



Appeal Decision

Site visit made on 22 September 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Appeal Ref: APP/V1505/W/23/3317008

Land East of Denewood, Studland Avenue, Wickford, Essex

- 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 Mrs Beth Deacon-Bates against the decision of Basildon Borough Council.
 - The application Ref 22/01005/FULL, dated 11 July 2022, was refused by notice dated 14 September 2022.
 - The development proposed is the construction of a 3 bedroom chalet, associated garage, parking area and driveway.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been submitted by the appellant against Basildon Borough Council and this is the subject of a separate decision.

Procedural Matters

3. The address on the planning application form describes the site address as a plot to the east of Denewood and Studland Avenue. It was clear from my visit that the appeal site is to the south of Studland Avenue, not to the east. I have therefore taken the appeal site address from the appellant's appeal form which accurately describes the appeal site's location. This address coincides with that used by the Council in determining the planning application and would cause no prejudice to any party.
4. I have omitted the words "Full planning permission for..." from the description of the development in the banner heading above, as they do not constitute an act of development, and are therefore superfluous.
5. I am content that omitting the roof dormers from the front wing of the proposed dwelling would lessen its scale and reduce opportunities for the intended future occupiers to view neighbouring properties. For these reasons, the amended drawings of the proposed dwelling would not constitute a fundamental change to the proposal or unfairly prejudice the interests of third parties, and consultation would not be necessary. Therefore, I have used the amended drawings in determining this appeal.
6. Submitted with the appeal is a copy of a permission (consent) granted by the Council, dated 13 January 2023, ref. 22/01578/TPOBAS, for works to the trees on the appeal site, which are preserved by a Tree Preservation Order¹. As this

¹ A Woodland Tree Preservation Order dated March 2005, preserves the woodland trees growing on the site.

consent has been granted, it would not prejudice the interests of the parties by me taking account of it in determining this appeal.

7. Also submitted with the appeal is a Tree Works Plan dated January 2023 (the TWP), showing the trees to be felled and retained on the appeal site. The TWP is annotated with a note stating that consent ref. 22/01578/TPOBAS has been granted for works to the trees. As such, the TWP appears to post-date the tree works consent. Therefore, I cannot be certain that the TWP shows the same information as was before the Council when it granted the tree works consent.
8. Furthermore, appeal procedural guidance² states that it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage. The TWP was not before the Council when it determined the planning application, and it does not show the proposed development. Therefore, interested parties whose views and comments were sought on the application may not have seen it. As such, in the interests of natural justice and avoiding prejudicing the interests of those parties, I have not taken the TWP into account in determining this appeal.
9. I am advised that the appeal site lies within the Zone of Influence of one or more sites on the Essex coastline which are protected as European sites of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended). The appellant has submitted a signed Unilateral Undertaking, dated 9 September 2022, to secure a contribution towards the strategic mitigation set out in the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document. This is a matter to which I will return to later in this decision.

Main Issues

10. The main issues are:

- The effect of the proposed development on biodiversity and protected species, with particular regards to Bats and Great Crested Newts.
- Whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
- The effect of the proposal on the character and appearance of the area.
- If the proposal is inappropriate development, whether the 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

Biodiversity and protected species

11. At the time of my visit there were several trees growing within the appeal site, which has the appearance of a small woodland. The wider locality includes some undeveloped plots and small blocks of woodland set amongst residential

² Planning Inspectorate Procedural Guide: Planning appeals – England (Updated 5 October 2023)

properties. Based on my observations, Natural England's Standing Advice³, and the advice from the Council's Ecological Consultant, I find that the appeal site could possess bat roosting features. Nearby trees could provide linkages allowing bat species to move to and from the appeal site.

12. Bat are a European protected species under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). Several bat species are of 'principal importance' under the Natural Environment and Rural Communities Act 2006 (the NERC Act).
13. The appeal proposal is not accompanied by any ecological surveys to ascertain the development's effect on biodiversity. I have read nothing in the appellant's Tree Survey (TS) to confirm the presence or absence of bat species roosting within those trees. Furthermore, I cannot be certain that protected species were in the scope of the TS, or that it was undertaken by an ecologist. I have no authoritative evidence that the trees identified in the TS as 'young' are unlikely to support bat habitation. In any case the TS⁴ identifies a greater number of early mature and semi mature trees on the appeal site, than young trees. As such, there is no substantive evidence to demonstrate that the trees on the appeal site are not inhabited by bat species or provide roosts.
14. The consent granted by the Council (ref. 22/01578/TPOBAS) for works to trees under a tree preservation order states that it does not give an exemption from the requirements to comply with the Wildlife and Countryside Act 1981 (as amended), or any other Acts offering protection to wildlife. As such, it does not alter my finding on this matter. Furthermore, the trees that would be retained may have the potential for habitation by bats species. That the site is only marginally located within a deciduous woodland does not alter my conclusions on this matter.
15. The appeal site is also within an Amber Risk Zone for protected Great Crested Newt species (GCN), as recognised by the appellant. GCN are a European protected species under the Regulations, and a species that are of 'principal importance' under the NERC Act. I did not observe a pond on the appeal site. Even if there are no ponds within 500m of the appeal site, and the evidence is not conclusive on that point, the appeal site is nonetheless within the risk zone for GCNs.
16. Given the nature of the appeal site and its immediate surroundings, and in having regard to the advice of the Council's Ecologist, I find there is a reasonable likelihood of protected and other priority species being present on the appeal site, particularly bats and GCN species. The Regulations and the NERC Act place a duty on decision makers to have regard to the conservation of species. In the absence of appropriate surveys to ascertain the presence or absence of such species, and in taking a precautionary approach, I cannot be certain that those species would not be harmed by the appeal proposal. Although the Council Ecologist's request for a preliminary ecological survey was received after planning permission had been refused, it was nonetheless refused for this reason amongst others.
17. I note the appellant's willingness to provide surveys via a planning condition. The advice in Circular 06/2005 'Biodiversity and Geological conservation –

³ Bats: advice for making planning decisions.

⁴ Table 3

Statutory obligations and their impact within the planning system’, states that “It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances...”

18. Therefore, before permission could be granted, the survey work should be completed and any necessary measures resulting from that to protect biodiversity, including any bats or their roosts, and GCN species, should be identified and secured through conditions and/or planning obligations, or any District Licensing Scheme. This would be the case even if the proposal was acceptable in all other respects. As such, this is not a matter that could be satisfactorily addressed by a planning condition, nor would it be outweighed by securing additional planting or other biodiversity enhancement measures. There is no substantive evidence before me to demonstrate any exceptional circumstances that would justify departing from the advice in the Circular referred to above.
19. The conditions imposed in the appeal decision at Maitland Lodge, Billericay⁵, which required an updated Biodiversity Survey, Construction Environmental Management Plan (CEMP), and Landscape and Ecological Management Plan appear to relate to an Ecological Impact Assessment submitted with that appeal. Furthermore, there is no indication in that appeal decision that protected species were likely to be present on the appeal site. Similarly, the conditions imposed in the appeal decision at Land on the east side of Newhouse Avenue⁶, securing a CEMP and Biodiversity Enhancement Strategy, appear to follow-on from a Preliminary Ecological Appraisal submitted with the planning application. Consequently, I find that the circumstances in those appeals are materially different to the appeal before me, and they do not justify securing an ecological survey by condition in this appeal. As such, they do not alter my conclusion on this main issue.
20. For these reasons, in the absence of substantive evidence to the contrary and having regard to my duty under the Regulations and the NERC Act, I conclude on this issue that the proposed development would harm biodiversity and protected species, with particular regard to bat and GCN species. It would therefore conflict with Paragraphs 174 and 180 of the Framework, which state that development should minimise impacts on biodiversity and local planning authorities should refuse planning permission if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for.

Whether inappropriate development

21. Paragraph 149 of the Framework, states that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions. These exceptions include “limited infilling in villages” (Paragraph 149.e), which is not defined in the Framework. I have not been referred to any other definition of limited infilling in policy or guidance. It is therefore necessary to consider whether or not the appeal proposal would be limited

⁵ APP/V1505/W/22/3296116

⁶ APP/V1505/W/21/3283720

infilling, and whether or not the site is within a village for the purposes of applying this exception.

22. The appeal site is a long and narrow plot of land that is situated between two dwellings that occupy plots fronting onto Studland Avenue of a broadly similar width. In the area of the appeal site, Studland Avenue is a tarmac surfaced road about a car's width. It is fronted mostly by single storey bungalows set on discernible building lines. Gaps between buildings are irregular. Some gaps separating nearby buildings from one another are narrow, whereas most are relatively wide and often containing small utilitarian buildings.
23. Studland Avenue is identified by a road sign, of a formal appearance, set in the grass verge at the junction with Parkstone Road. It is connected to the wider plotland area on the edge of Wickford, and the A129 London Road, via the tarmac surface roads of Parkstone Road, Branksome Avenue and Sugden Avenue. Laid out in a grid-like pattern and fronted by relatively long rows of dwellings with few open plots, this part of the area has a discernible built-up character that continues to the junction with London Road, and the ribbon of housing development that continues alongside the road and into Wickford.
24. Compared to Parkstone Road, Branksome Avenue and Sugden Avenue, the pattern of built development fronting the narrower Studland Avenue in the area of the appeal site, is relatively more intermittent. Nonetheless, the dwellings fronting this part of Studland Avenue have a visible presence in the street scene. Their presence is further announced by the substantial front boundary walls to the dwellings on either side of appeal site and they are sufficiently close to one another to be experienced as a coherent group fronting Studland Avenue. Despite the dense vegetation along some frontages limiting visibility, the dwellings nonetheless have a visible frontage to the Avenue and relate visually to the rows of buildings fronting Studland Avenue to the west of its junction with Parkstone Road.
25. The appeal site forms an uncharacteristically narrow gap between existing dwellings. These dwellings are set close to their side boundaries with the appeal site, which is visibly consistent with their plot widths and depths. The scale and layout of the proposed dwelling would closely reflect the scales and pattern of development established by the dwellings on those plots. It would infill the gap in the built frontage between them and have a strong visual relationship with them. Having regard to the context of the appeal site and its physical characteristics, I find that the appeal site is an infill plot. Consequently, the proposed dwelling, along with its modest garage, would constitute limited infilling in the terms expressed by the exception in Framework paragraph 149.e).
26. The Framework does not define a village and I have not been referred to any other definition of a village. The extracts from the Basildon District Local Plan Saved Policies 2007 (the BDLP), that are before me in this appeal do not identify the site as within a defined village. However, there is nothing I have seen or read in the evidence before me that limits the application of the exception in Framework paragraph 149.e) to sites that fall within settlements formally defined as villages by local planning policy. As such, it is necessary to consider the situation 'on the ground' as to whether the site is in a village.
27. The main parties have drawn my attention to a development site on the nearby Branksome Avenue, in which previous Inspectors in appeal decisions

APP/V1505/W/20/3246994 (the 2020 appeal) and APP/V1505/W/21/3278853 (the 2021 appeal) reached different conclusions on whether that site was in a village for the purposes of applying the exception on Paragraph 149.e).

