



Appeal Decisions

Hearing held on 5 March 2024

Site visit made on 5 March 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2024

Appeal A Ref: APP/B1550/W/22/3313730

270 Eastwood Road, Rochford, Essex, SS6 7LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Hamlin Estates Ltd against the decision of Rochford District Council.
 - The application Ref is 21/01134/OUT.
 - The development proposed is demolition of existing house, creation of improved access and development of care home, lifetime homes and affordable housing and associated works.
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Appeal B Ref: APP/B1550/W/23/3324879

270 Eastwood Road, Rochford, Essex, SS6 7LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Hamlin Estates Limited against the decision of Rochford District Council.
 - The application Ref is 23/00012/OUT.
 - The development proposed is demolition of existing house and non residential structures, creation of improved access and creation of care home and Later Living residential dwellings and associated works.
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Decision

1. Appeal A is dismissed
2. Appeal B is dismissed

Preliminary Matters

3. As set out above there are two appeals on this site. They differ in the number of dwellings proposed. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Description of development

4. The description of development in the headings above has been taken from the planning application forms. However, in the statement of common ground the descriptions of development were amended and at the hearing the parties confirmed that I should consider the appeal on the basis of the agreed descriptions.

5. For Appeal A - Outline application with all matters reserved apart from access to the site from 270 Eastwood Road and other non-residential dwellings at the side and with the construction of affordable residential dwellings (up to 35), a care home (of up to 70 beds), later living/lifetime homes (up to 30) and associated works.
6. For Appeal B – Outline application with all matters reserved apart from access to the site from 270 Eastwood Road and other non-residential dwellings at the side and with the construction of care home (of up to 70 beds) and later living residential dwellings (up to 30) and associated works.
7. The appellant has confirmed that the use of the term later living does not denote any age or occupancy condition and that these dwellings should be considered as general market dwellings and I will consider the appeal on this basis.

Legal Agreement

8. A completed agreement has been provided under Section 106 of the Town and Country Planning Act 1990 for both appeals. The obligations therein relate to the provision of affordable housing, healthcare, ecological mitigation and a contribution towards monitoring of a protected tree. I have considered these agreements in relation to the Regulatory tests of the Community Infrastructure Levy (CIL) below.

Drawings

9. The original applications were both made in outline with means of access to be considered. At the hearing I was provided with a copy of drawing no HAM 2791 sk 010 b in relation to Appeal A, this drawing was not submitted with the appeal. During the hearing it was explained that it combined the indicative layout shown on HAM 2791 sk 0101 a and the access plan provided on drawing no HAM 2791 sk 0101 c, which was submitted with Appeal B. As this access plan was part of Appeal B and therefore had been in the public domain as part of the consultation on that application I am satisfied that no party would be prejudiced by my acceptance of revision b of HAM 2791 sk 0101.
10. I have dealt with the appeal on this basis and considered the other details shown on the plan relating to layout and landscaping being for illustrative purposes only.

Main Issues

11. The submitted statement of common ground confirms that the appellants and the Council have worked together to resolve the second and third reasons for refusal in respect of both appeals.
12. Therefore, the main issues in both Appeal A and B are:
 - whether the proposal would be inappropriate development in the Green Belt; including its effect on openness having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - if the development is 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 the development.

Reasons

13. The appeal site is situated in the Green Belt where the Rochford District Council, Local Development Framework Core Strategy 2011 (CS) policy GB1 directs development away from it as far as practicable and prioritises the protection of it.
14. Policy DM10 of the Rochford District Council, Local Development Framework Development Management Plan (DMP) considers the development of previously developed land and the supporting text to the policy sets out that any such development should not have a greater impact on openness than the existing buildings structures on the site in terms of its scale, design and siting.
15. Paragraph 154(g) of the Framework allows for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development. Both parties accept that part of the site comprises previously developed land.
16. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence.
17. It is agreed that, having regard to the limited built development on the site and the overall size and scale of the development proposed, the appeal scheme would have a greater impact on the openness of the Green Belt than the existing development. The development would in both spatial and visual terms have a greater and harmful impact upon the openness of the Green Belt. Therefore, it would result in significant harm to the openness of the Green Belt. It would therefore be inappropriate development which is, by definition, harmful to the Green Belt.
18. I have had regard to the five purposes of the Green Belt, set out under paragraph 143 of the Framework. Paragraph 154(g) does allow for the redevelopment of previously developed land subject to some qualification and therefore some form of development at the appeal site may not conflict with the purposes of paragraph 143(e). However, in this instance there would be an erosion of openness and therefore the proposal would amount to sprawl and encroachment. In addition, whilst the development would meet the purposes of recycling derelict land as set out within paragraph 143(e) it would do so in a way that would erode openness.
19. Therefore, I give these factors limited weight bearing in mind that it is a fundamental aim of the Framework that Green Belts are protected and that any redevelopment such as that proposed should not have a greater impact on the openness of the Green Belt.

Other Considerations

20. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm are clearly outweighed by other considerations.

21. There are a number of other considerations that have the potential to weigh for or against the appeal scheme and these are assessed under the following subheadings.

Need for and Delivery of Care Homes

22. The CS sets out that the Rochford District is predominately Green Belt. The Council confirmed that any future allocations for care home development would be located within the Green Belt and that there is currently no strategy to deliver sites for care homes outside of the Green Belt. The new Local Plan is anticipated to be adopted in 2026.
23. There is a dispute between the parties as to the level of need for future care home provision but I have been provided with details of a number of other care home sites that are under construction, having been granted planning permission over the past 5 years. These new care homes will go some way to both meeting current need for care home beds and addressing any previous undersupply.
24. This approach was accepted by the Inspector in APP/B1550/W/20/3251565, where it was stated that much of the district's needs would be likely addressed by the development at Rocheway and/or other care homes. That appeal permitted a care village with a range of different accommodation types, including a 93 bed care home, further adding to the Council's supply.
25. This shows that the lack of a local policy specifically for specialist housing for older people is not preventing the provision of this type of accommodation. Furthermore, the appellant confirmed at the hearing that the market homes included in the appeal scheme are not intended to meet the definitions of age-restricted general market housing, retirement living or sheltered housing or extra care housing or housing with care. This limits the weight that can be given to this part of the scheme.
26. Even if I were to accept the appellant's case that in that appeal the Inspector may not have had the same level of evidence before them and that the evidence before me demonstrates there is a significant unmet need for care homes in the Rochford District, the timetable for the Local Plan indicates the new plan will be adopted by Q2 of 2026, so within two years time.
27. The new Local Plan would be able to identify sites for any future needs identified through the South Essex Housing Needs Assessment (SEHNA). It is important that a strategic approach to delivery of all types of housing is properly planned for. This ensures future provision is allowed to be considered on the basis of a proper evidence base, tested as part of the Local Plan examinations. I am therefore satisfied that the District Council will be able to respond to any levels of higher need as identified by the appellant, through the Local Plan process.
28. Furthermore, evidence provided by the consultation response of Essex County Council indicates that current care home provision in Rochford is under used, with average occupancy levels of 75% and on this basis they have not identified Rochford as a current area for growth in the sector.
29. However, I accept that the planning practice guidance sets out that the need to provide housing for older people is identified as being critical and that this proposal would go some way to meeting future need within the District. As such I have given the need for the development significant weight.

Housing Supply

30. It is common ground between the main parties that the Council is currently able to demonstrate a five year housing land supply, with the evidence available putting the supply at 5.15 years.
31. However, there would be social benefits arising from the contribution that the proposed housing in both Appeal A and B would make to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. I have given these benefits modest weight.

Economic

32. The proposed development is likely to generate 20-30 full time jobs and 30-40 part time jobs, directly employed at the site with further indirect employment arising from services accessing the site to provide support and wellbeing to residents. The development would also give rise to some economic benefits during the construction phase and provide limited support to local services. Therefore, I have given these economic benefits moderate weight.

Housing Mix

33. The appellant is proposing all of the housing on the site to be 1 bedroom single storey dwellings, albeit I have not been provided with any evidence, beyond that set out in the SEHNA, that there is a demand for this dwelling type and in particular in Appeal A, where this would equate to up to 65 1 bedroom dwellings on a single site.
34. Whilst the appellant considers that the provision of 1 bedroom dwellings is a benefit of the scheme, this would not accord with policy H5 of the CS which requires developments to contain a mix of dwelling types to ensure they cater for all people within the community, whatever their housing needs.
35. In addition, as the appeal is in outline and the total number of dwellings is expressed as a maximum and not a minimum, the mix of dwellings are not fixed and as such, noting the conflict with policy H5, I have given this consideration limited weight.

Wheelchair Adapted Housing

36. The Framework is clear that local planning authorities should plan to create safe, accessible environments and promote inclusion and community cohesion. This includes buildings and their surrounding spaces. Local planning authorities should take account of evidence that demonstrates a clear need for housing for people with specific housing needs and plan to meet this need.
37. Based on their housing needs assessment it is for local planning authorities to set out how they intend to approach demonstrating the need for Requirement M4(2) (accessible and adaptable dwellings), and/or M4(3) (wheelchair user dwellings), of the Building Regulations.
38. This should take into account a number of factors including the likely future need for housing for older and disabled people (including wheelchair user dwellings). The size, location, type and quality of dwellings needed to meet specifically evidenced needs; how needs vary across different housing tenures and the overall impact on viability.

39. The Council's adopted policy H6 sets out they would expect 3% of new dwellings on developments of 30 dwellings or more to be built to full wheelchair accessible standards, which I have taken to mean meeting the standards of Part M4 (3).
40. The appellant has expressed that all of the bungalows would be designed to meet Part M4 (3) requirements which would exceed the number set out in Policy H6. However, it is difficult to equate how the overprovision of wheelchair user dwellings would be appropriate in a single location and whether this is based on any evidence that demonstrates a clear need for housing for people with specific housing needs in this area. Therefore, I have given this consideration moderate weight.

Affordable Housing

41. Appeal A would deliver up to 35 dwellings as affordable housing, and this would be above the requirements set out within policy H4 which requires 35% of the development to be affordable housing, which based on a scheme of 65 equates to an additional 12 affordable homes above the policy requirement.
42. Appeal B would deliver policy compliant affordable housing, at 35% of the proposed development of up to 30 dwellings.
43. The provision of affordable houses as part of the development would accord with the Framework which seeks to ensure a sufficient supply of homes to reflect identified needs.
44. The SEHNA identifies a shortfall of affordable housing in each authority, with an annual need for 248 affordable homes in Rochford. It also sets out there is a shortfall of every size of property, which is most pronounced for homes with two bedrooms.
45. The provision of additional affordable housing in Appeal A, beyond that required by this adopted policy is a benefit to which I afford moderate weight, noting the modest scale of the additional provision.
46. The provision of policy compliant affordable housing in Appeal B is afforded modest weight, noting the need for such development in the District.

Green Belt Balance

47. I have concluded that the appeal scheme in both Appeal A and Appeal B would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in significant harm to the openness of the Green Belt. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt.
48. On the other hand, I have afforded the need for the scheme significant weight, the contribution to housing supply moderate weight, the economic benefits moderate weight and the social benefits moderate weight. However, I conclude these circumstances, even collectively, do not clearly outweigh the substantial weight that should be given to the harm to the Green Belt.

49. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in either Appeal A or Appeal B. Both Appeals are therefore in conflict with policies GB1 of the CS and DM10 of the DMP and the Framework. In addition to the harm to the Green Belt, by reason of inappropriateness and loss of openness, the development would be contrary to the development plan and Framework.

Other Matters

50. The site is within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) zone of influence for the Crouch and Roach Estuaries Special Protection Area and Ramsar site and the proposed development falls within the scope of the RAMS as relevant development. Given that the proposal is for additional housing, and its proximity to the SPA there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a likely significant effect on the European site.
51. The Conservation of Habitat and Species Regulations 2017 require that the competent authority must ensure that there are no effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The likely significant effects arising from the proposal need to be considered in combination with other development in the area and adopting the precautionary principle.
52. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Section 106

53. The appellants have provided a legal agreement under section 106 of the Town and Country Planning Act 1990, for both appeals, which includes a number of obligations which would come into effect if planning permission were to be granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and as set out in paragraph 57 of the Framework. These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to and fairly and reasonably related in scale and kind to the development. I have already considered the obligations pertaining to affordable housing and those relating to the RAMs.
54. The submitted legal agreements include contributions for the NHS. I am satisfied that these planning obligations meet all three planning obligation tests and so are necessary. However, these contributions would be required to mitigate the increased demand on those facilities arising from the development and therefore they are neutral in the planning balance.

55. A contribution has also been included for the annual monitoring of an Oak Tree, protected by a Tree Preservation Order, located close to the entrance to the site. The monitoring would be funded for a period of 20 years. However, it is unclear as to how the monitoring would ensure longevity of the tree or how the figure of £500 a year has been derived. My understanding, from discussions at the hearings, are that the tree is located within the highway and as such Essex County Council, as highway authority, would also have their own responsibilities regarding the monitoring of the tree. Therefore, I am not satisfied that the obligation is necessary to make the development acceptable and as such I have not attributed it any weight in the planning balance.

Conclusion

56. The proposals in both Appeals would conflict with the development plan and there are no other considerations that outweigh this conflict. For the reasons given above, and having regard to all other matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Charles Robinson BTech (Hons) MPhil MRTPI
Mr Iain Warner, Tetlow King

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mike Stranks BA, MRTPI
Miss Yvonne Dunn

INTERESTED PARTIES:

Mr Paul Williams
Mr Tom Costello
Mr Brown
Mr Cooper

DOCUMENTS

1. Rochford District and Southend-on-Sea Borough Joint Green Belt Study, February 2020
2. Policy CTL1 of the Rochford District Council, Local Development Framework Core Strategy 2011
3. Policy H6 of the Rochford District Council, Local Development Framework Core Strategy 2011

PLANS

1. Drawing no HAM 2791 sk 010b

Reference	Case Reference	Appellant
Appeal A	APP/B1550/W/22/3313730	Hamlin Estates Ltd
Appeal B	APP/B1550/W/23/3324879	Hamlin Estates Limited