



Appeal Decision

Site visit made on 20 July 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/M1595/W/22/3298844

Malvina Close, Lower Dunton Road, Horndon on the Hill SS17 8QG

- 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 Julian Macalle (Malvina Properties) against the decision of Thurrock Borough Council.
 - The application Ref 21/02062/OUT, dated 1 December 2021, was refused by notice dated 11 March 2022.
 - The development proposed is described as 'Provision of 5 No. self build residential plots, with main services provided. Allowance of individual units c175 square metres with all amenity works and designs to be decided'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against Thurrock Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was in outline with all matters reserved. Therefore, with the exception of the red line identifying the application site boundary and the proposed point of access to the highway, I have treated all details on the application drawings as being indicative.
4. The Council's decision notice described the proposal as 'provision of up to 5 custom-build dwellings'. The appellant considers that 'self-build' is a more accurate description. In the banner heading above, I have used the description which appeared on the application form and I have referred to self-build elsewhere in this decision. However, I have also kept in mind that neither the Self-build and Custom Housebuilding Act 2015 nor the National Planning Policy Framework (the Framework) distinguish between 'self-build' and 'custom-build', for purposes of the relevant statutory and national policy framework.
5. The Council's Officer Report refers to preparation of a new Local Plan, which was subject to an Issues and Options consultation in December 2018. However, the reasons for refusal do not identify any conflict with the emerging Local Plan and it remains at an early stage of preparation. I have therefore given it limited weight when considering this appeal.

Main Issues

6. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies,
- the effect of the proposal on the openness and purposes of the Green Belt,
- whether the proposed development would provide a suitable location for housing, having regard to its accessibility to services and facilities, and
- 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

Inappropriate development

7. The appeal site is within the Green Belt. Paragraph 149 of the Framework states that construction of new buildings should be regarded as inappropriate in the Green Belt. It goes on to set out a number of exceptions, which include limited infilling in villages (paragraph 149e) and redevelopment of previously developed land subject to the effect on openness (paragraph 149g).
8. In the Thurrock Core Strategy and Policies for Management of Development 2015 (CSPMD), Policy CSSP4 sets out the strategic approach to land within the Green Belt, including that its purpose, function and open character will be maintained. Despite the out-dated reference to PPG2¹, this aspect of the policy remains consistent with the essential characteristics and purposes of the Green Belt as set out in the Framework. Policy PMD6 goes on to identify built development which may be permitted in the Green Belt, including infill within defined residential frontages and infilling or redevelopment of previously developed land, subject to considerations relating to openness, the purposes of the Green Belt and integration within the landscape.
9. Both parties have indicated the site was lawfully used for car storage in the past, although the evidence provided about the planning history of the associated buildings is more ambiguous. In any case, the appellant's evidence confirms that commercial buildings on the site were removed around 16 years prior to submission of this appeal, in association with an approved 2002 planning application for construction of four dwellings. Aerial photographs in the appellant's statement correspond with that timing and reveal that vehicles and machinery which had been stored on the site were also removed.
10. During my site visit I saw that the site is currently rough grass with trees and vegetation around the boundaries. There is a field shelter about halfway along one boundary, alongside a small number of apparently abandoned car bodies and machinery. However, the vast majority of the site is devoid of built development.

¹ Planning Policy Guidance 2, Green Belts (1995-2012)

11. The definition of previously developed land in Annex 2 of the Framework excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. On that basis, notwithstanding the previous commercial use and its complex planning history, the appeal site no longer comprises previously developed land as defined in the Framework. Therefore, the proposal does not benefit from the provision for redevelopment of previously developed land in paragraph 149g or Policy PMD6.
12. The appeal site is also not within any residential frontage where Policy PMD6 allows for infilling. However, the Framework allows for 'limited infilling in villages', without specifying that this should be restricted to specific frontages or boundaries defined on a policies map. Therefore, I have had regard to the wider characteristics of the former plotlands development around the appeal site when considering this aspect of the appeal.
13. There is existing housing along one side of Lower Dunton Road as well as along Kirkham Road and at the rear of the appeal site. In places, this forms a continuous built-up frontage and the original plotlands layout can be readily perceived. However, there are also spacious, mature gardens and undeveloped plots, resulting in a relatively loose knit pattern of development. This includes extensive areas of open land behind the main developed frontages, which include the appeal site and the rear parts of the plots to either side. These form a continuous and fairly extensive undeveloped area behind the built-up frontage to Lower Dunton Road.
14. Although there are some dwellings to the north and at the rear of the site, these have a loose knit layout, as described above. The appeal site does not feel enclosed by existing buildings. It is not a clearly defined gap, either within a built-up frontage or otherwise surrounded by existing buildings.
15. Furthermore, the illustrative layout indicates five substantial homes, with detached outbuildings and extensive access and parking areas. While the layout and scale of the development are reserved matters, these illustrative details are consistent with the intended use of the site for self-build. This is likely to introduce detached housing across the whole extent of the site, which is itself of a not insignificant scale.
16. Having had regard to the extent of the site, its relationship with the surrounding pattern of development and the proposed amount of built development, I find that the proposal would not amount to limited infilling as envisaged in paragraph 149e. Having reached that conclusion, there is no need for me to consider further whether the surrounding development should be regarded as a village. Therefore, while I have noted that the Basildon appeal decision² concluded that a different area of plotlands development could be regarded as a village, I have otherwise given the conclusions in that decision limited weight.
17. For the above reasons, the proposal does not meet the exceptions at Framework paragraphs 149e or 149g. Nor does it meet any of the other exceptions in the same paragraph. I therefore conclude that it would comprise inappropriate development in the Green Belt.

