



Appeal Decision

Site visit made on 17 April 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/M1595/W/23/3328213

246 Heath Road, Chadwell St Mary, Thurrock RM16 3AP

- 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 Abdul Azeem, Mr Aleem and Mr Samad Dhillon of Dhillons Chartered Accountants against Thurrock Borough Council.
 - The application Ref 23/00462/FUL, is dated 18 April 2023.
 - The development proposed is described as Replacement of existing dwellings, Nos 246 and 246a with one 5 bedroom house with 2 bay garage and formation of landscaped garden including acoustic bund and new tree planting.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is submitted due to the failure of the Council to give notice of its decision within the prescribed time period. The Council subsequently advised it would have refused the application because it would have found the proposal inappropriate development in the Green Belt and harmful to openness, which is not outweighed by other considerations. I have had regard to these matters in setting out the main issues. I sought further clarification in respect of a bund and tennis court and taken this into account in determining the appeal.
3. The Council did not object to the proposal in respect of biodiversity matters and any effect upon habitats sites. However, having regard to the substantive evidence before me, I consider it is necessary that biodiversity is considered as a main issue. I have given the Council and Appellant the opportunity to comment upon this and taken views into account in determining this appeal.
4. Since the appeal was lodged, the 2022 Housing Delivery Test (HDT) results and the revised National Planning Policy Framework (2023) (the Framework) were published. I have given the Council and Appellant the opportunity to comment upon these and taken them into account in determining this appeal.

Main Issues

5. The main issues are:
 - the effect of the proposal upon biodiversity;

- whether or not the proposal would be inappropriate development in the Green Belt and the effect upon openness; and,
- if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and if so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Biodiversity

6. The proposal includes land clearance, recontouring and demolition of the two damaged main site buildings. At the time of the Preliminary Ecological Appraisal Report¹ (PEA) the larger building (B1) was fire damaged with little roof. However, it had a brick cavity wall through which access existed in gaps, missing vent grills and fallen bricks. While no internal inspection was possible due to health and safety concerns, the building was assessed as having moderate suitability for roosting bats.
7. An internal Inspection of Building 2 (B2) was not possible. It had slipped and broken tiles that could give access to its interior and there was potential roosting space between tiles and rafters. Gaps and crevices existed at eaves level and by the chimney stack, and the northern aspect was overgrown with ivy, which could be hiding other potential roosting features. It was assessed as having moderate suitability for roosting bats. The overgrown garden areas also had some limited potential for use by foraging and commuting bats.
8. The PEA concluded that without further assessment, the development has potential to cause injury to or death of bats, and damage or destroy bat roosts in B1 and B2. Therefore presence/absence surveys and further mitigation work were required, prior to a planning application being submitted².
9. The roof of B2 has been damaged since the PEA was undertaken, but exterior walls remained. I could not see if there were cavity walls, but there was still extensive thick ivy cover and the chimney stack remained, which could be used as bat roosts. Even were these no longer suitable because of the changes to B2, based upon the photographs and description in the PEA, B1 does not appear to have changed significantly.
10. The footnote to paragraph 185 of the Framework refers to Circular 06/2005 for the statutory obligations for biodiversity. Paragraph 99 of the Circular confirms 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.
11. At the very least, B1, if not B2, appears to have a moderate potential for bats. Though not a complete list of species present in the area, a local biological records centre search revealed previous records of bats in the wider area. The professional advice in the PEA is clear that without further assessment, the demolition has potential to cause the injury or death of bats and damage or

¹ Preliminary Ecological Appraisal Report by Practical Ecology (January 2023).

² Page 4 of the Preliminary Ecological Appraisal Report by Practical Ecology (January 2023)

destroy bat roosts. I am of the view there is a reasonable likelihood of protected species being present and affected by the development.

12. There is not substantive evidence demonstrating whether or not bats are roosting in the buildings, and if so the numbers, species or the type and characteristics of any roosts. Therefore, the proposal could have a potentially unacceptable effect upon a European Protected Species, and it is not possible to determine whether or not any effects could be adequately mitigated or compensated, and if and how this might be achieved. Therefore, this matter cannot be addressed by planning conditions.
13. Aside of bats, the PEA considers the suitability of the appeal site for and potential effects of the proposed development upon other species. It suggests that subject to further mitigation measures secured by conditions there would not be harmful effects, or the effects would be acceptable. However, this does not mitigate or outweigh the potential for harm to bats.
14. Therefore, for the reasons set out above, the proposal would potentially cause unacceptable harm to biodiversity. This would conflict with paragraphs 180 and 186 of the Framework, which require development minimises impacts upon biodiversity, and if significant harm cannot be avoided, adequately mitigated, or, compensated for, then planning permission should be refused.

Inappropriate development

15. 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. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to certain exceptions.
16. An exception at Framework paragraph 154g) includes the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on Green Belt openness than the existing development. Another (paragraph 154d)) is the replacement of a building, provided the new one is in the same use and not materially larger than the one it replaces. Framework paragraph 155b) states that engineering operations are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
17. Policy CSSP4 of the Thurrock Core Strategy and Policies for the Management of Development (2015) (the TCS) states the purpose, function and open character of the Green Belt will be maintained in accordance with PPG2. Policy PMD6 of the TCS states the open character of the Green Belt will be maintained, protected, and enhanced. Permission will only be granted for new development in the Green Belt, provided it meets the requirements of the Framework, other policies in the TCS, and the PMD6 policy criteria for Green Belt exceptions.
18. Insofar as are relevant to this proposal Policy PMD6 2)ii) includes a similar exception in respect of replacement buildings to the Framework. At 6)II) for redevelopment, PMD6 lists various criteria including that redevelopment should not have a greater impact upon the openness, or the purpose of including land within the Green Belt. Though it introduces more criteria, the TCS was examined for consistency with the Framework. It is not put to me that

Framework Green Belt policy between Framework iterations has changed insofar as is relevant to this appeal proposal. The TCS follows the broad approach in the Framework and adds to it, so while not the same, it is consistent with it, and I see no reason why PMD6 should not attract full weight.

19. The proposal involves significant re-contouring with the creation of a void in the landform to create a courtyard area, over which the single and two storey southern elevations of the new built development would wrap around and look onto. Based upon the existing ground level only the first floor of the new dwelling and garage would be above ground level, so on one measure there would be a reduction in the volume of built development at a certain land level.
20. However, including the below surrounding ground-level building would result in an increase from approximately 1,048m³ in volume, 392 sqm in floorspace and 199 sqm footprint, to approximately 1,258m³ volume, 422 sqm floorspace and a 257sqm footprint. Therefore the new building would be materially larger than the ones it replaces, so it does not meet the exception at paragraph 154d), or Policy PMD6 2)ii). Moreover, from what is before me it is not clear the garage measurements are fully factored into these figures. The Council's statement questions this, and I see no substantive response from the appellant that provides me with full clarity to address this concern.
21. Notwithstanding the above other exceptions may be of relevance. The two main buildings and some limited hardstanding are well-defined within the site, and as set out on the topographical survey, although much of the site has undergone succession. Any other permanent structures or surfaces are not clear, so if present, appear to have blended into the landscape.
22. Excluding the grass tennis court, this proposal would result in a significantly increased harm to spatial openness due to the extent of built development, from the new dwelling, garage, courtyard, and hardstanding/circulation areas. Further to this, the tennis court would be enclosed by approximately 2.75m high fencing. Approximately 900m³ of on-site material would be used to create a bund approximately 75m in length averaging 2m in height above largely flat land. This engineered landform would further increase the spread of development, harm to spatial openness and conflict with the third Green Belt purpose of safeguarding the countryside from encroachment.
23. The engineering works would result in a net reduction of 490m³ of material from the site. However, totality of the effects of Green Belt openness are not clear, because some of the void would be part-filled or raised by hard surfacing and engineered walls. How the garage, summerhouse and drainage pump house factor into the overall calculations are also not clear.
24. Having regard to surrounding land levels, highways, vegetation, and all the various aspects of the proposal, there would on-balance be some beneficial effects to the visual openness of the Green Belt. However, based upon the evidence before me, including having regard to the scope of suitably worded planning conditions within the scope of this appeal scheme, this does not fully mitigate or outweigh harm to spatial openness, and there would be a greater adverse effect upon Green Belt openness overall. Therefore, the proposal does not meet exceptions at Framework paragraphs 154g) or 155b) or TCS Policy PMD6 6)II). No other specific exceptions are put to me, and from what is before me, none of the other exceptions appear capable of being met.

25. Therefore, for the reasons set out above the proposal would be inappropriate development in the Green Belt, which is by definition harmful to the Green Belt. It would conflict with the aims of Policy PMD6 and CSSP4 insofar as these seek to maintain Green Belt openness and resist inappropriate development, and with the aims of Framework paragraph 142, the relevant provisions of which are set out above. Paragraph 153 of the Framework explains that substantial weight should be given to any identified harm to the Green Belt.

Other considerations

26. The proposal would result in moderate economic benefits during construction and once complete limited on-going benefits to the local economy, including through on-going spend, and small contributions to the vitality of local and rural communities, services, and facilities.
27. Taking an approach that the existing buildings are not habitable even with significant repair, the proposal would result in a net gain of one dwelling, that I am informed can accommodate three generations of a family. The Council is understood to be unable to demonstrate a 5-year housing land supply, and has a 2022 HDT result of just 46%, so the policies most important to determining the application are considered out of date. The position of the emerging local plan suggests its adoption is some way off as a way forward to address housing needs. Therefore, while being only for a single dwelling, in the current circumstances the social benefits to supply, overall, attracts moderate weight in favour of the scheme.
28. While tidying-up the appeal site might be a minor benefit at best, the proposal is for a new bespoke dwelling that would include features such as a large southern facing aspect, rainwater harvesting, living roofs, and a thoughtfully designed accessible internal layout to enhance the living experience. It has not been justified why, and I am not of the view, it could be regarded as truly outstanding, or would help raise design standards more generally. However, it is of a very high-quality design with a pleasing juxtaposition of external forms and materials, high functionality, with high-quality landscaping, secured by planning conditions. It would enhance its immediate setting and is sensitive to the defining characteristics of the local area. It would result in significant benefits to the character and appearance of the area, attracting significant weight in favour of the appeal scheme.
29. The proposals would result in a very highly energy efficient building with carefully designed landscaping, and with renewable energy technologies capable of resulting in a marked and beneficial net gain in renewable energy generation. The extent of biodiversity net gain that can be secured and its maintenance is not fully explained. However, aside of the issue of potentially unacceptable harm to bats, subject to the imposition of suitably worded planning conditions, I see no reason why features such as the living roofs, wildflower meadow, planting and further habitat creation could not result in a significant biodiversity net gain in the longer term, attracting significant weight.
30. The Council does not object to the location and accessibility of the proposal. Subject to the imposition of suitably worded planning conditions, I see no reason why compliance could not be secured with policies concerning matters such as the access, parking and construction works. Based upon the evidence before me, the proposal could ensure satisfactory living conditions for the future and neighbouring occupiers, and it would not affect or be physically

affected by the Lower Thames Crossing. Compliance with such policies are neutral matters in the balance.

Other Matters

31. The appeal site is within the Zone of Influence of designated Habitats Sites. This could require a financial contribution to mitigate effects of the new dwelling due to recreational disturbance, in accordance with the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy, although Natural England suggests the proposal would not require mitigation. While based upon what I saw and the substantive evidence before me, I do not necessarily share this view, the appellant would be willing to pay the sum. It has not been put to me any contribution would have benefits weighing in favour of the scheme, and even there were overall benefits in this regard, they could not mitigate the potential for unacceptable harm to bats. Therefore, it is not necessary for me to look at this matter in detail.

Planning & Green Belt Balance

32. The proposal would be inappropriate development that would, by definition, harm the Green Belt, and would result in harm to the openness of the Green Belt. In accordance with the Framework, substantial weight should be given to any harm to the Green Belt. In addition to this, it has not been demonstrated that the proposal would not result in unacceptable harm to a protected species. The matters weighing against the scheme attract very substantial weight.
33. Though of a high order, the factors and benefits set out by the appellant, do not clearly outweigh the harm to the Green Belt and the potential for harm to bats. Consequently, the very special circumstances necessary to justify the proposal do not exist, so the proposal conflicts with Framework paragraphs 142, 152 and 153, which seek to preserve Green Belt openness and protect it from inappropriate development, unless very special circumstances exist.
34. In-light of the foregoing, 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 outweighs the benefits.

Conclusion

35. The proposed development would be contrary to the development plan read as a whole, and the Framework read as a whole. 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