



Appeal Decisions

Hearing held on 8 October 2024

Site visit made on 8 October 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal A Ref: APP/V1505/C/23/3314641

Land at Canford Avenue, Wickford, Essex SS12 0JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Hilda Eastwood against an enforcement notice issued by Basildon Borough Council.
- The notice was issued on 16 December 2022.
- The breach of planning control as alleged in the notice is without planning permission:
 - (1) the construction of a dwellinghouse ("the Building") shown approximately edged and hatched black on the notice plan and
 - (2) laying of hardstanding on the site shown approximately as shaded in blue on the notice plan.
- The requirements of the notice are to:
 - (i) Demolish the dwellinghouse shown outlined and hatched black and remove all resultant debris from the Land outlined red, as shown on the notice plan.
 - (ii) Breakup the concrete base beneath the dwellinghouse shown outlined and hatched black, and remove all resultant debris from the Land outlined red, as shown on the notice plan.
 - (iii) Remove all residential paraphernalia and chattels from the Land.
 - (iv) Remove all non-organic matter forming hardstanding from the Land, including all associated detritus therefrom.
 - (v) Return the Land to its former condition by levelling and reseeding to grass thereby returning it to its former condition.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/V1505/W/23/3314643

The Orchard, Canford Ave, Wickford, Essex SS12 0JN

- 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 Mrs Hilda Eastwood against the decision of Basildon Borough Council.
- The application Ref is 22/01068/FULL.
- The development proposed is a bungalow.

Summary Decision: The appeal is allowed.

Preliminary Matters

1. The description of development in appeal B referred to an application to retain the existing bungalow. However, retention is not a form of development. I will deal with the development as a bungalow.

2. The development subject of appeal B is the same as that subject of appeal A. On that basis, I will deal with the appeal A on ground (a), the deemed planning application and appeal B together in my decision.
3. During the course of the appeal a draft National Planning Policy Framework (the draft Framework) was published for consultation along with a Written Ministerial Statement (WMS). The parties were given the opportunity to comment on these and they were subject of discussion at the hearing.
4. During the hearing it was suggested that the enforcement notice should be corrected by removal of one of the phrases relating to returning the land to its former condition in the final requirement. If I were to uphold the notice I would make that correction.

Appeal A on Ground (a), the Deemed Planning Application and Appeal B

Main issues

5. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - The effect on the openness of the Green Belt;
 - The effect of the proposal on the Blackwater Estuary Special Protection Area (SPA) and Ramsar Site; and
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

6. Policy BAS GB1 of the Basildon District Local Plan sets the boundaries of the Green Belt but does not contain further details as to how development within the Green Belt should be assessed. The National Planning Policy Framework (the Framework) states that new buildings within the Green Belt should be considered inappropriate with a number of exceptions. This includes limited infilling in villages.
7. The Framework does not define what it means by limited infilling or villages. The site is located within a "plotlands" area between the settlements of Wickford and Ramsden Bellhouse. The area comprises plots arranged around a network of roads set out in a grid formation. It is most developed where it adjoins Wickford, with density of residential development reducing further toward Ramsden Bellhouse. Some of the plots are developed with houses, mostly bungalows and chalet bungalows, although many are undeveloped or contain other forms of development such as caravans or stables.
8. Canford Avenue is a short road within the plotlands area at the end of which is a field. The plots to either side of the road at that end contain houses, that opposite the appeal site being a wide bungalow on a large plot with another house neighbouring, directly opposite the appeal site. The plots to either side of

the appeal site appear overgrown with glimpsed views of caravans within both plots. However, there is a gap between other built development, comprising houses at the end of Canford Avenue and the next houses along the road. The plots directly to the rear, on Boscombe Avenue, also appear largely open.

9. My attention has been drawn to other appeal decisions relating to limited infilling in this area of plotlands. Appeal decision reference APP/V1505/W/22/3298089 relates to another site in Canford Avenue. In that case, it was concluded that proposal would not infill an obvious gap in an otherwise continuous built-up frontage. Whilst that can be a helpful definition of infilling, other forms of development may comprise infilling. That proposal was also substantial in size. Whilst this bungalow is limited in size, it is within a substantial gap between built development, such that it would not comprise infilling.
10. Appeal decision reference APP/V1505/W/21/3278853 relates to a site a short distance away in the plotlands on Branksome Avenue. That site was bounded on three sides by other residential development and was described as an uncharacteristic gap within existing housing development. It was a modest proposed dwelling and the Inspector concluded that it would comprise limited infilling within a village. However, surrounding development around this site differs in that it is surrounded by more dispersed development.
11. The number of houses within the plotlands area suggest that this is a settlement, albeit somewhat dispersed. There was discussion at the hearing about whether a village needs to contain services. Whilst I consider that to be common, in this case the proximity to Wickford means that residents can rely on the services there. Consequently, I consider that this land can be considered within a village for the purposes of the Framework policy on Green Belts.
12. For these reasons, I conclude that the bungalow is not infilling. As a result, it does not fall within the exception to inappropriate development relating to limited infilling in villages as defined in the Framework.

Openness

13. The appeal site previously comprised an open area with stables at the rear on which horses were kept. It was open to the road, with the stables visible at the rear of the site from Canford Avenue. Visually and spatially it was essentially open. A storage building was erected that now forms part of the bungalow, with an extension to the rear. That affected the visual and spatial openness of the site.
14. The bungalow with hardstanding used for parking has resulted in a domestic appearance to the site. As a result, it has visually affected the openness of the site. The extension to the rear is less visible such that it has limited additional visual effect on the openness of the site.
15. The hardstanding is at ground level but enables use for parking and other domestic activities. The conversion and extension to the store building has resulted in more built form on the site. Consequently, the development has affected the spatial openness of the site.
16. The Council suggest that the site contributes to the purpose of the Green Belt relating to preventing neighbouring towns merging into one another. However, the plotlands area is located between the town of Wickford and smaller

settlement of Ramsden Bellhouse. As an area, it comprises a mix of residential and other development with open land. I have already concluded that plotlands is part of a village for Green Belt purposes. As a result, it makes a limited contribution to that purpose of including land within the Green Belt.

17. For these reasons, I conclude that the bungalow and hardstanding have resulted in harm to the openness of the site.

Blackwater Estuary Special Protection Area and Ramsar Site

18. The appeal site is located within the Zone of Influence of the Blackwater Estuary SPA and Ramsar Site. The Blackwater Estuary comprises a complex of estuaries and intertidal sand and silt flats, islands, shingle and shell beaches and areas of saltmarsh. It supports nationally important breeding and over-wintering populations of a variety of endangered or vulnerable populations of waders and wildfowl, including the little tern *Sterna albifrons*, hen harrier *Circus cyaneus* and dark-bellied brent geese *Branta bernicla bernicla*. These comprise the qualifying features of the SPA.

19. The qualifying features of the SPA are threatened by disturbance as residents in the surrounding area use the SPA for recreation. New residential development is likely to result in additional residents within the area who may use the Blackwater Estuary for recreational purposes. That leads to a likely significant effect on the SPA.

20. For these reasons, as the competent authority it is necessary for me to carry out an appropriate assessment to determine the extent of those effects, whether they could be avoided or whether mitigation measures could remove or reduce the effects.

Appropriate Assessment

21. The appropriate assessment needs to consider the effect of the development on the integrity of the SPA and its qualifying features and species. Whilst occupants of a single modest bungalow would have a limited recreational effect on the integrity of the SPA, in combination with residents of other developments in the area those effects could be substantial.

22. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) sets out measures to mitigate any likely significant effects such that development can be considered appropriate. These are in the form of payments to contribute to those mitigation measures. I understand that the appellant has made payments to the Council as financial contributions toward mitigation measures as set out in the SPD. The parties agree that I am able to take this into account in coming to my decision.

23. I note comments from Natural England that it is necessary to secure payment via an agreement under section 106 of the Act to ensure payment on commencement of the development. However, the payment has been made and the development already commenced. I am satisfied that as the payment clearly related to the development concerned and has already been paid, there is no need for an agreement under section 106 of the Act in this case.

Conclusion

24. Taking account of the mitigation provided in the form of financial contributions, I conclude that there will be no adverse effect from the development on the integrity of the Blackwater Estuary SPA and Ramsar Site. The development complies with the requirements of the SPD and the Conservation of Habitat and Species Regulations 2017.

Other considerations

Housing land supply

25. It has been accepted by the Council that they have a supply of 2.34 years of specific deliverable housing sites. This is considerably below the requirement of the Framework that local planning authorities should be able to demonstrate a 5 year housing land supply.

26. The development comprises a single house. As a result, it contributes little to housing supply. Nevertheless, the lack of housing supply is material.

Draft Framework and Written Ministerial Statement

27. The Framework states that other statements of government policy, such as Written Ministerial Statements (WMS), may be material when deciding appeals. The WMS of 30 July 2024 was issued alongside the draft Framework and indicates how applications for development of what it describes as "grey belt" land will be dealt with in the future. It refers to building in the right places and suggests much of the Green Belt has little ecological value and is inaccessible to the public, so would be better described as grey belt. It defines that as land on the edge of existing settlements or roads, with little aesthetic or environmental value. It indicates that unallocated grey belt sites must be considered by underperforming authorities, such as those lacking a sufficient land supply. It also states that we cannot wait for all release to come through plan making, although land released outside the plan-making process where very special circumstances exist will remain exceptional.

28. As set out above, the appeal site is located on Canford Avenue in a plotlands area close to Wickford. Prior to development of the bungalow, the site comprised an open area with stables at the rear used for keeping horses. As a result, it had little aesthetic or environmental value. It is clear that the site would be grey belt for the purposes of the WMS and this influences the weight the development needs to be given in contributing toward land supply.

29. The draft Framework proposes a new paragraph to suggest housing would also not be regarded as inappropriate where it would utilise grey belt land in sustainable locations and would not fundamentally undermine the function of the Green Belt across the area of the plan as a whole. This would apply where, as in this case, the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

30. The glossary to the draft Framework defines grey belt land. This is land in the Green Belt comprising previously developed land and other parcels that make a limited contribution to the purposes of the Green Belt. Its previous use means that it would have been defined as previously developed land. Given the nature of the plotlands development around, it made a limited contribution to the

purposes of the Green Belt. In addition, this is essentially a sustainable location in terms of its relationship to services and facilities within Wickford.

31. The WMS is an important and relevant material consideration in terms of this decision. Whilst the draft Framework is at an early stage and it is unclear whether it will be adopted in the published form or revised following consultation the thrust of the government's intentions is clear. Taking account of the quantified shortage of housing supply set out above, this carries great weight in this case.
32. It was suggested that I could consider granting a temporary planning permission to allow the Framework to be published in final form. However, the WMS is clear that it is the government's intention to adopt the concept of grey belt through the Framework. Whilst there may be some changes to the policy, the nature of the shortfall in housing supply and of the site in relation to grey belt, including limited contribution to the purposes of the Green Belt, indicates that a permanent permission should be considered in this case.

Personal circumstances

33. The appellant bought this land with her husband in 2013 as somewhere to keep their horses and where their grandchildren could play. They built a large shed for storage, which was shortly after converted and extended, resulting in the present bungalow. Prior to living in the bungalow, they were living in a caravan elsewhere. However, due to their health they ceased to be able to access and move around the caravan and needed somewhere level and with easier internal access.
34. The bungalow is a permanent building and this needs to be balanced with the more transient personal needs of the appellants. Nevertheless, I will take those personal circumstances into account in coming to my decision.

Removal of stables

35. The appellant suggests that the former stables at the rear of the site could be removed to reduce the effect of the development on the openness of the Green Belt. The stable building is considerably smaller than the bungalow, such that its removal would have limited effect in reducing harm to the openness of the Green Belt. It is currently used for purposes related to the occupancy of the bungalow. I will take this into account in the final planning balance.

Conditions

36. The Council suggested a condition listing the approved plans. However, as there is no dispute as to what has been constructed on site, I consider such a condition would not meet the test of necessity set out in the Framework. I have not included a condition removing permitted development rights as I do not consider it to be reasonable or necessary.
37. If I were to consider that permission should be granted for a temporary period or to reflect the personal circumstances of the occupants, it would be necessary to control this by condition. If that were the case, at the end of that period it would also be necessary to require the land to be restored to its condition before the development took place. If I were to conclude that the stable building should be removed, this could be required by condition.

Conclusion

38. I have found that the bungalow would not comprise limited infilling in a village and, as such, it is inappropriate development that harms the openness of the Green Belt. I have not identified any other harm. Taking account of mitigation, there will be no adverse effect from the development on the integrity of the Blackwater Estuary SPA and Ramsar Site.
39. The supply of housing land within the borough is considerably below 5 years, such that the Council are lacking a sufficient land supply. The development contributes a single house. The WMS, which is an important and relevant material consideration, states that we cannot wait for all release to come through plan making. The location of the bungalow on grey belt land as defined in the WMS and draft Framework means that these factors carry great weight in the planning process. There are also personal circumstances that weigh in favour of the development and I have considered the potential to remove the stables.
40. I have considered whether a temporary grant of planning permission would be appropriate to enable assessment against the amended Framework once it is issued. Alternatively, I have considered a personal grant of planning permission taking account of the circumstances of the occupants.
41. The Framework states that substantial weight must be given to any harm to the Green Belt. However, I consider that the harm to the Green Belt by reason of inappropriateness is clearly outweighed by a combination of the above factors in this case and that, on balance, such a permission should not include conditions limiting it to being temporary or personal to the occupants, nor removal of the stables.
42. I have not found any conflicts with the development plan, such that the development complies with the development plan as a whole.
43. For these reasons, I conclude that appeal A on ground (a) should succeed and planning permission should be granted on the deemed application under section 177(5) of the Act. I conclude that appeal B should also succeed.
44. As a result of success of the appeal under ground (a) I will grant planning permission for the development and quash the enforcement notice. As a result, I do not need to consider the appeal under grounds (f) and (g).

Formal Decisions

Appeal A

45. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out and as shown on the plan attached to the notice, namely:
- (1) the construction of a dwellinghouse ("the Building") shown approximately edged and hatched black on the notice plan and
 - (2) laying of hardstanding on the site shown approximately as shaded in blue on the notice plan.

Appeal B

46. The appeal is allowed and planning permission is granted for a bungalow at Land known as "The Orchard", Canford Ave, Wickford SS12 0JN in accordance with the terms of the application, Ref 22/01068/FULL, and the plans submitted with it.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green Green Planning Studio

Hilda Eastwood Appellant

Freddie Eastwood

FOR THE LOCAL PLANNING AUTHORITY:

Thomas Benson Basildon Borough Council

Ian Cummings Basildon Borough Council

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1: Appeal Decision reference APP/W1525/W/23/3316812 & APP/W1525/W/23/3316813

Document 2: Witness Statement of Freddie Eastwood

Document 3: Witness Statement of Hilda Eastwood

Document 4: Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document

Document 5: Statement of Common Ground

Document 6: Blackwater Estuary SPA and Ramsar Site description