28. The Inspector in the 2020 appeal found that the area in the vicinity of that appeal site was of a sporadic and plotland nature, with a great variety in built form with dwellings set irregular distances apart, an absence of public highways and a single road connection to the wider highway network. He remarked that there are limited land uses or communal facilities within the immediate vicinity to support the day-to-day needs of residents, which is not indicative of a village location, with residents needing to travel some distances to access services and facilities. However, even if I was to agree with the Inspector's description of the characteristics of the plotland area, I find that in the absence of any definition in local or national policy, this is just one way of identifying whether or not a particular site lies within a village.
29. The Inspector in the 2021 appeal, observed that the 'main core' of the area, including Branksome Avenue, Sugden Avenue, Parkstone Avenue and the western section of Studland Avenue, was served by a network of well-maintained estate roads with metalled surfaces and formalised street name signs. As such, it appeared as a well-ordered residential suburb and had many features and characteristics of a village. Even though the pattern of development in some parts of the plotland area away from this core might be described as sporadic, the Inspector found the same could be said of many other villages.
30. In terms of the appeal site before me, there are some irregular gaps and open plots along this stretch of Studland Avenue. The pattern of built development is also comparatively more intermittent than the well-consolidated pattern along Branksome Avenue that was observed by the Inspector in the 2021 appeal, and it could therefore be considered as somewhat looser knit. Nonetheless, I agree with the Inspector in the 2021 appeal that many villages have a loose knit pattern of development, or which incorporates built development interspersed with open land.
31. Furthermore, as I have described above, the buildings along this stretch of Studland Avenue are sufficiently close to one another to be experienced as a coherent group fronting onto the tarmac surfaced road on both sides. They are well related to the rows of buildings fronting Studland Avenue to the west of its junction with Parkstone Road. As such I find that the settlement pattern along this stretch of Studland Avenue displays characteristics that would not be uncommon to a village setting, and it would not preclude the appeal site from being located within a village.
32. There are no apparent facilities or services on nearby roads within the plotlands area. Nonetheless, the appeal site appeared to be functionally contiguous with Wickford, where the services and facilities listed by the appellant are located. These would be likely to be accessible by non-motorised modes of transport via the tarmac surfaced roads referred to above and into Wickford via the footways along London Road. Although the distances of travel to several of these facilities would not be short, I have not been referred to any policy or guidance that sets parameters regarding travel distances from facilities and services that would otherwise exclude qualification as a village.

33. In drawing these considerations together, I find no justifiable basis as to why the settlement pattern in the area of the appeal site, the relative absence of services and facilities nearby, and accessibility to services and facilities in Wickford, should preclude the area from being considered as a village for the purposes of Framework Paragraph 149.e).
34. For the reasons given above and in accordance with Paragraph 149.e) of the Framework, I conclude on this issue that the proposed development would constitute limited infilling in a village. Therefore, it would not be inappropriate development in the Green Belt. Accordingly, there is no requirement for subsequent assessments of the effect of the proposed development on the openness of the Green Belt, or impact on its purposes. Therefore, it is not necessary for me to consider whether very special circumstances exist in order to justify the development.
35. The Council's reason for refusal 1, refers to Green Belt considerations and cites a conflict with Policy BAS BE12 and Policy BAS C5 of the BDLP. However, these policies seek to ensure that new housing does not harm the character of the surrounding area and that woodlands are retained. As such, they do not relate to Green Belt considerations and are not determinative to my findings on this main issue.

Character and appearance

36. Based on the amended drawings explained in the procedural matters above, I find that the revised design of the dwelling, omitting the dormer windows and their elevated bulk from a prominent position on the front wing of the dwelling, would be in-keeping with the scale, layout and mixed styles of the existing dwellings that front Studland Avenue in the locality of the site. Although it would infill the undeveloped plot with a building and domesticate the site, the proposed dwelling would nevertheless be consistent with the residential character and appearance of the area.
37. I conclude on this issue that the proposal would not harm the character and appearance of the area. As such it would be consistent with Policy BAS BE12 of the BDLP, which amongst other objectives, seeks to refuse development that causes material harm in respect of the character and appearance of the surrounding area, including the street scene.

Other Matters

38. The appeal decision⁷ within the plotland area for a new dwelling at Charlotta, Canford Avenue comprised of a plot of land that was not flanked on both sides by existing residential dwellings. As such, it was materially different in context to the proposal before me and is of limited relevance to my consideration in this appeal.
39. The appeal site is located within the Zone of Influence (ZoI) for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). Figure 3.1 of the SPD indicates the site as falling specifically within the ZoI of the Blackwater Estuary Special Protection Area (SPA), which supports internationally important populations of breeding and non-breeding bird species. The SPA is defined in the Framework's Glossary (Annex 2) as a 'habitats site'. The appeal development would increase the number of households within the ZoI of the

⁷ APP/V1505/W/22/3298089

SPA, thus potentially increasing disturbance to the qualifying bird species through increased recreational pressure.

40. The appellant has submitted a Unilateral Undertaking (UU) to obligate payment to the Council of a contribution towards the delivery of the RAMS to mitigate the potential adverse in-combination effects of new housing on the SPA. The contribution in the UU does not match that stated in the Council Officer's Report. Nevertheless, in light of my findings on the main issues above, it is not necessary for me to look at the implications to the SPA in detail, given that the proposal is unacceptable for other reasons.

Planning Balance and Conclusion

41. The appellant's uncontested evidence in the form of the 2021 appeal decision, indicates a housing land supply of 2.4 years in Basildon District. Accordingly, the presumption in favour of sustainable development in Paragraph 11.d) of the Framework applies. As such, planning permission for the proposed development should be granted unless, under Framework Paragraph 11.d)i., the application of the policies in the Framework that protect areas or assets of particular importance⁸ provides a clear reason for refusing the development or, under Framework Paragraph 11.d)ii., any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
42. The list of protected areas or assets of particular importance to which Framework Paragraph 11.d)i. applies, includes the Green Belt and habitats sites. I have already concluded that the proposed development would not be inappropriate development in the Green Belt. Therefore, the application of the Framework's policies that protect the Green Belt do not provide a clear reason for refusing the development proposed.
43. The proposed development has the potential to harm the SPA, through increased recreational pressure. As I am dismissing the appeal for other reasons, it is not necessary for me, as the competent authority, to consider whether measures could be put in place to avoid or mitigate the proposal's potential impact on the SPA. However, if I was able to conclude that the appellant's UU would be effective in mitigating the recreational impacts of the development on the SPA, thus avoiding adverse effects on its integrity, then the application of the Framework's policies in section 15, would not provide a clear reason for refusing the development proposed. In that scenario it follows that Framework Paragraph 11.d)ii. would apply.
44. The benefit of delivering a single housing unit would, in the context of the housing shortfall in the Council's area, make a small but nonetheless valuable contribution to housing supply on a small site in a settlement. Framework Paragraph 69 states that small sites can make an important contribution to meeting housing requirements and are often built out relatively quickly.
45. Construction and occupation of the proposed development would generate short-term employment opportunities and economic activity, together with long-term economic and social benefits through the new resident household supporting businesses and services within the area. Given the scale of the proposed development, these benefits would be modest and attract limited

⁸ Footnote 7 of the Framework

weight in its favour. Likewise, any environmental benefit from enhancing biodiversity at the appeal site or using energy efficiently would be relatively small.

46. I acknowledge the reasons for the appellant wanting to reside in the area and the intention for it to be a self-build project, albeit with no mechanism in place to secure it as such. The personal circumstances and aspirations of the appellant attract limited weight. Furthermore, without a mechanism in place to secure it as a self-build development this again attracts limited weight.
47. The adverse impacts of the proposal would be confined to the harm I have identified to biodiversity and protected species, with particular regard to bat and GCN species. This would result in conflict with Paragraphs 174 and 180 of the Framework. Having regard to my duties in respect of the Regulations and the NERC Act to have regard to the conservation of species, I attach very substantial weight to this harm and the conflict with the Framework.
48. Therefore, the proposal's adverse impacts would significantly and demonstrably outweigh the benefits identified, even if the proposal's contribution to housing supply were afforded the same substantial weight as for that relating to the 2021 appeal decision, when assessed against the policies in the Framework taken as a whole.
49. Consequently, the proposed development does not benefit from the Framework's presumption in favour of sustainable development. Having considered all matters raised, I therefore conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR