



Appeal Decision

Site visit made on 16 January 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/V1505/W/23/3318167

Avondale, Brackendale, Billericay, Essex CM11 1EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Philip Davenport against Basildon Borough Council.
 - The application Ref 22/01773/OUT is dated 20 December 2022.
 - The development proposed is the construction of one 4-bed dwelling.
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Decision

1. The appeal is dismissed and planning permission for the construction of one 4-bed dwelling is refused.

Preliminary Matters

2. A revised National Planning Policy Framework was published on 19 December 2023 and updated on 20 December 2023, which I have had regard to as a material consideration in my decision making. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.
3. The planning application form submitted seeks outline planning permission with all matters (access, appearance, landscaping, layout and scale) reserved for future consideration. As such I have treated the submitted appeal plans relating to any of the reserved matters as being for illustrative purposes only.

Main Issues

4. Although a formal decision was not issued, in their statement, the Council have indicated that it would have refused planning permission for the proposed development. They have outlined that their main concerns relate to the location of the appeal site within the Green Belt and the impact of the proposed development on biodiversity. Therefore, the main issues in this appeal are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the 'Framework') and relevant development plan policies;
 - the effect of the proposed development on biodiversity; and
 - would the harm by reason of inappropriateness and any other harm, be clearly outweighed by other consideration so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether it is inappropriate development

5. The appeal site is an unoccupied area of land within the Break Egg Hill Plotland area and the Green Belt. This small plotland is located on the edge of the town of Billericay and has a rural character with dense vegetation, limited development and a sporadic layout of dwellings.
6. Policy GB1 of the Basildon District Local Plan (LP) 1998 defines the extent of the Green Belt in the borough. Paragraph 154 of the Framework indicates that the construction of new buildings in the Green Belt are inappropriate subject to a number of exceptions. Under the first section of paragraph 154 (g), these exceptions include limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continued use which would not have a greater impact on the openness of the Green Belt than the existing development.
7. The terms 'limited' and 'infilling' are not defined within the Framework. Whilst a single dwelling could be defined as limited development, due to the sporadic nature of development in the surrounding area which does not have a dense or uniform pattern, the appeal site does not represent a gap in an otherwise built up frontage and would not represent an infill plot. However, the appellant and the Council have both submitted that the appeal site is previously developed land, although no built form remains on the site at present.
8. In considering the concept of openness, the courts have found that it broadly has two dimensions; spatial and visual. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension.
9. As there are no permanent buildings on the appeal site at present, the addition of a new building would have a significant spatial impact on the openness of the Green Belt due to the increase in built form. In addition, regardless of the design and scale of the proposed dwelling, due to the corner plot location of the appeal site and its proximity to the road, the proposal would be highly visible from both Brackendale and The Crossway. As such, the proposed development would also visually reduce the openness of the Green Belt. Therefore, there would be both a spatial impact and visual impact to the openness of the Green Belt from the proposed development and therefore it would not fall under the first section of paragraph 154 (g).
10. The second section of paragraph 154 (g) makes provision for buildings which would not cause substantial harm to the openness of the Green Belt where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority. However, no evidence has been provided to suggest that the proposal includes the provision of affordable housing. Therefore, the proposed development would not fall under the second section of paragraph 149 (g).
11. The appellant has also drawn my attention to paragraph 154 (e) of the Framework, which lists limited infilling in villages as an exception to the restriction of new buildings within the Green Belt, and several recent appeal

decisions¹ where it was found that a plotland area on the edge of the town of Wickford could be considered a village. However, the Break Egg Hill Plotland area is much smaller and less developed when compared to the Plotland area referenced in these appeal decisions and therefore less akin to a separate village. Furthermore, the Green Belt Infill Policy Topic Paper (2017) states that its proximity to the Billericay urban area and its services has resulted in it being incorporated into Billericay instead of counted as a separate unserved settlement. These factors would suggest that the area in which the appeal site is located would not be classified as a village. Nevertheless, as I have already concluded that the proposed development would not constitute infilling, the proposed development would not fall under the stipulations with Paragraph 154 (e).

12. The proposal would therefore be inappropriate development within the Green Belt. This would be harmful to the Green Belt which, in accordance with paragraph 153 of the Framework, should be given substantial weight. Development should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations, which will be considered below.

Biodiversity

13. The consultation with the Council's ecological consultant has identified that the appeal site is located within an Impact Risk Zone (IRZ) for Norsey Wood, a Local Nature Reserve and a Special Site of Scientific Interest, and is surrounded by deciduous woodland, a priority habitat. For this reason, to establish the impact on protected and priority species from the development proposed, a preliminary ecological appraisal should be provided. This would require a survey to establish the presence of such species on the appeal site or in the surrounding area. The government circular 06/2005 states that ecological surveys should be carried out before planning permission is granted and only secured by condition in exceptional circumstances. There are no exceptional circumstances in this instance and therefore the ecological appraisal should be completed before planning permission is granted.
14. Comments from a neighbouring resident regarding bat roosting are noted. It is also noted that the appellant has planted new trees on the site, created log piles for insects and small mammals and intends to implement bird and bat boxes on the site. However, this does not negate the requirement for an assessment by a suitably qualified ecologist to identify the impact of the proposed development on local biodiversity.
15. Therefore, without a preliminary ecological appraisal to suggest otherwise, the proposed development would harm local biodiversity and would be contrary to the environmental objectives of the Framework in this regard.

Other Considerations

16. The proposed development would contribute to the housing supply in the area with a new dwelling. However, due to the nature of the proposed development, as a single dwelling, this is only a small contribution to the housing supply which is given only limited weight. The Council currently have a significant shortfall in housing land supply, with only a 1.85 year supply, and are failing to

¹ APP/V1505/W/21/3278853 and APP/V1505/W/22/3310341

meet their Housing Delivery Test (HDT). Therefore, the test in paragraph 11(d) of the Framework should be applied.

17. However, while the framework advocates granting planning permission where there are no relevant development plan policies, this is unless, in accordance with paragraph 11(d)(i), the application of policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development. The harm to the Green Belt identified is such that the policies in the Framework relating to the Green Belt provide that clear reason for refusing the development. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposal.
18. The appellant has drawn my attention to a number of documents including the Green Belt Infill Policy Topic Paper (2017) which explores the potential for Green Belt infill on designated plotlands within Basildon Borough and the Basildon Borough Plotland Study (2017) which states that some limited development should be permitted on infill plots within the Break Egg Hill Plotland. They have also identified the Housing and Economic Land Availability Assessment (HELAA) which states that the appeal site is suitable, available and achievable for one dwelling. Whilst these documents all consider the opportunity for residential development on land such as the appeal site, they are only exploratory documents and therefore are given limited weight.
19. The proposed dwelling is intended to be used by the appellant as a retirement home for their family, and they have stated that it will release a dwelling in a prime location for commuting to a working family. However, no evidence has been provided to substantiate this claim and therefore this cannot be given any weight.

Green Belt Balance

20. The proposal would be inappropriate development in the Green Belt in that it would result in a new building within the Green Belt which does not fall under any of the listed exceptions. It would also result in harm to biodiversity. The Framework establishes that substantial weight should be given to any harm to the Green Belt and the development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
21. I find that the other considerations in this case do not clearly outweigh the harm to the Green Belt, in terms of a loss to openness and inappropriateness that I have identified, and the harm to biodiversity. Consequently, the very special circumstances necessary to justify the development in the Green Belt do not exist. Therefore, the proposal conflicts with paragraphs 152, 153 and 154 of the Framework.

Other Matters

22. The appellant has brought a number of successful appeal decisions to my attention that relate to residential development also within the Green Belt. These include an application for 200 dwellings at Land North of Kennel Lane, Billericay², an application for 100 dwellings at Roundhouse Farm, Land Off

² APP/V1505/W/22/3298599

Bullens Green Lane, Colney Heath³ and an application for 167 dwellings at Land South of Heath Lane, Codicote⁴. They have also highlighted an application for 99 dwellings on Southend Road in Great Burstead, which was recently granted planning permission, although the decision notice was not provided.

23. These schemes all involve development which was considered inappropriate development in the Green Belt but was granted planning permission in very special circumstances, largely due to the provision of a significant number of dwellings against a housing shortfall. As I have found that very special circumstances do not exist in the appeal before me, these appeals are not comparable and do not set a precedent for the appeal proposal.
24. The Council have highlighted that the appeal site is located within the Zone of Influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). They state that Natural England have identified that new residential development within this area is likely to have a significant effect on the features of interest of Special Protection Areas (SPAs) and Ramsar sites, through increased recreational pressure, although no specific European sites have been identified by the Council.
25. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR

³ APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

⁴ APP/X1925/W/21/3273701