



Appeal Decision

Site visit made on 14 November 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2023

Appeal Ref: APP/V1505/W/22/3313894

Land at Woodvalley Farm, Outwood Common Road, Billericay, Essex, CM11 1HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Badgers Mount Ltd against the decision of Basildon Borough Council.
 - The application Ref 22/00917/PIP, dated 20 June 2022, was refused by notice dated 3 October 2022.
 - The development proposed is permission in principle for the erection of 6no Self Build Lifetime Homes for 6 no. local residents/households from Billericay and Wickford and associated works including construction of access drive, footways and provision of private gardens, amenity space; cycle and refuse storage and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second (technical details consent) stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent Technical Details Consent (TDC) application if permission in principle is granted. I have determined the appeal accordingly.

Main Issues

4. The main issues, which relate to land use, location and amount of development, are:
 - whether the proposal would be inappropriate development in the Green Belt, in terms of land use and location, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, including its effects on the openness of the Green Belt and the purposes of including land in it;
 - the effect of the amount of development on the character and appearance of the area;

- whether the proposal would be habitats development under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended); and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

5. Policy BAS GB1 of the Basildon District Local Plan Saved Policies 2007 (LP) defines the extent of the Green Belt. Paragraph 149 of the Framework sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt. The main parties have agreed that the proposal would represent inappropriate development in the Green Belt as defined in development plan policy and the Framework.
6. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence.
7. Having regard to the lack of built development on the site and the overall size and scale of the development proposed, the appeal scheme would inevitably have a greater and harmful impact on the openness of the Green Belt. It would therefore be inappropriate development which is, by definition, harmful to the Green Belt.

Character and appearance

8. Policy BAS BE12 of the LP sets out that development which results in harm to the character of the surrounding area, including the street scene, will be refused.
9. In the context of this appeal for permission in principle, the scope of the permission is limited to location, land use and amount of development and matters of design would be dealt with at the technical details consent stage. However, the appellant has applied for a maximum of 6 dwellings and therefore the amount of development is a matter for consideration.
10. The appeal site abuts existing residential development, with a mixture of linear development facing Outwood Common Road and the cul-de-sac of The Mount, these are predominately detached dwellings within rectangular plots. Having regard to the amount of development proposed the proposal for 6 dwellings would result in a density of development compatible with the adjoining development. Therefore, I consider that the amount of development would be within an acceptable range having regard to the general density of development within the locality and would accord with policy BAS BE12 of the LP.
11. Furthermore, whether the appearance of 6 dwellings would be appropriate having regard to the character of the surrounding area and the street scene would also be matters for consideration at technical details stage once details of design and layout are available.

Blackwater Estuary Special Protection Area (SPA) and Ramsar Site

12. Under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended), Permission in Principle must not be granted for development which is habitats development which is likely to have a significant effect on a qualifying European Site, unless the competent authority have ensured an appropriate assessment has been carried out. There is a specific process to deem what would constitute habitats development which I must assess.
13. As set out in the PPG, habitats development is defined as: i) Development which is likely to have a significant effect on a qualifying European site or a European offshore marine site, referred to as habitats sites in the National Planning Policy Framework (either alone or in combination with other plans or projects); ii) is not directly connected with or necessary to the management of the site, and; iii) the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Regulations).
14. The site is within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) zone of influence for the Blackwater Estuary Special Protection Area (SPA) and Ramsar Site. The Essex coastline is one of importance for birds and their habitat. It is home to internationally important numbers of breeding and non-breeding birds and their coastal habitats.
15. The proposed development falls within the scope of the RAMS as relevant development. Given that the proposal is for additional housing, and its proximity to the SPA and Ramsar Site there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a likely significant effect on the European sites. The development therefore constitutes habitats development.
16. The Regulations require that the competent authority must ensure that there are no effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA and Ramsar Site. The likely significant effects arising from the proposal need to be considered in combination with other development in the area and adopting the precautionary principle.
17. The Essex Local Planning Authorities within the Zones of Influence have developed a mitigation strategy to deliver the measures to address direct and in-combination effects of recreational disturbance on SPA. The RAMS sets out a strategic approach to mitigation by several Councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA and Ramsar Site.