² Appeal reference APP/V1505/W/21/3278853

18. The proposal would also conflict with Policies CSSP4 and PMD6 of the CSPMD, which amongst other things require that the purpose, function and open character of the Green Belt is maintained and allow for new dwellings only within defined residential frontages or through redevelopment of previously developed land.

Effect on openness and purposes of Green Belt

19. Openness is an essential characteristic of the Green Belt which relates to the presence or otherwise of built development and has spatial as well as visual aspects.
20. The proposal would introduce a significantly increased level of built development, compared to the existing field shelter. This would be harmful to openness in spatial terms. As well as the dwellings themselves, any outbuildings, parking areas and domestic paraphernalia would erode openness within the confines of the site. As a result, the development would encroach into, and fragment, the open land behind the frontage to Lower Dunton Road, significantly intensifying the current, loose knit pattern of built development.
21. Since the proposed dwellings would be set back behind the houses on Lower Dunton Road, they would be largely screened from public view. However, the development would be partially visible in views along Malvina Close and more clearly visible from the private access serving the neighbouring dwellings.
22. Given the above, there would be harm to openness, primarily in spatial terms and to a more limited extent in visual terms. The loss of openness would be localised, given the existing surrounding development. Nevertheless, I find that there would be moderate harm to openness, given the increased scale and extent of additional built development within this substantially undeveloped site. While the indicative plan implies that the dwellings could be of a similar scale and form to their neighbours, this is a separate consideration from their effect on openness.
23. The land is not in agricultural use, and its value as grazing land is described by the appellant as limited. However, the rough grass and boundary hedgerows on the site are typical of the surrounding countryside. The site and its neighbours connect with the more extensive open fields which lie to the east. On that basis, the proposal would conflict with the Green Belt purpose of safeguarding the countryside from encroachment, albeit to a limited extent given its relationship with existing developed sites.
24. No issues arise in terms of merging of settlements, the setting of historic towns or checking the unrestricted sprawl of large built-up areas. Given the modest number of dwellings proposed, there would also be very limited conflict with the Green Belt purpose of assisting in urban regeneration, although any development delivering housing outside defined urban areas could be said to disincentivise urban regeneration to some degree.
25. For the above reasons, the proposal would cause harm to the openness of the Green Belt and be contrary to the purposes of the Green Belt. The scheme conflicts with the Framework in so far as it sets out that the essential characteristics of Green Belts are their openness and their permanence.

Accessibility

26. The site is not isolated, given its relationship with the existing development along Lower Dunton Road. However, the majority of this development is in residential use. There is no clearly-defined village centre, shop or similar local facilities close to the site. The nearest local services are in Horndon on the Hill and the larger urban areas beyond.
27. Although Horndon on the Hill is a relatively short distance away, the intervening roads lack continuous pavements and the unrestricted speed limit would be a deterrent to all but the most confident cyclist. The street-lit pavement along one side of Lower Dunton Road does not provide a continuous connection between the appeal site and existing bus services. The nearest railway stations are significantly further away. Therefore, while there are public transport services in the locality, there are also barriers to their use.
28. I have been advised that a new bus stop is proposed near the site in connection with an approved development at the golf club, but I saw no evidence that this has been delivered. Nor have I seen any clear evidence about the likely timescale for delivery and I have therefore given this future improvement in accessibility modest weight.
29. For the above reasons, the proposal would not provide a suitable location for housing, having regard to its accessibility to services and facilities. It would conflict with the spatial strategy articulated in policies CSSP1 and CSSP4 of the CSPMD, which direct the majority of new development towards large urban settlements underpinned, where required, by enhanced community infrastructure and services. It would also conflict with relevant requirements of CSPMD Policy PMD2, which amongst other things requires that development promotes connections between places that people want to use.

Other Considerations

30. Evidence from both main parties confirms that the Council cannot demonstrate a five year housing land supply. The appellant's evidence suggests that the shortfall is long-standing and substantial, based on published evidence dating back to 2006. I have been provided with no more recent or updated evidence to the contrary. Furthermore, given that the emerging Local Plan remains at an early stage, there is little certainty as to when the shortfall will be resolved.
31. The proposal would make more efficient use of a site which has historically been used for commercial purposes, although it is not classified as previous developed land. I have noted that drainage and utilities are available which would assist with delivery. In the context of what appears to be a chronic and substantial shortfall in housing land supply, the prompt delivery of five additional homes is a benefit to which I have given moderate weight.
32. The application furthermore indicates that the proposed dwellings would be delivered in the form of plots for self-build housing. To that extent, it responds positively to the support in the Framework for boosting the supply of sites for people wishing to commission or build their own homes. The Council does not dispute that no sites for self or custom build housing are included in the CSPMD, and I have not been provided with any clear evidence of the timescale for addressing this issue through the emerging Local Plan or otherwise. Therefore, the delivery of five self-build plots would be a potential benefit of

the proposal, helping the Council meet its statutory obligations under the Self-build and Custom Housebuilding Act 2015.

33. However, no legal mechanism has been presented to secure the provision of self-build housing on the site. As such, while I have noted the potential contribution to demand for self-build plots, I cannot be certain that such benefit would be delivered in practice. For that reason, I have given the potential contribution to self-build housing very limited weight.
34. Some neighbouring occupiers supported the proposal, as a means of putting the land to use and preventing it from being a 'wasteland'. However, there is no obvious impediment to proper maintenance of the site or removal of the few remaining stored vehicles and items of machinery. Nor does the site materially detract from the character and appearance of the wider surroundings in its current form. I have therefore also given this consideration very limited weight.
35. There is a substantial new housing development further along Lower Dunton Road, alongside a new hospice building. I have also noted that planning permission has apparently been granted for 200 dwellings alongside care facilities and recreational uses on the nearby golf course. While I acknowledge that these developments will significantly expand the amount of built development in the vicinity of the appeal site, they would not alter its Green Belt status or the relationship between the appeal site and the more immediately surrounding development. Nor is there any evidence that they would significantly improve the availability of local services, with the exception of a new bus stop.
36. I have been given little evidence regarding the circumstances which led to these developments being permitted within the Green Belt. However, it is clear from the limited evidence provided that they include provision of specialist housing, care facilities and recreational uses, and that their contribution to the supply of housing is of a different magnitude to the appeal proposal. On that basis, there are very clear differences in circumstances between these other approved developments and the proposal currently before me, which I have considered on its own merits.
37. Since I have found that the appeal site is not previously developed land, evidence of redevelopment on neighbouring previously developed sites is likewise of little relevance. Similarly, the replacement of dwellings on nearby sites is not inconsistent with the Framework, given that paragraph 149 allows for such replacement in principle.
38. Absence of identified harm in relation to highway safety, design, affordable housing provision, heritage or flooding are neutral factors which weigh neither for nor against the proposal.

Green Belt Balance

39. The proposal would be inappropriate development in the Green Belt as defined in the Framework. There would be moderate harm to openness and more limited harm to the purposes of the Green Belt. In accordance with paragraph 148 of the Framework, I have given the harm to the Green Belt substantial weight.
40. While I have found that travel to local services would largely be by car, there is a good range of services within the nearest urban areas. These are also within

a relatively short travel time by car, which would mitigate the harm arising from the additional need to travel. Although the Framework requires that development supports the move to a low carbon economy, including by limiting the need to travel, it also recognises in paragraph 105 that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and that decision-makers should take this into account. Therefore, given the evidence of a shortfall in housing land in more accessible locations, I have given the harm by reason of poor accessibility and the associated conflict with the development plan limited weight.

41. While a number of factors have been highlighted in favour of the proposed development, for the most part I have given these very limited weight, for the reasons explained above. Even when considered together with the contribution towards the shortfall in housing land supply, these considerations would still carry only moderate weight.
42. On that basis, the harm to the Green Belt and other harm is not clearly outweighed by other considerations. Therefore, the very special circumstances necessary to justify the proposal do not exist.
43. It follows that the proposal does not benefit from the provision in CSPMD Policy CSSP1 for housing on small sites in the Green Belt. Likewise, since I have found that there would be harm to the Green Belt and that no very special circumstances exist to justify the proposal, policies of the Framework provide a clear reason for refusing the development. Accordingly, the test in paragraph 11 d) ii. of the Framework is not applicable and the proposal does not benefit from the associated presumption in favour of sustainable development.

Other Matters

44. The Council's Officer Report highlights that the appeal site is located within the Zone of Influence for Essex Coast Habitats Sites and that a mitigation strategy is in place to address direct and in-combination effects of recreational disturbance from new dwellings on the relevant Habitats Sites. However, as I am dismissing the appeal for other reasons, as set out above, it is not necessary to address the effect of the proposed development on Habitats Sites in any further detail.
45. While I have noted issues raised in the appellant's Planning Statement regarding the Council's decision-making on the 2002 planning application, compliance with the approved plans, discharge of conditions and the current status of a legal agreement linked to that decision, none of these matters fall within the scope of this appeal. I have based my conclusions on the evidence before me, including my observations on site and evidence about the date at which buildings and outdoor storage uses on the site were removed. Neither the effectiveness of the legal agreement, nor the Council's alleged lack of progress on an application for it to be set aside, affect those considerations based on the evidence currently before me.
46. Given that I have found there would be conflict with the development plan, there is no indication that advertisement of the planning application as a departure from the Local Plan was inappropriate.

Conclusion

47. For the reasons set out above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR