDC or outbuilding LDC. I do not therefore know where the former might be sited in the yard or where the latter might be sited elsewhere on the appeal site, including if in close proximity or apart. I have no other dimensions for the caravan or outbuilding, such as length, width or height and so their overall form and size, including roofs, is not evident. The full nature and extent of potential individual or cumulative impact of built form and its location on the site is therefore not clear. Nor is the full extent of possible storage use apparent, including in footprint or vertical height and to what extent this would change by the siting of a caravan for an office. I am unable to determine the potential effect on Green Belt openness in these regards in comparison to the proposed bungalow.
30. The bungalow would be a permanent building, likely in continuous use. A caravan is ordinarily not considered to be a permanent building and there is no suggestion to the contrary in this case. There is no evidence that a caravan for office use is actually necessary to support the operation of the roofing contractor's yard, including a permanent on-site staff presence. Nor is it certain that it would eventually be replaced, including concurrently, be the same size or endure on the site. Its ancillary association to this commercial use would mean it is less likely to be used in the evening, at night or over an entire weekend whereas a dwelling could be used more intensively.

⁶ 20/01406/LDCP

31. In footprint and volume, the permanent outbuilding would have a limited greater impact on the Green Belt than the bungalow (by 7m² and 31m³). However, there is no evidence that the outbuilding LDC has resulted in a significant uplift in the value of No.146 or to suggest value would increase further if this development took place. The outbuilding would anyway also be in incidental use to No.146, not continuous active use.

Fallback

32. I am not, therefore, satisfied that the appellant has demonstrated or justified any of these potential lawful development scenarios beyond speculation or assertion. There is very little substance to these suggestions, so while they are possible there is no apparent likelihood of this development being carried out so no real prospect of a fallback position. As a result, I give limited weight to these considerations. These circumstances can be distinguished from a Green Belt appeal decision that I have been referred to⁷. In that case the Inspector found that there was 'every prospect' of the possible alternative development, thus that a fallback position existed.

Removal of permitted development rights

33. It has been put to me that permitted development rights (PDR) at No.146 and for the proposed bungalow could be removed by a condition. No specific PDR have been suggested and there is no scheme before me to show what effect this might have on Green Belt openness. Nonetheless, some Schedule 2, Part 1 PDR⁸ could result in the significant enlargement of No.146 or the proposed bungalow once constructed, including with outbuildings.
34. However, the Framework does not advocate such restrictions in the Green Belt and PPG cautions that blanket removal of PDR for small-scale domestic alterations and extensions are unlikely to be reasonable. Moreover, this would anyway only give the Council control over future development at both properties. Removing PDR would not affect the size of the proposed bungalow or therefore overcome or justify the fundamental harm to the Green Belt that would be caused by it in any event. As a result, I give little weight to this consideration.

Biodiversity enhancements at the site

35. The proposal would not harm any biodiversity interest at the site, including protected species and trees protected by a Tree Preservation Order⁹. This is a neutral factor in my decision. Additionally, Framework paragraph 174 already requires that planning decisions should provide net gains for biodiversity. Although important, the enhancements in this case would be modest. I therefore give little weight to this consideration.

New housing

36. The Council accepts that it cannot currently demonstrate a 5-year supply of deliverable housing sites; it was a 3.5-year supply¹⁰ and I have not been informed that this figure has changed. The proposal would make efficient and effective use of a small windfall site to provide a new two-bedroom home.

⁷ APP/V1505/A/11/2153864

⁸ Town and Country Planning (General Permitted Development) Order 2015 (as amended)

⁹ TPO/18/00008

¹⁰ Basildon Borough Council Five Year Land Supply Report (2021-2025)

This would be aligned with objectives of the Framework to significantly boost the supply of homes and meet specific housing needs. The social and economic benefits of constructing and occupying a single new home would be modest.

Green Belt Balance

37. The proposal is inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt. The limited harm to the openness of the GB in this case is at odds with local and national policy to protect the GB. Any harm to the GB is a matter that carries substantial weight. There is no other harm in this case.
38. The other considerations outlined above are individually and cumulatively of insufficient weight therefore to clearly outweigh the harm to the Green Belt. Consequently, very special circumstances to justify the development do not exist. As such, the proposal conflicts with Framework paragraph 148.

Planning Balance and Conclusion

39. By virtue of the 5-year housing land supply position, paragraph 11 d) of the Framework is engaged. However, in this appeal the application of policies in the Framework that protect areas of particular importance (the Green Belt) provide a clear reason for refusing the development. Accordingly, by virtue of paragraph 11 d) i) the presumption in favour of sustainable development does not apply in this case.
40. Since I intend to dismiss the appeal for this reason there is no need for me to consider the appellant's unilateral undertaking in respect of a financial contribution towards mitigation measures for Habitats Sites along the Essex coastline any further. To do so would not alter my decision or the outcome of the appeal.
41. The proposal does not accord with the development plan taken as whole and it conflicts with the Framework. There are no additional considerations which outweigh these findings.
42. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR