
Appeal Decision

Site visit made on 30 January 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal Ref: APP/W1525/W/23/3321925

Land at Imphy Hall, Back Lane, Stock, Ingatestone, Essex CM4 9RZ

- 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 Eileen Ward against the decision of Chelmsford City Council.
 - The application Ref 22/02315/FUL, dated 8 February 2023, was refused by notice dated 14 April 2023.
 - The development proposed is described as 'demolition of existing agricultural barn with the benefit of Prior Approval Consent 20/00152/CUPAQ under Class Q for the change of use to 2 dwellings and the construction of two new dwellings with garages'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In December 2023, the Government published a revised version of the National Planning Policy Framework ('the Framework'). There have been changes to paragraph numbers but the parts of the Framework most relevant in this case have not significantly changed and I am satisfied that the revision does not raise new considerations necessitating further submissions from the parties.

Main Issues

3. The appeal site is within the Green Belt. Accordingly, the main issues are:
 - i) whether or not the proposal would be inappropriate development in the Green Belt;
 - ii) the effect of the proposal on the openness of the Green Belt;
 - iii) whether or not the development would be in a suitable location having regard to the accessibility of services and facilities; and
 - iv) if the development would be inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

4. The appeal site currently includes an agricultural building which the proposal seeks to demolish and replace with two dwellings with garages. Prior approval was granted for the change of use of the building to two dwellings in 2020¹ ('the Prior Approval') but has not been implemented and has now lapsed.

¹ Application ref 20/00152/CUPAQ

5. The appellant asserts that the principle of residential development on the site is essentially established and that the proposal should be assessed against the fallback position represented by the Prior Approval. However, the potential fallback does not obviate the requirement under Section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. Nor does it alter the meaning of relevant policies or the requirements that are set out within them. My assessment therefore first considers the proposal in light of the stated development plan requirements. That said, the potential fallback is an important consideration and I return to this matter as part of my assessment of other considerations and the planning balance below.

Whether Inappropriate Development

6. The Framework sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt, although some exceptions are specified. These include the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; and the limited infilling or the partial or complete redevelopment of previously developed land. Policy DM6 of the Chelmsford Local Plan 2020 ('the LP') includes broadly similar exceptions, albeit with some additional provisions.
7. Notwithstanding the grant of the Prior Approval, the existing use of the building remains agricultural. The proposed dwellings would not therefore be in the same use as the existing building. Furthermore, the definition of previously developed land within the Framework excludes land that is or was last occupied by agricultural buildings. As the site currently stands, the proposal would not therefore fall within any of the exceptions to inappropriate development specified in the Framework or LP Policy DM6.
8. Accordingly, the proposal would constitute inappropriate development which is, by definition, harmful to the Green Belt.

Openness of the Green Belt

9. The appellant's Landscape and Visual Appraisal ('the LVA') concludes that the proposal would have a neutral effect on landscape character. However, as the LVA recognises, Green Belt is not designated for its landscape character. Instead, the essential characteristics of Green Belts are their openness and their permanence.
10. The proposed dwellings would each include pitched roofs of greater maximum height than the existing building on the site. They would have flat-roof sections which would be significantly lower than the existing building's ridge. However, the dimensions marked on the existing and proposed elevations suggest that the flat-roof sections would be of greater height than the eaves to the front of the building and to the lower catslide section to its rear. In my assessment, the height of the flat sections below the existing ridge would not offset the increase in maximum height which would moreover occur in two locations given the two separate dwellings. I note that other nearby buildings are taller, but the overall increase in height of development on this site would in my judgement be material.
11. Even taking the appellant's figures, the proposal would additionally result in increases in the total floor area, volume and footprint of buildings on the site.

At around 18%, 15% and 8% respectively, the increases may not be large in percentage terms. Nevertheless, I consider together with the increase in height that there would be an appreciable increase in the bulk and mass of development present. The greater scale of built form would inevitably cause some loss of openness in spatial terms in comparison to the existing situation.

12. Moreover, there would be a greater spread of development across the site. Unit 2 would be positioned partly on the existing concrete pad adjacent to the building resulting in a much greater presence of development on this part of the site. Unit 1 would in part be on the footprint of the building, but both dwellings would extend onto parts of the site which are currently undeveloped grass to the rear of the existing building or to the side of the concrete pad. Parking and residential gardens would further result in a more formal and domestic appearance to the remainder of the site in comparison to the existing open and undeveloped quality around the building and hardstanding.
13. I note that the proposal would divide the volume of built form between two separate buildings with space between them. This could offer some improvement to the visual impact of the development on the site relative to the existing single large structure. However, the improvement would be tempered by the greater total scale, bulk and mass of development and in my assessment, it would be more than offset by the much greater coverage of built form and development across the site so that there would be a loss of openness overall.
14. Existing and proposed vegetation including new yew hedge planting would provide some screening, but the development would be apparent from viewpoints including on the farm track along the front of the appeal site which is designated as a right of way. Irrespective of the materials and architectural style of the proposal, there would consequently be an adverse visual impact on the openness of this part of the Green Belt.
15. I find for these reasons that there would be a marked increase in the physical presence of development on the site and a loss of openness in both spatial and visual terms from the existing situation. The effect would be localised and limited, but the proposal would accordingly cause harm to the openness of the Green Belt in addition to the harm by reason of inappropriateness.

Location of Development

16. Policies S1 and S7 of the LP seek to direct development to well connected and sustainable locations in accordance with a defined settlement hierarchy. Stock is identified as a Key Service Settlement Within Green Belt under this hierarchy. However, the appeal site is located some way outside of Stock and while the distance would not be excessive, a significant proportion of the route from the site comprises a narrow, unlit track, sections of which are unmetalled. This may not be heavily trafficked, but these factors would discourage travel by walking or cycling, particularly at night or in poor weather and I consider that occupiers of the site would be unlikely to undertake such journeys regularly. I therefore share concerns raised in a previous appeal decision² that the site would lack a choice of transport modes to allow access to services, and I find that occupiers would be likely to be heavily reliant on travel by private vehicle.

² Appeal ref APP/W1525/W/20/3259269

17. I therefore conclude that the development would not be in a suitable location having regard to the accessibility of services and facilities and it would be contrary to Policies S1 and S7 of the LP. It would also be contrary to the Framework which highlights accessible services and mitigating and adapting to climate change as key aspects of sustainable development.

Other Considerations

Fallback

18. Although the Prior Approval previously granted at the site has lapsed, I have not been made aware of any change in circumstances or other factors which might suggest that a new prior approval application for a similar change of use of the building to two dwellings could not be made or that such an application would be unlikely to be successful. I also have no firm reason to doubt the appellant's intention to pursue residential development on the site through the prior approval procedure should the appeal fail. Having regard to the evidence before me, I am satisfied that there is a real prospect of a prior approval scheme for a change of use of the existing building to two dwellings coming forward and that this should be considered as a realistic fallback position that can be given weight.
19. The appellant contends that the requirements of Policy DM6 of the LP should be assessed and considered in light of the fallback. The existence of the fallback does not in itself change the use of the existing building to residential. However, I accept that if it were implemented, the proposed dwellings would be in the same use as the existing building. This would address one of the stipulations of Policy DM6 and the Framework for a replacement building to be considered an exception to inappropriate development in the Green Belt. That said, there remains a further stipulation that a replacement building is not materially larger than the one it replaces.
20. The meaning of 'materially larger' is not defined in Policy DM6 or the Framework and I have not been directed to any other relevant policy or guidance on this point. The increases in the total floor area, footprint and volume of buildings present on the site from the existing building (which would also be the baseline under the fallback) would each be reasonably modest in percentage terms, particularly the footprint. However, I have found above that the increase in height would be material and there would be an appreciable increase in the bulk and mass of development present. On an overall assessment of the quantitative measures, the proposed buildings would in my judgement be materially larger than the existing building baseline. Even assessed against the fallback, the proposal would not therefore fall within the exception to inappropriate development for replacement buildings specified in Policy DM6 and the Framework.
21. Insofar as they would be materially larger, the dwellings would also have a greater impact on the openness of the Green Belt than would arise under the fallback. I have additionally identified that the greater spread of development across the appeal site would further contribute to an overall loss of openness in comparison to the existing arrangement. Moreover, I note in this regard that the appeal site is larger than the Prior Approval scheme which the appellant accepts showed a fairly tightly defined curtilage around the building. Future occupiers of a prior approval scheme may well desire a larger garden. However, whether or not further planning applications would be likely, any such

application would fall to be considered in light of relevant provisions and development plan policies, including in respect of Green Belt. From the information before me, I can have little certainty that further applications would be successful and it is not therefore clear that the fallback would necessarily result in a comparable spread of development to that before me.

22. I therefore find that the proposal would have a greater impact on the openness of the Green Belt than the existing and potential fallback developments. As a consequence, even assessed against the fallback, the proposal would not meet the Policy DM6 and Framework exceptions for redevelopment of previously developed land which include a requirement that the redevelopment would not have a greater impact on the openness of the Green Belt than the existing development.
23. For these reasons, the fallback does not alter my assessment that the proposal would comprise inappropriate development in the Green Belt.
24. Furthermore, the appeal proposal would cause greater harm to the openness of the Green Belt than the fallback position. In considering effects on the Green Belt, the weight that I give to the potential fallback position is therefore limited and it does not offer significant support for the proposal.

Economic and Social Benefits

25. In light of clear objectives within the Framework seeking to significantly boost the supply of housing, the provision of two new dwellings is an important benefit. However, the contribution to the supply of housing and consequently the extent of the benefit would be limited. Social and economic benefits associated with the construction and occupation of the dwellings would be similarly limited by the small scale of the proposal. Moreover, the fallback would provide for two dwellings which would be likely to offer similar benefits on occupation without causing comparable harm to the Green Belt. I therefore give moderate weight to these benefits.

Ecological Enhancements

26. The Preliminary Ecological Appraisal makes recommendations to enhance the site for the benefit of biodiversity. The degree of the resulting benefit to biodiversity is not quantified, but is likely to be limited given the small scale of the site and I give it moderate weight.

Character and Appearance and Setting of Listed Building

27. Imphy Hall is a Grade II listed building. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have therefore had special regard to the desirability of preserving the setting of this building. The existing building on the site is of utilitarian appearance. However, it sits comfortably within its rural setting and given its modest height, it is a fairly unobtrusive feature in the surrounding area. It is also consistent with the agricultural character of the surroundings which I consider to contribute positively to the significance of the listed building as part of its setting.
28. The appellant's Heritage Impact Assessment suggests that the proposal would reinforce the agricultural quality of the site. In my view though, it would be clearly appreciated as a residential development. The materials, plan form and architectural language may draw from the local vernacular and be generally

sympathetic to the rural surroundings. However, I consider that the proposal would do no more than preserve the significance of the listed building and I am not persuaded that there would be a tangible benefit to the rural character or appearance of the area or the significance of the heritage asset so as to weigh positively in favour of the appeal.

Other Matters

29. The appeal site is located within the zone of influence for the Blackwater Estuary Special Protection Area ('SPA') and Ramsar site and Essex Estuaries Special Area of Conservation ('SAC') which are European designated sites. The information before me indicates that the development proposed, either alone or in combination with other developments, is likely to have a significant effect on the SPA/Ramsar site and SAC through recreational disturbance. The appellant has submitted a Unilateral Undertaking providing for a financial contribution intended to manage and mitigate adverse effects of the development in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. However, given the harm that I have identified and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further and in light of the provisions of the Conservation of Habitats and Species Regulations 2017 as it could not alter my decision.
30. I have noted additional concerns raised by an interested party including effects of the proposal on rights of access, and the effects of use of this access on living conditions for future occupiers of the site. However, these do not alter my conclusions in respect of the main issues.

Planning Balance

31. Irrespective of the fallback, the proposal would comprise inappropriate development which the Framework identifies is, by definition, harmful to the Green Belt and which should not be approved except in very special circumstances. It would also cause harm to the openness of the Green Belt, and I have further found that the development would not be in a suitable location having regard to the accessibility of services and facilities.
32. The Framework sets out that substantial weight should be given to any harm to the Green Belt, and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
33. The fallback could result in two dwellings on the site which would have comparable access to services and facilities to those now proposed. Noting that the floor area of the dwellings (excluding the garages now proposed) would be comparable between the schemes, it seems to me that there would be unlikely to be a meaningful difference in the levels of comings and goings or vehicle trips that would be generated. In this respect, I find that the appeal proposal would be no more harmful than the fallback. In view of the real prospect of the fallback development being implemented, I give significant weight to it as an alternative to the appeal scheme and I find that it is a material consideration sufficient to outweigh the conflict with Policies S1 and S7 of the LP and the Framework on account of the location of the development and its accessibility to services and facilities.

34. However, I have found that the appeal proposal would cause greater harm to the openness of the Green Belt than the fallback. In this respect, the fallback attracts limited weight and does not offer significant support for the proposal.
35. The economic and social benefits associated with the construction and occupation of the dwellings and ecological enhancements carry moderate weight, but would be limited in extent.
36. Even taken cumulatively, I find that the other considerations do not clearly outweigh the substantial weight that must be given to the harm that the proposal would cause to the Green Belt by reason of inappropriateness and harm to openness so as to amount to the very special circumstances necessary to justify the development in the Green Belt. The proposal would accordingly be contrary to Policy DM6 of the LP and the Framework.
37. While the conflict with Policies S1 and S7 of the LP on account of the location of the development and its accessibility to services and facilities would be outweighed by other considerations, I find that the harm to Green Belt would result in conflict with the development plan when it is read as a whole. Material considerations, including the fallback, do not indicate that a decision contrary to the development plan should be reached.

Conclusion

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

J Bowyer

INSPECTOR