



Appeal Decision

Site visit made on 9 January 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Appeal Ref: APP/V1505/W/23/3316578

Grimshill Farmhouse, Southend Road, Great Burstead, Billericay CM11 2PP

- 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 Millen Homes Ltd against the decision of Basildon Borough Council.
 - The application Ref 22/01223/FULL, dated 1 September 2022, was refused by notice dated 3 January 2023.
 - The development proposed is development of 4 affordable chalet bungalows.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged, the 2022 Housing Delivery Test (HDT) results and the revised National Planning Policy Framework (2023) (the Framework) were published on 19 December 2023. I have given the Council and Appellant the opportunity to comment upon these and taken any comments into account in determining this appeal. The references and paragraph numbering below reflects the new Framework.
3. Applications were made for both planning permission and listed building consent. Although the appeal site is within the setting of a listed building, no works are proposed to the building. After seeking clarification from the main parties, the appeal is against the refusal of planning permission only, so I have determined the appeal on this basis.
4. Since the appeal was lodged the appellant has submitted a planning obligation seeking to secure, amongst other things, the new dwellings as affordable homes and a contribution in accordance with the Essex Coastal Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) for designated Habitats sites. The effect of the proposed development upon Habitats sites, did not form a reason for refusal in the Council's decision notice. However, having regard to my duties under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) it is necessary I carry out an Appropriate Assessment (AA) and consider the effect upon Habitats sites as a main issue. I have sought the Council's and appellant's views upon this matter and taken them into account in determining this appeal.
5. The appeal site was subject of an application for a greater number of dwellings which was dismissed at appeal, for which I am provided with a copy of the

Inspector's decision letter¹. I have had regard to the findings, however, I am not bound by their conclusions. I have considered this appeal proposal on its own merits based upon the evidence before me.

Main Issues

6. The main issues are:

- the effect of the proposed development upon designated Habitats sites;
- whether or not the proposed development would be inappropriate development in the Green Belt and the effect upon the openness of the Green Belt;
- the effect of the proposed development upon the character and appearance of the area; and,
- the effect of the proposed development upon the setting and significance of Grimshill Farmhouse as a Grade II listed building.

Reasons

Habitats sites

7. The Regulations require that where a plan or project is likely to result in a significant effect on a European site (Habitats site), a competent authority is required to make an AA of the implications of that plan or project on the integrity of the Habitats site in view of its conservation objectives. Any likely significant effects (LSEs) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
8. There is no dispute between the main parties that the appeal site lies within a Zone of Influence (ZoI) of the Blackwater Estuary Special Protection Area and Ramsar Site (the SPA) as a designated Habitats site, and without mitigation is likely to result in LSEs. Habitats in the SPA support nationally important populations of breeding, wintering, and migratory birds, and internationally important assemblages of over-wintering and migratory waterfowl. These constitute the SPA's qualifying features.
9. The SPA conservation objectives are to maintain or restore its integrity by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, the population the qualifying features and species, and the distribution of the qualifying features within the site.
10. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020) (the RAMS SPD) confirms it has been found that outdoor recreational activities by visitors result in disturbance to the qualifying features. It identifies that new housing in the ZoI is likely to result in increased visitors to the SPA, resulting in recreational disturbance to the qualifying features. Therefore, by introducing a further four dwellings within the ZoI, the effects of this scheme alone and in combination with other development, would have LSEs on the SPA.

¹ Ref. APP/V1505/W/21/3272280.

11. The RAMS SPD outlines a package of strategic mitigation measures, including education and communication, access management, enforcement, habitat creation and monitoring, delivered by partnership arrangements. They are funded by a per dwelling tariff for developments within ZoIs, secured by planning obligation. Based upon the evidence before me and having regard to the views of Natural England (NE), I am satisfied that subject to a payment being secured against the appeal scheme via a planning obligation, the measures would mitigate the LSEs upon the SPA.
12. NE confirms if the tariff is secured by an obligation to be paid upon commencement of development, it would adequately secure the deliverability of mitigation measures. The appellant's view is the submitted obligation secures the contribution as sought by NE. However, it only secures payment before the occupation of more than 50% of the dwellings. Therefore, up to 2 dwellings could be occupied without any mitigation to mitigate the LSEs upon the integrity of the SPA.
13. From what is before me, there is no certainty of the timescale between phases of occupation, so unmitigated LSEs could be prolonged. Even if there was a relatively short timescale between the occupation of the first two and second two dwellings, there would still be a clear potential for unmitigated effects. I am also offered no certainty as to how long after paying the monies it is transferred to the partnership and spent on mitigation, also giving a potential for a further gap between occupation of the second two dwellings and mitigation being provided.
14. There are no other suitable means before me to mitigate the adverse effects. Therefore, the proposed development does not make adequate provision to mitigate the recreational disturbance impacts and thus maintain or restore the integrity of the SPA. It makes no other provision to mitigate the impacts and thus maintain the integrity of the SPA. Applying the precautionary principle, in the absence of adequate mitigation being secured the appeal scheme would have significant adverse effects upon the SPA, failing to adhere to its conservation objectives. Imperative reasons of overriding public interest do not exist. It has not been put to me there are no alternative solutions, or other compensatory measures will be provided. Therefore, section 63(5) of the Regulations precludes the proposal from proceeding.
15. For the reasons set out above, the proposed development would have harmful effects upon a designated Habitats site in conflict with section 63(5) of the Regulations, which states the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site. It would also conflict with paragraph 186a) of the Framework which states that if significant harm to biodiversity cannot be avoided, then planning permission should be refused.

Inappropriate development

16. The appeal site is within the Green Belt designated under Policy GB1 of the Basildon District Local Plan Saved Policies (2007) (the LP). Paragraph 142 of the Framework identifies the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

17. The Framework states the construction of new buildings should be regarded as inappropriate development, subject to certain exceptions. The exceptions at paragraph 154g) are in respect of the limited infilling or partial or complete redevelopment of previously developed land, subject to a development falling within one of the two clauses. These exceptions do not require an assessment against Green Belt purposes.
18. The appeal site is part of a residential garden that includes a permanent building. It is clearly separated and distinct from the established residential streets to the north and southwest, and it does not reflect the pattern of development. Therefore, it is outside a built-up area and for the purposes of the Framework, appears to be previously developed land.
19. The appeal site includes a sizeable garage building, hardstandings, parking, gateways, fencing and some limited garden structures, but these occupy a relatively limited proportion of it, and most are of a limited scale. A significant proportion is largely open lawned and landscaped. The appeal site makes a clear and distinctive contribution to Green Belt openness, appreciated from the public highway around the site frontage, and some neighbouring land.
20. The proposal for four new dwellings with first floor accommodation in the roof, associated hardstandings, parking of vehicles, paraphernalia and comings and goings would result in a significant increase in built development and associated activity. The increased footprint, extent and height of new built development, and more prominent visibility would have a significantly adverse effect upon the visual and spatial openness of the Green Belt, so it could not meet the first clause of 154g) of the Framework. However, in respect of the second clause of 154g), I am of the view the harm would not be to such a level that there would be substantial harm to openness.
21. There is a need for affordable housing identified in the South Essex Strategic Housing Market Assessment (2017). The submitted planning obligation appears well set out and to contain amongst other things, appropriate clauses and provisions to secure affordable housing of the types defined in the Framework, the arrangements for transfer to a registered provider, and means of identifying appropriate future occupiers. The Council's draft obligation includes some differing definitions and clauses. Many are of a similar nature and type to those in the appellant's obligation and the Council has provided little substantive explanation of why the appellant's obligation does not secure affordable housing appropriate to meet local needs.
22. While specifically highlighting the Option Agreement, I am informed this has already been signed and is in place, so it is not clear why further details are needed. Based upon the Council's limited explanation in respect of the signed agreement, it has not made its case that the completed obligation can be considered deficient. For this reason, I conclude the completed obligation secures four affordable houses to meet local needs. On this basis, four affordable homes are secured, and the obligation meets the tests in Regulation 122 of the CIL Regulations and paragraph 57 of the Framework.
23. For the reasons set out above, the proposed development is not inappropriate development. It does not conflict with paragraphs 152 and 154 of the Framework, the relevant provisions of which are set out above. It would also not conflict with Policy GB1 of the LP as this does not impose specific policy requirements to the Green Belt. As I have found the proposed development

would not be inappropriate development, it is not necessary for me to consider whether very special circumstances exist under Framework paragraph 152.

Character and appearance

24. By virtue of the limited amount of development, its verdant and landscaped appearance, and the separation from wider built development, the character and appearance of the appeal site relates more to the countryside in which it is located, than the wider established built-up areas. Its verdant, largely open and informal appearance makes a positive contribution to the character and appearance of the area and green corridor across Southend Road.
25. The scale, form, design and appearance of surrounding dwellings is somewhat varied, and it would be difficult to secure dwellings that integrates with all the surrounding vernaculars. Nevertheless, the dwellings appear to have been carefully designed, and are of a scale, forms, design and materials that draw aspects from the surrounds and the host building, and integrate some traditional local materials. The proposed layout has been designed to retain existing trees and landscaping around the periphery of the appeal site.
26. Though it is reduced from the previous scheme, this appeal scheme can still be said to result in a significant extent of additional built development and partial loss of the green corridor across Southend Road. The formal perpendicular layout of the dwellings, subdivision of the garden and the parking of cars on an Ecogrid base would be at odds with the informality of Grimshill Farmhouse and its garden setting. This would have a relatively limited and sometimes filtered visibility from vantage points on the public highway, and neighbouring land due north, east and south.
27. For the reasons set out above, the proposed development would be harmful to the character and appearance of the area. It would conflict with Policy BAS BE12 of the LP which seeks that development does not cause material harm to the character of the area. It would also conflict with paragraph 135 c) of the Framework which requires that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

Grimshill Farmhouse

28. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCAA) requires special regard is had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 205 of the Framework requires when considering the impact upon the significance of a designated heritage asset, great weight should be given to the asset's conservation. Harm to the significance of a designated heritage asset, including from development within its setting, requires clear and convincing justification (paragraph 206).
29. The listing description describes Grimshill Farmhouse (known as Elm Cottages 1 and 2) as an 18th century timber framed and weatherboarded house of one storey with attics under a tiled roof. It is a vernacular building that includes a 3-window range, casements with lattice leaded lights, and 3 gabled dormers. The appellant's Heritage Statement² (HS) suggests that it was more likely to have been a worker's cottage or cottages. Its significance lies in its historic

² Janice Gooch Heritage Consultancy (March 2020).

- and architectural interest as a good example of a simple, attractive, vernacular building and a rare survival of this type of property.
30. The setting of the farmhouse includes the garden and appeal site, grassland to the north, the farmland to the south and east, and some wider development to the north and southwest. The open land contributes to its significance as it reflects the asset's historic agricultural origins. The part of garden that includes the appeal site formed part of South Green. It is not within the original curtilage but was integrated in 1966. However, it is part of the close proximity setting in which it is experienced today. It contributes positively to the significance of the farmhouse, because the appeal site was once part of South Green, has remained predominantly open throughout the lifetime of the building, with the orientation of the building designed to look over the green.
31. Though the HS states land around Southend Farmhouse is consented for development this is some distance from the appeal site and does not appear to fall within the setting of Grimshill Farmhouse. The HS and an interested party state land surrounding the appeal site is proposed for housing, with the later providing an indicative plan. However, the evidence suggests the emerging Local Plan was withdrawn, I have no details of any extant planning permission, or that one can and will be implemented. Therefore, I have little certainty as to the proposal and layout put to me, so this attracts limited weight, at this time. Were a future application to be submitted or approved, that must be determined on its own merits and the circumstances at the time.
32. The proposed new dwellings have been designed with the upper floor in the roof space and integrate dormers and materials that have some degree of synergy with aspects of the farmhouse, which could be secured by a suitably worded planning condition. However, the proposed development would encroach both west of the original alignment of the farmhouse, and other heritage assets further south. It would be closer to the principal elevation of the farmhouse in a regular layout, at odds with and detracting from the openness, informality and visibility of the farmhouse and its setting.
33. The proposed development might be said to permit the restoration of the historic curtilage. However, a curtilage is not the same as setting and because the house is experienced from the appeal site, the site is within the setting. The garage and frontage hedgerow in particular, currently limit its visibility. The proposed development would still permit views from various vantage points from the public highway and the north, south and east. However, it would reduce these, thereby diminishing the setting and ability to appreciate the significance the heritage asset.
34. I concur the Council's and their specialist advisers' view, that the harm would be of a relatively low level. Nevertheless, the proposed development would fail to preserve the setting of Grimshill Farmhouse and would adversely affect its significance. This would conflict with the aims of section 66(1) of the LBCAA, the provisions of which I have set out above. The level of harm would be less than substantial harm. Framework paragraph 208 states that where a development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the development.
35. The proposed development would make a numerically small contribution to the supply of housing in the Borough. However, I am informed that outside

- designated settlements, the Borough is largely comprised of Green Belt. The proposal would also contribute to meeting affordable housing demand for which the appellant suggests the shortfall was at 1,013 dwellings in August 2022.
36. An interested party has suggested the level of outstanding permissions and census projections are such that the housing land supply (HLS) position could be considered healthy. However, that assessment is rather limited in detail of how this figure has been arrived. The Council's assessment of this matter is that it can only demonstrate an approximately 1.85-year HLS, and the evidence does not persuade me this position is inaccurate. The Council's 2022 HDT measurement is only 46%. Need can be regarded as acute, and as a public benefit, the contribution to the supply of housing needs by these four affordable homes is of a high order.
37. There would be a moderate temporary economic benefit during construction and once complete a limited on-going benefit to the local economy. The restoration of the historic curtilage to the farmhouse would aid the understanding of its historical development, but overall, I regard this as a very limited public benefit. Little detail is provided of the design of a sustainable drainage scheme to suggest it would be of an overall benefit. On this basis compliance with relevant policies and guidance would be a neutral matter.
38. The communal areas are to be public, so it appears an open space clause is necessary in the obligation. It secures the space being laid out to an agreed specification and its future management by a management company. The Council has not stated the space is not necessary having regard to the development plan and the Framework. Based upon the evidence before me I am satisfied this meets the statutory and Framework tests, and it could be considered as a public benefit. Mindful of its limited size, location and proximity to other greenspace, at best this would be a minor public benefit.
39. Presently the site includes sizeable hardstandings and well-maintained grass areas that appear of a relatively limited ecological value. The space within the proposed development outside private gardens gives sufficient scope to provide a material net gain in biodiversity and further landscaping. Subject to the provision of a suitably high-quality landscape scheme, enhancement plan and long-term management, the biodiversity and landscape benefits would be likely to result in at least a limited overall public benefit in the longer term.
40. The proposed development would result in less than substantial harm to the setting and significance of a designated heritage asset, which carries great weight. I am of the view, that against the harm the public benefits of the proposal would collectively carry weight of a high order for the reasons set out. Even were I not to take into consideration the provision of a public open space as a benefit, the public benefits would be of sufficient magnitude to outweigh the less than substantial harm that would occur. Therefore, the proposed development would not conflict with paragraph 208 of the Framework, the relevant provisions of which I have set out above.

Planning Balance

41. When applying footnote 8 of the Framework, the presumption in favour of sustainable development would normally apply given the Council's HLS position. However, paragraph 11d)i) states that planning permission should be granted, unless the application of the policies in the Framework that protect

areas or assets of particular importance provide a clear reason for refusing the development. Footnote 7 confirms that these include those for designated habitats sites, so the tilted balance does not apply.

42. Were I to agree the proposed development is or could be made compliant with policies in respect of matters such as design, materials, renewable energy, resource and energy efficiency, the living conditions of future and neighbouring occupiers, highway safety and parking, cycle and refuse storage, biodiversity protection, flood risk, arboriculture and archaeology, these would all be neutral matters in the balance. That this proposed development would not constitute inappropriate development is a neutral matter.
43. The proposed development would result in benefits that are sufficient to outweigh the harm to the setting and significance of a designated heritage asset. However, it would adversely affect the integrity of Blackwater Estuary SPA, this is a matter that attracts substantial weight against the scheme. The scheme would also adversely affect the character and appearance of the area. Even were I to be of the view this harm should attract only limited weight, and that there might be some greater benefits possible in respect of matters such as on-site biodiversity, landscaping and drainage, the overall harm from the development would significantly outweigh the benefits. Moreover, Regulation 63(5) of the Regulations state that, the competent authority may only agree to the plan or project only after having ascertained that it will not adversely affect the integrity of a habitats site. Therefore, the appeal should be dismissed.

Conclusion

44. For the reasons set out above, the proposed development would be contrary to the development plan read as a whole, the National Planning Policy Framework taken as a whole, and the Habitats Regulations. There are no material considerations advanced that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR