



Appeal Decision

Site visit made on 22 June 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/B1550/W/22/3306095

Hillview, Ulverston Road, Ashingdon SS4 3JT

- 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 Ryan Ward against the decision of Rochford District Council.
 - The application Ref 21/01081/OUT, dated 28 September 2021, was refused by notice dated 22 June 2022.
 - The development proposed is erection of one dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made in outline with all matters reserved. I have therefore treated the plans submitted with the appeal as indicative only. Paragraph 5(3) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires where access is a reserved matter for the outline application to state the area where access points to the development will be situated. The indicative plan submitted with the appeal shows that access to the site would be taken from Ulverston Road.
3. The planning statement that accompanied the application referred to the paragraph numbers of the 2019 National Planning Policy Framework (the Framework) although the Framework was updated prior to the submission of the application to the Council. Changes to the content of those paragraphs were limited in the 2021 Framework and do not alter the substantive content of those paragraphs as they relate to this appeal.
4. The Planning Practice Guidance (PPG) on flood risk and coastal change was updated on 25 August 2022, prior to the submission of the appeal. The appellant therefore had the opportunity to update their case in response to this.
5. I am therefore satisfied that there would be no prejudice to any party in my determining the appeal on the basis of the information before me. For the avoidance of doubt, all references to the Framework in this decision refer to the 2021 version which is in force at the time of my decision.

Main Issues

6. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt;

- the effect of the proposal on the openness and the purpose of the Green Belt;
- whether the proposal would be at an unacceptable risk of flooding; and
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by any other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

7. The Framework identifies at paragraph 137 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 149 of the Framework confirms that new buildings are inappropriate in the Green Belt unless it is one of the exceptions listed.
8. Rochford District Council Local Development Framework Core Strategy (2011) (CS) Policy GB1 sets out that Green Belt land will be prioritised for protection based on how well it helps achieve the purposes of the Green Belt. This is not entirely consistent with the Framework which confirms at paragraph 147 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This reduces the weight to be attached to this policy.
9. Paragraph 149 e) of the Framework sets out that limited infilling in villages is one such exception. The appeal site is part of the garden which lies to the side of the host dwelling. Immediately adjacent is a vacant plot, beyond which is another dwelling set in a spacious plot. Beyond that, and to the other side of the host dwelling are large plots with sporadic development within them. Given the dispersed nature of the development along this side of Ulverston Road, I consider that the proposed dwelling would not constitute infilling, limited though the scale of the scheme would be for a single dwelling. In reaching this conclusion, I have had regard to the criteria contained within CS Policy DM3 regarding infilling and residential intensification insofar as they are relevant to considerations regarding the Green Belt.
10. The appellant has not disputed the Council's assertion that Ashingdon is not a village, therefore on the basis of the evidence before me, I can only reach the same conclusion as the Council. However, all aspects of exception e) of paragraph 149 must be met for a proposed development to benefit from it. Even if I were to find that the site did lie within a village, it still would not comprise infilling and so would not benefit from the exception.
11. The Council has also considered the proposal against Paragraph 149 g). This is a conditional exception which, as it relates to this appeal, allows for the redevelopment of previously developed land subject to it not having a greater impact on the openness of the green belt than the existing development. As part of a domestic garden, the site would constitute previously developed land. Given my findings above in respect of limited infilling and that the appeal site comprises garden land, it is necessary to assess the effect of the proposal on the openness of the Green Belt before I can determine whether the proposal falls within this exception.

Openness and Purpose

12. The essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development and can have spatial as well as visual aspects. Paragraph 138 of the Framework sets out the five purposes of the Green Belt, one of which is to assist in safeguarding the countryside from encroachment.
13. While I observed structures on the site and some typical domestic paraphernalia, the proposed dwelling would be considerably larger in scale. This would inevitably result in a loss of both visual and spatial openness to the Green Belt and result in harm. In accordance with paragraphs 147 and 148 of the Framework, I give substantial weight to this.
14. Although layout is a reserved matter, the indicative plan shows that it would be possible to site a dwelling in proximity to the host dwelling with a similar relationship to Ulverston Road and the surrounding countryside. I therefore consider the site could be developed in such a manner as to not encroach into the countryside. However this would amount to a lack of harm and would therefore be a neutral factor in the determination of this appeal.

Conclusion on whether inappropriate development in the Green Belt

15. I have found that the proposed development would not comprise limited infilling in villages and would harm the openness of the Green Belt. For these reasons, when considered as a whole, the appeal proposal would constitute inappropriate development in the Green Belt as it would not meet any of the exceptions set out in paragraph 149 of the Framework and would be contrary to CS Policy GB1. Paragraph 147 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Flood Risk

16. The site is in Flood Zone 3a. While the site does benefit from flood defences, the Framework does not make any exceptions for such sites in relation to the need for its policies to be applied.
17. The evidence before me shows only a limited application of the sequential test. No area of search has been identified. The Planning Practice Guidance¹ (PPG) confirms that reasonably available sites do not need to be owned by the appellant and that the absence of a 5-year land supply is not a relevant consideration. It has therefore not been demonstrated that the development has been steered to an area with the lowest risk of flooding.
18. There is no need to apply the exceptions test to proposed development which has not passed the sequential test. In any event, the submitted flood risk assessment (FRA) does not accurately reflect the risk of flooding at the site and therefore does not demonstrate that the development would be safe for its lifetime. Even if I were to apply the exceptions test and find there were wider sustainability benefits to the community that outweigh flood risk, the proposed development would not meet both limbs of the exceptions test.

¹ Flood risk and coastal change Paragraph: 028 Reference ID: 7-028-20220825 Revision date: 25 08 2022

19. The proposal would therefore be at an unacceptable risk of flooding. It would be contrary to LP Policy ENV3 which seeks to direct development away from areas at risk of flooding and the policies within section 14 of the Framework insofar as they relate to flood risk.

Other Considerations

20. It is not in dispute that the Council cannot demonstrate a five year supply of deliverable housing land, with the evidence before me suggesting the supply is 4.04 years. There is no indication of how the shortfall is being addressed or how long it is likely to last. The constraints of Green Belt and flood zone 3 add to the constraints and challenges of delivering housing. It is likely that a small site would be capable of delivering the dwelling quickly, albeit reserved matters approval would be required. I therefore attach limited weight to the benefit of a single additional dwelling.
21. There would be an economic benefit arising during both the construction and occupation stages from the additional spending and the employment this would support. An additional dwelling could also support use of facilities within the surrounding area. Biodiversity enhancements could be secured by condition. However, I attach limited weight to these benefits given the small scale of the proposed development.
22. Compliance with the building regulations is a separate regulatory requirement. There is no mechanism before me that would secure delivery of a dwelling which would provide an environmental benefit through improved energy performance beyond those required by the building regulations. In any event, such a benefit would be limited given the small scale of the proposed development.
23. In isolation, and as far as can be addressed at the outline stage, there would be an acceptable effect on the character and appearance of the area. Insofar as they can be assessed, acceptable living conditions for occupiers of both the existing dwelling and that proposed could be achieved. The access and parking arrangements for the proposal, including cycle storage, would fall to be considered at the reserved matters stage. I did not observe anything at my site visit that would lead me to think these could not be suitably addressed. However these are neutral factors as they would be expected of any well designed development.
24. The site is not an important open space in that it does not provide a community benefit or a visual focus in the street scene. There are no surrounding heritage assets which would be affected by the proposal. No adverse effect on landscape character has been identified and I saw nothing at my site visit that would lead me to a different conclusion. However, these factors demonstrate a lack of harm, leading them to be neutral in the determination of this appeal.
25. There is no substantive evidence before me as to the availability of public transport or for other means of travel other than the private car to meet the needs of future occupiers. However, even if this were demonstrated, it would at best amount to a neutral factor given the expectation in the Framework that appropriate opportunities to promote sustainable transport modes should be taken up.

26. The appellant has referred to other applications and appeals in the vicinity of the site. I have not been provided with full details of those cases. In any event, this appeal must be determined on its own merits on the basis of the evidence before me.
27. The Council has not put forward that the proposed development would amount to an isolated dwelling in the countryside. From my observations at my site visit, I have no reason to find otherwise. Paragraph 80 of the Framework is therefore not pertinent to this appeal.

Green Belt Balance

28. I have found that the proposal would constitute inappropriate development in the Green Belt and would be harmful to its openness. Paragraph 148 of the Framework states that substantial weight should be given to this. The Framework clarifies that inappropriate development should only be permitted in very special circumstances and that such will not exist unless the potential harm to the Green Belt is by reason of inappropriateness, and any other harm resulting from the proposal is clearly outweighed by other considerations.
29. For the reasons given, I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Other Matters

30. The site falls within the zone of influence for coastal habitats sites which are subject to pressures from recreational disturbance. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would likely have significant environmental effects on the integrity of those habitats sites. However, given my findings above, it has not been necessary for me to pursue this matter further. A finding that the proposal would not have an adverse effect on the integrity of the habitats sites, with or without any mitigation, would be at best a neutral matter.

Planning Balance

31. The harm to the Green Belt and the risk of flooding would result in a conflict with the development plan when read as a whole. My findings in respect of the Green Belt and the lack of very special circumstances, and flood risk means that there are policies in the Framework that provide a clear reason for refusing the development proposed. Therefore, under Paragraph 11d)i of the Framework, the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

32. The proposed development would conflict with the development plan taken as a whole. There are no material considerations, including the Framework, of sufficient weight to indicate the decision should be made otherwise. Therefore, the appeal should be dismissed.

J Downs

INSPECTOR