



Appeal Decisions

Hearing held on 6 February 2024

Site visit made on 6 February 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal A Ref: APP/V1505/C/23/3328789

Vidor, Honiley Avenue, Wickford, Essex SS12 9JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ken Kent against an enforcement notice issued by Basildon Borough Council.
 - The enforcement notice was issued on 31 July 2023.
 - The breach of planning control as alleged in the notice is the unauthorised construction of a four (4) bedroom bungalow ("The Building" – shown approximately edged and hatched black on the attached notice plan) within the residential curtilage of Vidor, Honiley Avenue, Wickford ("The Land").
 - The requirements of the notice are:
 - i. Demolish the building (as approximately shown outlined and hatched black on the attached notice plan) and remove all resultant building materials and construction debris from the land.
 - ii. Remove all internal fencing (as approximately shown outlined blue and marked A to B on the attached notice plan) and remove all resultant materials and debris from the land.
 - The period for compliance with the requirements is Nine (9) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/V1505/W/23/3328786

Land rear of Vidor, Honiley Avenue, Basildon SS12 9JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ken Kent against the decision of Basildon Borough Council.
 - The application Ref 23/00348/FULL, dated 6 March 2023, was refused by notice dated 31 July 2023.
 - The development proposed is a retrospective application for retention of existing bungalow for use as 3 bedroom care home (C2).
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Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Appeal A on ground (a) - the deemed planning application, and Appeal B Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The main parties were given the opportunity to provide written comment over these changes. I have determined these appeals based on the current version of the Framework.
4. Appeal A on ground (a) is a deemed planning application for the development that is the subject of the enforcement notice, namely the construction of a four-bedroom bungalow. The application subject of Appeal B is for the retention of the existing bungalow for use as a three-bedroom care home (C2). Both appeals relate to the same building and a residential use. The only difference between the two appeals is that Appeal B relates to a proposed use falling under Use Class C2. The similarities between the two appeals are further demonstrated by the reasons for the issue of the enforcement notice, and the local and national planning policies that the development is said to be contrary to, being repeated in the reasons for the refusal of the planning application.
5. On this basis, and having regard to the evidence of the parties, the main issues that I will consider for these appeals are broadly the same. I am satisfied that the ground (a) appeal and Appeal B can be considered together, but I will distinguish between the two, where appropriate.

Main Issues

6. The main issues are:
 - the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the area;
 - whether the development provides satisfactory living conditions for future occupiers, with particular regard to outlook, light, and the suitability of outdoor amenity space;
 - the effect of the development on the living conditions of occupiers of Cymbeline, with particular regard to outlook and overlooking; 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 proposal.

Reasons

Green Belt

7. It is common ground that the appeal site lies within the Green Belt. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate development except in certain circumstances. There is no dispute between the parties that the development is inappropriate development in the Green Belt within this context.
8. The Framework clearly sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It also outlines that very special circumstances will not

exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Openness

9. Paragraph 142 of the Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. The Council considers that the development conflicts with this fundamental aim and erodes the openness of the Green Belt.
10. The appeal site encompasses the residential curtilage of Vidor, a detached dwelling located towards the western end of the site and fronting onto Honiley Avenue. The rear garden has been sub-divided with the bungalow subject of the appeals situated at the eastern end of the site.
11. The bungalow is a substantial structure which occupies a significant proportion of the site and extends virtually the full width of the plot. The rear garden of Vidor was previously largely free from development, except for the existence of modest domestic outbuildings. Therefore, given the scale of the development and the increase in both footprint and volume compared to what previously existed on the site, the development has the unavoidable consequence of resulting in a significant reduction in the spatial openness of the Green Belt.
12. Despite the spatial reduction in the openness of the Green Belt, there would be a much more limited visual reduction in openness. This is due to the bungalow being bound by existing development including to the west (Vidor), north (industrial yard), and south (Cymbeline). As a result, whilst views of the development are possible from Honiley Avenue, these views are intermittent with only partial glimpses possible. There are also no clear views of the appeal site from the Southend Arterial Road to the south. It is likely that views of the development are possible at short range from nearby residential properties, including Cymbeline.
13. Overall, given that there are only limited views available of the appeal site and development from public vantage points, it makes only a minimal contribution to the visual aspect of openness. The development therefore only has a minor harmful impact on this aspect of openness. Nevertheless, for the reasons set out above the development inevitably results in a significant reduction in the spatial openness of the Green Belt.

Green Belt Purposes

14. Paragraph 143 of the Framework states that the Green Belt serves five purposes. One of those purposes is to assist in safeguarding the countryside from encroachment. Although the development is located within the curtilage of an existing residential dwelling, given the size and scale of the building along with its proposed use, I find that the development has an urbanising effect and would result in an intensified residential use. This runs contrary to the purpose of safeguarding the countryside from encroachment.
15. Consequently, whilst I concur with the appellant that the development does not conflict with the other four purposes listed under paragraph 143 of the Framework, the development fails to assist in safeguarding the countryside from encroachment. Whilst the harmful effect of the encroachment would be limited due to the existing development surrounding the site, there would

nevertheless be some limited harm arising to the purpose set out under paragraph 143 (c) of the Framework.

Character and Appearance

16. The appeal site is located on Honiley Avenue, a small cul-de-sac characterised by a mix of residential and commercial properties of varying architectural style and design. Although there are exceptions, the residential properties generally front onto Honiley Avenue and sit within rectangular plots with external amenity space to the side and rear.
17. The bungalow is of simple design and is constructed in materials which are appropriate and in keeping with both Vidor and the surrounding residential properties. As such, the bungalow is not visually incongruous when viewed from Honiley Avenue or other nearby properties.
18. However, the achievement of good design is not limited to only the aesthetic appearance of the development, but also its integration into the character of an area. In this case, the rear garden of Vidor has been sub-divided with the bungalow constructed at the extreme rear of the plot. Access to the bungalow is provided via the existing driveway and through the remaining private rear garden area of Vidor. The appeal schemes therefore represent a back land plot, adding an additional tier of residential development to the locality which is at odds with the established grain and character of the area.
19. Although I saw during my site visit that some nearby properties included single storey detached outbuildings, I have no evidence to indicate that these are in use as separate self-contained residential accommodation. Furthermore, most of these outbuildings appeared subservient to the host dwelling with few appearing to be of the size and scale of the building subject of these appeals.
20. The inappropriateness of the development is further exacerbated by its cramped form. The development extends virtually the full width of the plot and is sited very close to the site's northern, eastern, and southern boundaries. Accordingly, there is very little external space to the side and rear of the bungalow, with a modest private garden area provided to the front. As a result, the development does not sit comfortably on the site and appears as a cramped and contrived form of development that is out of keeping with the overall character of the area.
21. The proposal is largely screened from the street scene by the existing built form and planting, which consequently limits its effect on the appearance of the area. However, its lack of obviousness in the public realm does not make up for the harmful effect it has on the character of the area for the reasons I have set out.
22. The development therefore conflicts with saved Policy BAS BE12 of the Basildon District Local Plan (BDLP) (September 2007) and guidance contained within paragraph 135 of the Framework. These seek, amongst other things, to ensure that developments do not cause harm to the character of the surrounding area.

Living Conditions of Future Occupiers

23. The floor plans submitted as part of Appeal B show the internal layout of the property which broadly corresponded with what I saw during my site visit. A long living/dining area runs through the centre of the bungalow with patio

doors at either end, with a bedroom (bedroom 1) and a kitchen located either side at the front of the property. To the rear left hand side of the building are an en-suite bedroom (bedroom 2) and a further bedroom (bedroom 3). To the rear right hand side of the building is another en-suite bedroom (bedroom 4).

24. In relation to the use of the property as a C2 Care Home (Appeal B), at the hearing Mr Smith stated that the property had been visited on more than one occasion by care professionals. These professionals all considered it ideal for its intended purpose of providing accommodation for persons with complex learning and behavioural difficulties. However, the main thrust of why the appeal property was considered appropriate was due to its size and location. It was explained in some depth at the hearing that certain individuals in need of such care are not best suited to the more larger care homes, and instead need smaller, more secluded properties in quieter locations.
25. Whilst I have no reason to doubt that position, it nevertheless does not alter the fact that due to the close proximity of the site boundaries, outlook from a number of the windows is severely restricted. In particular, the outlook from the French doors in bedrooms 3 and 4 is dominated by the close boarded timber fence which is located at very close quarters and results in a sense of enclosure. The outlook from the rear facing patio doors in the living/dining area is equally as poor for the same reason.
26. Bedroom 3 has an additional window on its northern elevation, along with bedrooms 1 and 2 which have similar north facing windows. The outlook from all three of these windows is poor, as the outlook is directly into the adjacent industrial yard. The high level obscure glazed window in bedroom 4 cannot be said to provide any positive benefit in terms of outlook from that room.
27. The west facing windows located in the kitchen, bedroom 1, and the patio doors in the living/dining area all look out onto the enclosed amenity space to the front of the property. The outlook from these windows is dominated and restricted by the boundary fencing resulting in an oppressive environment. Overall, outlook from all windows in the property is poor and restricted in some way. Therefore, irrespective of whether occupied as a care home or a standard residential dwelling, the development provides an unacceptably poor standard of outlook for future occupants.
28. Despite the close proximity of the site's boundaries and the poor outlook, at the time of my visit there was, in my view, adequate natural light entering the property. In the absence of any compelling evidence to the contrary, I am satisfied that the development would not have a harmful effect on the living conditions of future occupiers with particular regard to light.
29. The bungalow includes an external private amenity space which the Council states measures around 130sqm. This space is predominantly located to the front of the property in the form of an enclosed yard which is hard surfaced. There is no dispute between the parties that the size of this space is adequate. However, the Council considers that users of this space would feel cramped and enclosed, and its appearance unduly harsh.
30. As already stated above, it was made clear at the hearing that care professionals considered that the property was appropriate for the C2 use proposed under Appeal B, and furthermore that there was sufficient outdoor amenity space for occupants and their specific needs. I find no compelling

reason to disagree, particularly given the size of the amenity space to the front of the property which would result in users not feeling unduly cramped or enclosed. The use of hard surfacing also does not detract from the useability of this space. Similarly, I also find that the amenity area would provide sufficient outdoor space to accommodate occupants sitting out, hanging out washing, storage, and general recreational activities commonly associated with a residential dwelling.

31. Consequently, although I have not identified any specific harm with regard to light and the suitability of outdoor amenity space, the development would not provide satisfactory living conditions for future occupiers in relation to outlook.
32. Policy BAS BE12 of the BDLP resists new development that would, among other things, cause material harm in terms of overlooking or noise and disturbance to neighbouring properties. As such, there is no direct conflict with this Policy. Notwithstanding that there would not be conflict with the development plan in this particular respect, the development does conflict with paragraph 135 of the Framework which seeks new development with a high standard of amenity for existing and future users.

Living Conditions of Occupiers of Cymbeline

33. The bungalow has been erected immediately adjacent to the shared southern boundary with Cymbeline, a residential dwelling located towards the southern end of its rectangular plot. I saw during my site visit that the shared boundary between the two properties is made up of a wall and fence, with planting also provided on the southern side of that boundary. Although the bungalow protrudes above the height of the boundary treatment and planting, this nevertheless provides a healthy amount of screening.
34. Given the significant distance between the development and Cymbeline, along with the screening provided, I do not consider that the development unreasonably dominates the outlook from the neighbouring dwelling. Similarly, whilst it would be partially visible, given its single storey nature and the screening afforded, the bungalow does not have an imposing or intrusive impact on users of the rear garden of Cymbeline.
35. With regards to overlooking, there are windows along the southern elevation of the bungalow which face towards the rear garden of Cymbeline. However, these windows are all small, above eye level, and obscure glazed. Due to these factors, along with the screening provided by the existing planting along the southern boundary, the development does not result in an undue level of actual or perceived overlooking for occupiers of the neighbouring property.
36. Overall, the development does not harm the living conditions of occupiers of Cymbeline, with regard to outlook and overlooking. It therefore accords with Policy BAS BE12 of the BDLP and guidance contained within paragraph 135 of the Framework which seek, amongst other things, to ensure that new development provides a high standard of amenity, including not causing harm in terms of overlooking or over dominance.

Other Considerations

37. It is common ground that the Council can only demonstrate a housing land supply of 1.85 years. This represents a severe shortfall. The Housing Delivery Test results also show that housing delivery in the Borough is falling short.

Whilst the development in both Appeal A and Appeal B would only make a limited contribution to that shortfall, it would nonetheless be a benefit and one to which I would attach moderate positive weight given the extent of the housing land supply shortfall.

38. The appellant referred to a range of evidence asserting a need for care home provision within the Borough. This included the South Essex Housing Needs Assessment (SEHNA) (June 2022) which showed a need for 380 bed spaces across the period of 2020-2040, equating to an average of 19 per annum. The SEHNA also showed a need for an average of 112 bed spaces per annum across the whole of South Essex. The appellant considers that this figure fails to take into account the need for other forms of specialist housing as set out in tables 7.3 and 7.4 of the SEHNA, and therefore should be higher. At the hearing the appellant also highlighted a recent appeal decision¹ at Potash Road which indicated a current need of 970 bed spaces in Basildon, rising to 1,845 by 2043.
39. In terms of supply, reference has been made to permissions recently granted at Pipp's Hill Road and Coxes Farm Road which are to provide 80 and 76 beds respectively. It was confirmed at the hearing that work on these developments had not yet commenced. Both parties also made reference to a replacement care home at Ghyll Grove. It was accepted though that whilst construction works were well advanced, the replacement care home actually results in a net loss of beds.
40. Although it disputes some of the figures provided, the Council accepts that there is a substantial unmet demand for care beds within the Borough. Given the evidence before me, I am clear in my mind that there is indeed an acute and significant unmet need for care beds within the Borough. Although the proposal in Appeal B would only make a limited contribution to those unmet needs, it would also provide an alternative form of care accommodation to the larger care homes which, whilst providing a more significant number of beds, are not always best suited to the needs of all users. Therefore, I place significant positive weight on the proposed C2 Use Class accommodation.
41. There would also be 6-8 full time equivalent jobs created through the proposal under Appeal B, which would be an economic benefit to which I ascribe moderate positive weight. In relation to Appeal A, the use of the bungalow as a C3 dwelling would also result in economic and social benefits due to the contributions of future occupiers to the local economy. These benefits however would be more modest, and I therefore ascribe them limited weight.

Planning Balance and Conclusion

42. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be supported except in very special circumstances. It goes on to advise 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, is clearly outweighed by other considerations.
43. In this case the Green Belt harm relates to the significant loss of openness in a spatial sense, along with limited harm to both openness in visual terms and

¹ APP/V1505/W/23/3326612

Green Belt purpose c). Taken together this amounts to a matter of substantial weight, to which I must also add the harm to the character and appearance of the area and the living conditions of future occupiers that I have found.

44. The benefits of the care home under Appeal B attracts significant weight, particularly given the acute and significant unmet need for care beds within the Borough. However, even when adding to this the benefits arising from the development's contribution to the Council's housing shortfall, and the economic and social benefits, these other considerations do not clearly outweigh the substantial weight that I have given to the harm caused to the Green Belt and the additional harm identified. Consequently, the very special circumstances necessary to justify the development under Appeal A or Appeal B do not exist.
45. For the reasons set out above, the proposals would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all other matters raised, I therefore conclude that the appeals should be dismissed.

Other Matters

46. The appeal site falls within the Zone of Influence for the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS). Natural England has identified that new residential development within this area is likely to have a significant effect on the features of interest of European Sites, due to increased recreational pressure.
47. In relation to Appeal B, the proposal seeks the use of the bungalow as a care home (Use Class C2) which would see its residents require a certain level of care. As a result, it is common ground between the parties that residents would be unlikely to use outdoor recreational facilities within the European Sites and would be far more likely to use facilities in a much closer geographical area. For this reason, the proposal would not lead to likely significant effects on the European Sites and an appropriate assessment is not required. I find no reason to disagree with this view.
48. However, the use of the bungalow as a standard residential dwelling (Use Class C3) would represent a different scenario, whereby occupants would be far more likely to use outdoor recreational facilities and therefore have a significant effect on the features of interest of European Sites. I note that the appellant has indicated a willingness to make a financial contribution towards the mitigation of these effects, however there is no planning obligation before me. In any event, as I have found against the appellant on other main issues, and therefore planning permission is to be refused, these matters need not be considered any further in this case.

Appeal A on ground (g)

49. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of nine months after the notice takes effect.
50. The bungalow was originally constructed by the appellant to provide suitable accommodation for his terminally ill wife. It was explained at the hearing that following the passing of the appellant's wife in 2022, the bungalow has retained signs of her previous occupation and its demolition represents a devastating

prospect for the appellant. It was also stated that the cost of the demolition will be high. A compliance period of eighteen months has been suggested by the appellant.

51. There is no evidence before me to demonstrate that it would be difficult to find a suitable contractor to carry out the works, or for those works to be physically carried out within the period specified in the notice. I also have no evidence before me with regards to the cost of the demolition or why that may be prohibitive.
52. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the personal and private interests of the appellant. Whilst I have the upmost sympathy with regards to the personal circumstances of the appellant, a period of eighteen months would be tantamount to a temporary planning permission. Such a lengthy period is not reasonable and, in my view, exceeds the length of time that would be required to carry out the works.
53. I therefore find that nine months is a sufficient and reasonable period of time to comply with the requirements of the notice. Accordingly, the appeal on ground (g) fails.

Conclusion

54. Having considered all of the matters raised, I conclude that Appeal A does not succeed. I have upheld the enforcement notice and refuse to grant planning permission on the deemed application.
55. For the reasons given above, I conclude that Appeal B should be dismissed.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Ground	Of Counsel, instructed by Peter Jeffrey of Sphere 25
Peter Jeffrey	Sphere 25
Declan Bristow	Sphere 25
Paul Smith	Eastern County Care
Ken Kent	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Katie Ellis	Principal Planner
Joseph Finn	Senior Planner

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal decision Ref: APP/V1505/W/23/3326612
2. Closing statement for the appellant