



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: 30 January 2024

Appeal Ref: APP/V1505/W/23/3319909

Land Rear of The Hyde, Glebe Road, Ramsden Bellhouse, Billericay, Essex CM11 1RL

- 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 D Webb against the decision of Basildon Borough Council.
 - The application Ref 22/01187/FULL, dated 16 August 2022, was refused by notice dated 14 October 2022.
 - The development proposed is described as Development of site to incorporate 9 Dwellings (C3 use).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description and address in the banner heading above are taken from the application form. It is rear of The Hyde although there are other intervening properties, which I have taken into consideration in determining the appeal. The application form and appellant's submissions refer to the appeal as being specifically for affordable self-build housing. I return to these matters below.
3. 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.
4. The Council has referred me to and provided copies appeal decisions¹ at land around the appeal site, on land it suggests is under the same ownership. While I have noted their contents, I am not bound by the previous decisions, and I have considered the appeal proposal upon its own merits and impacts, based upon the evidence provided.

Main Issues

5. The main issues are:

¹ Refs. APP/V1505/W/22/3304975, APP/V1505/W/21/3268385, APP/V1505/W/19/3244082, APP/V1505/W/19/3227488, APP/V1505/W/18/3218615, APP/V1505/W/17/3177993, APP/V1505/W/15/3129671, APP/V1505/C/18/3200729.

- the effect of the proposed development upon biodiversity;
- whether or not the proposed development would be inappropriate development in the Green Belt;
- the effect of the proposed development upon the openness of the Green Belt;
- the effect of the proposed development upon the character and appearance of the area;
- whether or not the proposed development would make adequate provision to mitigate flood risk and manage surface water; and,
- if the proposed development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Biodiversity

6. The Conservation of Habitats and Species Regulations 2017 (as amended) (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 Appropriate Assessment of the implications of that plan or project on the integrity of the European 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.
7. 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. Habitats in the SPA support nationally important breeding populations of little terns, wintering hen harrier, migratory pochard and ringed plovers, important wintering populations of a total eight bird species, and internationally important assemblages of over-wintering and migratory waterfowl. These constitute the SPA's qualifying features.
8. The conservation objectives for the SPA 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 of each of the qualifying features and species, and the distribution of the qualifying features within it. Studies have found various outdoor recreational activities by visitors result in disturbance to the qualifying features. It is identified that future new housing within the ZoI is likely to result in increased visitors, and recreational disturbance to the qualifying features. By introducing a further nine dwellings within the ZoI, the effects of this scheme alone and in combination with other development would have LSEs on the SPA.
9. The Essex Coastal Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020) (the RAMS SPD) outlines a package of strategic mitigation measures, including education and information, access management, zoning, enforcement and habitat creation delivered by the RAMS partnership. These are funded by a per dwelling tariff for developments within

- ZoIs, secured by planning obligation. Based upon the evidence provided, 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.
10. Natural England (NE) has stated the mitigation measures are sufficient subject to the tariff being secured by planning obligation and being paid prior to the development commencing. The appellant has made a direct payment of the tariff, although it is not clear if this is to the correct planning authority. On the assumption it is, despite this, the absence of a planning obligation means there is no certainty by a legal link between the money and any future permission, so it is unsecured. A direct payment does not provide guarantees it will only ever be used by an authority to deliver the requisite RAMS mitigation in the future for this specific appeal scheme. There is also no means of index linking the sum, to ensure it reflects the cost of mitigation at the time it is used.
 11. For the reasons set out, as the competent authority I do not have sufficient certainty the mitigation is secured or will adequately mitigate LSEs upon the SPA. 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. This scheme makes no other provision to mitigate the impacts and thus maintain the integrity of the SPA. Applying the precautionary principle, in the absence of appropriate mitigation being secured the appeal scheme would have significant adverse effects upon the SPA, thereby failing to adhere to its conservation objectives. Imperative reasons of overriding public interest do not exist. It is not put to me there are no alternative solutions, or other adequate compensatory measures will be provided.
 12. Section 63(5) of the Regulations 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. Therefore, it precludes the proposal from proceeding.
 13. The Council's specialist ecological advice states the site is within an Amber Risk Zone for Great Crested Newts (GCNs) identified by NE. Therefore, there is a reasonable likelihood they could be present on the appeal site and affected by the development. I am also informed by the Essex Badger Protection Group (the EBPG) there are a number of setts recorded within the Ramsden Bellhouse area. The Council is of the view the absence of substantive evidence of the effects upon protected sites, priority habitats and species, means there is a potential conflict with statutory duties under section 40 of the Natural Environment and Rural Communities Act 2006 (the NERC Act).
 14. NE standing advice expects a survey if there is suitable habitat on the site. It reiterates advice similar to that in Circular 06/2005, in that it is essential the presence or otherwise of protected species, and the extent that they may be affected is established before permission is granted, otherwise all relevant material considerations may not have been addressed. However, protected species surveys should not be required unless there is a reasonable likelihood of them being present and affected by the development.
 15. The appellant's Ecological Assessment (EA) is very brief and as far as I can tell, is not by a chartered ecologist. While it provides some commentary upon the species supported on the site and in the area, it does not outweigh the data from NE and the views of the Council's specialist ecologically qualified adviser, in respect of the potential for harmful effects to GCNs as a protected species.

16. The sett referred to by EBPB appears a considerable distance from the appeal site, and the appellant's EA suggests observations of badgers are also a considerable distance away. The EBPB does not provide evidence to substantiate how the appeal site habitat could support badgers, or that there is a likelihood of them being adversely affected by the development, such that a survey is necessary.
17. I see no reason why matters such as worker and construction practices were protected species to enter the site, and adequate provision for ascertaining the baseline conditions and habitat creation could not be the subject of suitably worded planning conditions. I am not provided with substantive evidence that would point to concerns in respect of other protected species at the appeal site. The reason for the Council's specific concern for the potential effects upon Lapwing habitat loss off-site in their appeal statement, is not fully explained. However, such matters do not mitigate the absence of a GCN survey.
18. 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, the relevant provisions of which I have set out above. 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. It has also not been demonstrated the proposed development would not harmfully affect a protected species, which is contrary to the aims of section 40 of the NERC Act, which expects the application of the general biodiversity objective to conserve and enhance biodiversity.

Inappropriate development

19. The appeal site is within the Green Belt designated on the proposals map under Policy GB1 of the Basildon District Local Plan Saved Policies (2007) (the LP). Paragraph 142 of the Framework states 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.
20. The Framework states the construction of new buildings should be regarded as inappropriate development, subject to certain exceptions. The Council has assessed whether the proposal meets the exceptions at paragraph 154 e) and f) of the Framework, for limited infilling in villages and limited affordable housing for local community needs under policies in the development plan. Not conflicting with Green Belt purposes are not a requirement of these exceptions.
21. The appeal site includes an access onto a largely open grassland field, with a modest building, structures, and some open storage or activity occupying a proportionally small part of it. It is surrounded by open countryside on three of its four main sides, with which there is open or filtered visibility to and from adjoining rural land. It is only adjoined by significant built development on its southern side. For this reason, the proposal could not constitute infilling.
22. This part of Ramsden Bellhouse is strongly defined by the linear development and parallel plots along Glebe Road. Even were the gardens of dwellings adjoining the south of the appeal site defined as lying with the village, these proposed new dwellings would lie to the north of these, projecting into open countryside and being situated outside what, on the ground, appears to be the

'village'. Therefore, the proposal could not constitute limited infilling within a village under paragraph 154 e) of the Framework.

23. Annex 2 of the Framework defines Affordable housing. Though it is intended the build cost of each plot for buyers would be limited and various financial conditions imposed, I am not provided with sufficient evidence demonstrating this is of a level or proportion of market values that would meet any of the definitions in Annex 2. There is also no planning obligation before me to secure the scheme as either affordable housing, or the dwellings as custom or self-build dwellings, or retirement plots, in the terms suggested by the appellant. I am also not provided with justification for the use of a planning condition, or sufficient assurances it can and should be used to secure these build types.
24. The site has been considered as part of past strategic studies², although it is by no means clear it was intended to be taken forward into an adopted plan. However, as the local plan review was withdrawn and the Neighbourhood Plan is in the early stages of producing a draft plan, I am not provided with evidence there is current development plan policies specifically in respect of limited affordable housing for local community needs in this location or for rural exception sites. Even if I were, it would not overcome the absence of a planning obligation as set out above, so the proposal cannot meet the exception at Framework paragraph 154 f).
25. The appellant's evidence and what I saw suggests part of the appeal site might be considered to constitute previously developed land, so I have had regard to the exceptions in the two limbs of paragraph 154g). However, there is no planning obligation before me to secure the development as affordable housing and I am not offered any other means by which it could be legally secured. Therefore, it could not meet the exception in the second limb of paragraph 154g) of the Framework. My findings in respect of openness will be determinative as to whether the proposal could meet the exception in the first limb of paragraph 154g).

Openness

26. Even were I to take all the development I saw as being authorised, the significant majority of the field still remains open, verdant, free of built development, and there is nothing of substance before me to suggest there is any extensive or intensive use of the field involving significant structures or storage. The proposed development would result in a large incursion of built development by virtue of 9 sizeable dwellings, associated subdivision, paraphernalia, hardstandings including access, circulation and parking areas, and associated activity and comings and goings. It would result in harm of a high order to the visual and spatial openness of the Green Belt, which would be visible, in particular, from surrounding open land to the north, west and east.
27. Therefore, for the reasons set out above, the proposed development would be harmful to the openness of the Green Belt, so it could not meet the exception in the first limb of paragraph 154g) of the Framework. It would also conflict with the aims of paragraph 142 of the Framework insofar as this aims to prevent urban sprawl by keeping land permanently open.

² The Strategic Housing Land Availability Assessment and Housing and Economic Land Availability Assessment.

28. The Council's first reason for refusal in respect of the Green Belt refers to Policies BAS BE12 and BAS BE13 of the LP, and paragraph 130 of a previous iteration of the Framework. However, these do not make specific reference to the Green Belt, its exceptions, the tests or Green Belt openness. Therefore, I have not concluded against them under this main issue.

Character and appearance

29. Notwithstanding a couple of more modestly sized backland plots, the prevailing character and appearance of the area can be characterised by linear development mostly in what appear to be very large plots, within an inherently rural, verdant and largely open setting. The existing building, storage and hardstanding constitute a small part of the appeal site and most of the site is given over to open grassland. Overall, as a whole the appeal site makes a positive contribution to the character and appearance of the area.
30. The proposed development would result in a large incursion and significant intensity of built development and associated domestication, paraphernalia and activity. It would be of a greater density than that of the prevailing character, onto a largely open and undeveloped rural field beyond the pattern defined by existing residential development. This would be harmful to and at odds with the existing open and spacious character and appearance of the appeal site and the prevailing character of the area.
31. Policy BE13 of the LP states that bungalows and chalets will normally only be permitted and the Council's second reason for refusal raises a specific objection to the design, height, size and scale of some 2 storey gables on the Type 2 dwellings. But there are no 2 storey gables on that house type on the plans before me. There are some on the Type 1 dwellings but these are substantially under a pitched roof, forming a limited part of the building. They would be viewed in the wider context of some much larger dwellings close to the appeal site with greater accommodation at second storey level than that proposed.
32. The house types are of a bungalow or chalet form, and I cannot conclude the two storey gables are particularly or harmfully out of keeping with the character and appearance of the area. However, I am not satisfied that these, the absence of harm from the standard of accommodation, dwelling design and materials, layout, and the scope of suitably worded planning conditions, could be considered to deliver an overall enhancement. Therefore, these matters could not mitigate or overcome the other harm I have found.
33. 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 states that development will be refused if it results in material harm to the character of the surrounding area. It would also conflict with the aims of paragraph 135a) of the Framework which seeks that development is sympathetic to local character including the surrounding built environment and landscape setting.
34. Taking into consideration the character and appearance of the area as a whole, I do not consider the Council has sufficiently reasoned the conflict it finds with the requirements of Policy BAS BE13 of the LP. For the reasons set out I do not find a specific conflict with its requirements, as set out above.

Flood risk and surface water

35. Framework paragraph 173 requires it is ensured that flood risk is not increased elsewhere because of a proposed development. The appellant's Flood Risk Assessment (FRA) confirms the site is at a negligible or very low risk of flooding from various sources. However, it highlights the predominant geology in the area is impermeable clay which is conducive to large amounts of surface water runoff. Its concluding recommendations are that a sustainable drainage strategy should be developed for effective management of surface water over the lifetime of the development.
36. The proposed development would result in a significant increase in hard surfacing upon a sizeable site area. Surface water drainage is proposed to be attenuated by permeable hardstandings and via a drainage ditch on the site feeding an existing off-site lake. However, there is little detail of substance explaining the amount of run-off that would be likely to be generated, including with climate change allowances. It also does not detail the specification of on-site infrastructure, the capacity of the lake or other forms storage being proposed, or confirm they can be made of sufficient capacity and control, to store and safely attenuate excess water without increasing flood risk.
37. This is particularly important given the underlying geology and that the FRA highlights that given the underlying soils and geology, the use of infiltration systems is largely not appropriate for use in the Borough. Given the absence of substantive technical evidence and the conflict with a fundamental aspect of flood risk policy, I am not satisfied this should be a matter left to be addressed by planning conditions.
38. For the reasons set out above, it has not been demonstrated the proposed development will ensure that flood risk is not increased elsewhere because of proposed development. Therefore, it would not make adequate provision to mitigate flood risk and manage surface water, in conflict with paragraph 173 of the Framework, the relevant provisions of which I have set out above.

Other considerations

39. The proposal would result in a significant temporary economic benefit during construction, and once constructed a moderate on-going benefit to the local economy and support to local services and facilities. The Council's evidence of its custom and self-build register suggests sufficient plots may have been approved to keep up with recent needs over the relevant base period, and it currently has 36 entries. Even were this incorrect, the proposal could add to the supply of potential options for such builds, although affordable and/or self-build dwellings as set out in the Act³, are not legally secured.
40. However, the Council's HDT result is 46%, it can only demonstrate an approximately 1.85-year Housing Land Supply (HLS) to address increasing population and housing needs, in an area where house prices are understood to be high, so housing needs could be considered acute. The development plan policies most important for determining the application are deemed out of date. The withdrawal of the emerging Local Plan and the absence of an adopted Neighbourhood Plan means there are uncertainties as to the way forward to address housing needs. In the current circumstances, and the government

³ The Self-build and Custom Housebuilding Act 2015 (as amended).

objectives to significantly boost the supply of housing, the social benefits of nine dwellings to supply, attracts significant weight in favour of the scheme.

41. Given the scope for landscape provision within the site and other land under the appellant's control, and the appellant's suggested measures, it is possible with the imposition of detailed suitably worded planning conditions, the proposal could achieve significant biodiversity net gain, some open space provision and some access benefits. The possible resultant benefits from biodiversity and landscaping could be of a magnitude that attracts significant weight in favour of the scheme. The suggested renewable technologies to create 'almost zero' homes would appear to off-set the emissions of the development rather than result in an overall benefit.
42. Were I to agree the development would be, or subject to the imposition of suitably worded planning conditions or CIL contributions, could be made compliant with policies in respect of matters such as protected and priority species, adherence with parking and access standards, the living conditions of future and neighbouring occupiers, construction effects, land contamination, local infrastructure, and arboriculture, these would be neutral matters. Were suitable mitigation for Habitats sites to have been secured in accordance with the Essex RAMS SPD, this would also have been a neutral matter.
43. The application plans that would be approved show an access from Glebe Road only, with no connection detailed to Orchard Road, so I have considered the appeal as such. There is presently a made access from Glebe Road to the southern part of the site, the scope of the enforcement notice upheld at appeal is not clear⁴, and as I am dismissing this appeal for other substantive reasons, I have not considered this and related matters in detail. Whether it can be lawfully retained, or reconstructed, it has not been substantively demonstrated a safe and suitable access cannot be achieved. Were an adequate and safe access to be achieved, it would appear to be a neutral matter.
44. The appellant has suggested an offer of £25,000 to upgrade a park area and include outdoor keep fit equipment, being of benefit to local residents. This is not the subject of a planning obligation before me. Neither is it explained how it would meet the Framework tests of being necessary to make the development acceptable, being directly related to the development, and fairly and reasonably related in scale and kind to the development. Therefore, I give this matter little weight.

Planning & Green Belt Balance

45. The proposed development would be inappropriate development that would, by definition, harm the Green Belt, and would result in harm to visual and spatial openness of a high order. In accordance with the Framework, substantial weight should be given to any harm to the Green Belt. In addition to this, I have identified harm to designated habitats sites, the character and appearance of the area, and it has not been demonstrated that the proposed development would not result in harm to protected species or avoid increasing flood risk. Therefore, the matters weighing against the scheme attract substantial weight.

⁴ Ref. APP/V1505/C/18/3200729.

46. Overall, the factors and benefits set out by the appellant, attract significant weight in favour of the scheme. Therefore, they would not clearly outweigh the harm identified to the Green Belt, and the other harm, which attracts substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the proposed development conflicts with paragraphs 142, 152 and 153 of the Framework, which seek to preserve the openness of Green Belt and protect it from inappropriate development, unless very special circumstances exist.
47. Given this and the unmitigated harm to Habitats sites, in accordance with paragraph 11d) of the Framework, the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development, for which the policies of the Framework have not been met. Consequently, the tilted balance does not apply, and the harm from the development significantly outweighs the benefits. Moreover, section 63(5) of the Regulations precludes the proposal from proceeding. Therefore, the appeal should be dismissed.

Conclusion

48. The proposed development would be contrary to the development plan read as a whole, the Framework read as a whole, and the Regulations. There are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR