



Appeal Decision

Site visit made on 9 January 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2024

Appeal Ref: APP/V1505/W/23/3319492

England, Crays Hill Road, Billericay, Essex CM11 2YP

- 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 Mr James Cook against the decision of Basildon Borough Council.
 - The application Ref 22/01718/FULL, dated 6 December 2022, was refused by notice dated 6 March 2023.
 - The development proposed is demolition of existing residential unit and the erection of a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing residential unit and the erection of a replacement dwelling at England, Crays Hill Road, Billericay, Essex CM11 2YP in accordance with the terms of the application, Ref 22/01718/FULL, dated 6 December 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1298.L.001, 1298.L.002, 1298.L.003, 1298.L.101, 1298.L.102 and 1298.L.103.
 - 3) Demolition and construction works shall take place only between 08:00 and 18:00 on Monday to Friday; 08:00 and 13:00 Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.
 - 4) There shall be no discharge of surface water from the site onto the highway.
 - 5) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) wheel washing facilities; and
 - e) measures to control the emission of dust and dirt during construction;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing by the local planning authority.

Preliminary Matters

2. During the appeal process a revised version of the National Planning Policy Framework (the 'Framework') was issued. The main parties were consulted on the relevance of the changes to the appeal and their comments have been taken into account.

Main Issues

3. The main issues are:
- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and development plan policies;
 - the effect of the proposal on openness;
 - the effect on the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS) zone of influence; and
 - would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Green Belt

4. Policy BAS GB3 of the Basildon District Local Plan relates to replacement dwellings in the Green Belt and sets out a number of criteria which such properties are subject to. It is not disputed by the parties that the proposed dwelling in this case would meet these criteria. The criteria are generally consistent with paragraph 154 d) of the Framework which sets out that replacement dwellings which are not materially larger than that they replace

are one of the exceptions to the general presumption against development in the Green Belt.

5. However the policy also refers to the need to accord with policy BAS GB5. That policy sets out the definition of a dwelling in respect of the dwelling being replaced. It clarifies in part iii. that the existing building must be a permanent substantial structure with foundations, walls, slated or tiled roof and internal plastering, and therefore caravans or mobile homes would not qualify. The existing structure on site is a mobile home. As the existing dwelling would fail to accord with policy BAS GB5, then the development as a whole would also be contrary to policy BAS GB3 as it would not constitute a replacement dwelling in the Green Belt. It would therefore be inappropriate development.
6. The Framework states that development in the Green Belt that constitutes limited infilling in villages would not be inappropriate. As the proposal is for one dwelling on a site that sits comfortably between other dwellings, it would comprise limited infilling. However the small collection of properties near the site is detached from the settlement of Crays Hill; being separated from it by a substantial area of woodland along Crays Hill Road. So whilst the immediate surroundings of the site do have a residential character, I do not consider that they constitute a village in their own right. Consequently, the appeal site is not within a village and so the development does not benefit from this exception in the Framework.
7. The Framework also supports the redevelopment of previously developed land. However the existing mobile home is not a building and there is limited other built form on site to render the site previously developed. This exception in the Framework therefore does not apply either.
8. In summary, the proposal would be inappropriate development in the Green Belt. This harm to the Green Belt carries substantial weight. As such the development would conflict with policies BAS GB 5 and BAS GB 3, as set out above. Policy BAS GB1 is also referred to in the Council's decision, but this largely refers to the Green Belt boundary so is of little direct relevance to the proposal.

Openness

9. The appellant states the proposed dwelling would have an internal floorspace of around 73m² whilst the Council calculate it to be 87m². The existing dwelling is approximately 68m² but there are other structures on the site which would also be removed as part of the development. The appellant states that in total around 100m² of floor space would be removed resulting in a reduction in floorspace overall; whichever figure for the size of the proposed dwelling is correct. In this respect the proposal would increase openness. The parties do not dispute that in this regard the proposal would meet the criteria set out in policy BAS GB3 for replacement dwellings.

Essex Coastal RAMS

10. It is agreed by the parties that the site is within the Zone of Influence of the Essex Coastal RAMS area. Within this area, the development of additional dwellings could result in additional recreational pressure on the Essex Coastal RAMS area which accommodates a number of Special Protection Areas (SPAs) and Ramsar sites which are designated habitat sites.

11. However in this case, notwithstanding that the mobile home fails the definition of a dwelling for the purposes of policy BAS GB5, the site has been occupied by residents for a long established period. Therefore, there would be no reason to consider there would be any increase in recreational pressure on the habitat sites and hence no need for any mitigation.

Other considerations

12. Paragraphs 152 and 153 of the Framework set out that inappropriate development in the Green Belt should not be approved except where other considerations clearly outweigh the harm to the Green Belt.
13. In this case it is clear that there has been an established residential presence on the site for a number of years. A Certificate of Lawful Use for the stationing of a mobile home for residential purposes on the site was granted in 1993 on the basis that the land had been used for that purpose for at least 10 years. Moreover, although the plan accompanying that Certificate shows the mobile home to be in a different position on the site to what it is now, other evidence shows the mobile home in its current position since 1999. This shows a high degree of permanence.
14. In addition, the mobile home has been extended with the addition of a brick-based porch, there is a brick plinth around the edge of the mobile home which fixes it to a hardstanding base, and it is connected to mains services. This illustrates a high degree of attachment to the ground that would make it very difficult, if not impossible, to move. This adds to its permanence.
15. The proposal would be inappropriate development in the Green Belt to which I give substantial weight. However the mobile home has been in situ for an extensive period of time and is firmly and considerably attached to the ground giving it a strong degree of permanence, to which I give significant weight. The proposal would also increase openness.
16. Overall, it is considered that the harm to the Green Belt by virtue of the development constituting a new dwelling, is clearly outweighed by the permanence of the existing residential unit on the site and the increase in openness provided by the proposal. As such, looking at the case as a whole, I consider that very special circumstances exist which justify the development.

Other Matters

17. The consultation response from the Council's ecologist to the application expressed an objection on the basis of a lack of information on the likelihood of bats on site. From my site visit, I noted that none of the buildings on site had roof voids that would be able to accommodate bats nor were there any gaps around the eaves. There were also no trees on site. I therefore consider the likelihood of there being bats on site to be negligible and so there would be no harm to this protected species resulting from the development.

Conditions

18. I have imposed conditions with reference to the advice in the Framework and the national Planning Practice Guidance.

19. In the interests of clarity I have attached the standard condition relating to the commencement of development, and a condition identifying the approved plans.
20. In the interests of protecting neighbouring residents from unacceptable noise and disturbance, I have included conditions, suggested by the Council's environmental health team and the highways authority, relating to hours of construction and a Construction Management Statement.
21. A condition relating to contamination is included to ensure future occupiers are not subject to unacceptable risks in that regard. I have also imposed the suggested condition preventing the discharge of surface water onto the highway so as to minimise the risk of localised flooding.
22. I have not imposed the condition suggested by the highways authority relating to entrance gates as there are already gates at the front of the site. Likewise the access is already surfaced with unbound material. It is also unlikely that material associated with the development would be burnt on site, so a condition relating to that would be unnecessary. In any case, any excessive nuisance in this regard could be addressed through different legislation.

Conclusion

23. Although the proposal would result in harm to the Green Belt in terms of its inappropriateness, which carries substantial weight, I consider the other considerations in this case clearly outweigh that harm.
24. As such, the proposal would conflict with the development plan as a whole but there are other considerations that indicate a decision other than in accordance with the development plan. Therefore, for the reasons given above, the appeal is allowed.

A Owen

INSPECTOR