18. The PPG states that it is not possible for conditions to be attached to a grant of Permission in Principle. Planning obligations also cannot be secured at this stage. Nevertheless, there is no legal reason why an obligation cannot be entered into at any time. The appellant has provided an obligation alongside the appeal.
19. Whilst the appellant has provided me with a signed and dated Unilateral Undertaking making provision for the required contribution, it does not specifically refer to a trigger for the delivery associated with implementation of a technical details consent. Therefore, there is a degree of uncertainty that there is a mechanism to secure the mitigation. However, as I am intending to dismiss the appeal for other reasons, it has not been necessary for me to pursue this matter further or seek clarification from the parties.
20. Accordingly, I am unable to conclude other than that the proposed development would have an adverse effect on the integrity of the SPA and Ramsar Site.

Other Considerations

21. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm are clearly outweighed by other considerations.
22. There are a number of other considerations that have the potential to weigh for or against the appeal scheme and these are assessed under the following subheadings.

Emerging Local Plan

23. The appeal site has been promoted for development through the emerging local plan for self build housing and was identified in the Green Belt Topic Paper, 2017 as one that had potential for housing. However, this document does not, to my knowledge, form part of the adopted development plan for Basildon, but was part of the evidence base for the now withdrawn Basildon Borough Publication Local Plan 2014-2034 and therefore I have only given it limited weight in my consideration.
24. Moving forward with a new Local Plan, the Council acknowledge that it is likely that land will be removed from the Green Belt in order to provide for a five year housing land supply. However, the process for this is at an early stage and sites, including those previously considered suitable, will need to be considered on the basis of a proper evidence base through examination. Therefore, I can not give weight to this consideration as part of this appeal.

Self Build Housing

25. I accept that government policy is supportive of self-build housing, with Paragraph 23 of the PPG highlighting that authorities must give permission to enough suitable serviced plots to meet the demand for self-build and custom built housing in the area. The proposed development would contribute to the Councils requirement to make adequate provision for self build dwellings, in accordance with the provisions of the Self Build and Custom Housing Act 2015.

26. However, whilst I acknowledge that the appellant is currently on the Council's Self Build Register, as six individual households, no firm evidence has been provided which demonstrates that the proposal would accord with the definition of self-build and custom housebuilding and more importantly no mechanism is before me which would ensure that it would be so. I therefore attach modest weight to this matter.

Passive House Design and Sustainable methods of Construction

27. Whilst I note that the appellant has set out that the development will be designed using the highest standards of energy efficiency, including the use of Passive House Design, as an application for permission in principle this detail is not before me for consideration. The appellant's final comments also note that this is a voluntary standard which is not required by the Council or the Government to be enforced. This is evidenced by the lack of mechanism before me to ensure that this would be implemented as it is not possible for conditions to be imposed on this form of application. I therefore attached limited weight to this matter.
28. The appellant's have also set out how they would like the scheme to be an exemplar for other similar development in Essex and that they intend to establish an education centre within the construction site to allow open days to enable greater understanding of sustainable construction methods. However it is unclear how this would be delivered and whether it would require planning permission in its own right. Whilst these aims are to be commended and I have no doubt of the appellant's intentions in this regard, it's delivery is not something that can be secured as part of this application and I have therefore attached limited weight to this matter.

Biodiversity

29. The appellant set out the development would provide environmental benefits to biodiversity that they considered were material. However, whilst the development would lead to some enhancements arising from the boundary planting and enhancements to the existing pond, it has not been demonstrated that these measures in isolation would result in a significant environmental benefit and it would not be possible for these measures to be secured as part of a permission in principle. Therefore, I have only attributed limited weight to the benefits outlined.

Five Year Housing Land Supply

30. The 2021 HDT results show that the Council has underdelivered against its housing requirement over the latest 3-year period. Consequently, the presumption in favour of sustainable development contained in the Framework is engaged whereby planning permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out that these policies include those relating to land designated as Green Belt.
31. Given my findings in relation to the Green Belt there is a clear reason for refusing the development proposed, albeit that the delivery of housing when there is evidence of significant under delivery is a benefit to which I have given moderate weight given the modest scale of the development.

Other considerations

32. The proposed development would offer other benefits such as the contribution that its construction would make to the local economy. I consider that any such benefits would be modest given the scale of the development and I have given this moderate weight.

Green Belt Balance and Conclusion

33. As explained above I give moderate or limited weight to the other material considerations cited in support of the proposal. However, I conclude these circumstances, even collectively, do not clearly outweigh the substantial weight that should be given to the harm to the Green Belt.
34. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist. The proposal is therefore in conflict with policy BAS GB1 of the LP and the Framework.
35. The proposal would therefore conflict with the development plan and there are no other considerations that outweigh this conflict. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR