



Appeal Decision

Site visit made on 19 November 2024

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Appeal Ref: APP/V1505/W/24/3341602

Land North of Southlands Road, Billericay CM11 2XB

- 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 Matthew Shute of Southlands Road Developments Ltd against the decision of Basildon Borough Council.
 - The application Ref is 23/01518/FULL.
 - The development proposed is Erection of 4 no. residential dwellinghouses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted an incomplete planning obligation with the appeal proposing to secure contributions towards affordable housing and mitigation as per the Essex Coastal Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020) (the RAMS SPD). A direct payment has since been made in respect of RAMS SPD mitigation. The appellant states they would be willing to update the payment and provide a contribution towards affordable housing if the Inspector considers it necessary.
3. The Procedural Guide states that for written representation appeals an appellant must ensure that an executed and certified copy of the planning obligation is received at the time of the appeal¹. I see no reason why a completed planning obligation could not include clauses dependent upon my findings. It is not incumbent upon an Inspector to indicate a finding to the parties before issuing a decision. Neither would this be fair to all parties. I have had regard to the obligation as submitted and the payment as made.
4. The Council agreed the direct payment addressed its reason for refusal in respect of Habitats sites. However, for appeals, the Inspector is the competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). In this instance, it is necessary for this matter to remain as a main issue.

Main Issues

5. The main issues are:
 - the effect of the proposed development upon designated Habitats sites;

¹ Section 18 of the Procedural Guide: Planning appeals – England.

- whether or not the proposed development would be inappropriate development in the Green Belt;
- the effect of the proposed development upon Green Belt openness;
- the effect of the proposed development upon the character and appearance of the area; and,
- if the proposed development is 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 proposed development.

Reasons

Habitats sites

6. The Regulations require where a plan or project is likely to result in likely significant effects (LSEs) upon a Habitats site, a competent authority is required to make an appropriate assessment of its implications upon the integrity of a Habitats site in view of its conservation objectives. Any LSEs arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
7. The appeal site lies within zones of influence (ZoI) of the Blackwater Estuary Special Protection Area and Ramsar sites, and the Essex Estuaries Special Area of Conservation, as European designated Habitats sites. The Habitats sites provide valuable coastal habitat types and support important populations of endangered and vulnerable bird species, and an important Waterbird assemblage. These constitute their qualifying features. Their conservation objectives are to maintain or restore their integrity, by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats and those of the qualifying features, the population of the qualifying features and species, and the distribution of the qualifying features.
8. Various outdoor recreational activities by visitors result in disturbance to the qualifying features. New housing within the ZoIs is likely to result in increased recreational pressure through more visitors and greater recreational disturbance to the qualifying features. Through four new dwellings within the ZoI, the effects of this scheme alone and in combination with other development, would result in LSEs upon the Habitats sites.
9. The RAMS SPD outlines a package of strategic mitigation measures, including rangers, access management and monitoring, communications and information, zoning, enforcement and habitat creation delivered by the RAMS partnership. These are funded by a per dwelling contribution by schemes within the ZoI. I am satisfied that subject to a contribution being secured against the appeal scheme, the measures would mitigate the LSEs.
10. Natural England (NE) states the RAMS SPD mitigation measures are sufficient subject to the contribution being secured and being paid upon the development commencing, or first occupation. The appellant has made a direct payment of the contribution to the Council for the amount set out from 1 April 2024. Even if NE may have been satisfied with a direct payment, the absence of a planning obligation means there is no certainty via a legal link between the money and a future permission, so it is unsecured. A direct

payment does not provide a guarantee it will be retained and only be used by an authority to deliver the requisite mitigation for this specific appeal scheme, and at the specific time it is required. There is also no means of index linking a direct payment to ensure it reflects the full cost of the required mitigation at the time it needs to be delivered.

11. For the reasons set out, adopting the precautionary principle, as the competent authority I do not have sufficient certainty the mitigation is secured and will adequately mitigate LSEs upon the Habitats sites. In consequence, the development does not make adequate provision to mitigate the LSEs, and thus maintain or restore the integrity of the Habitats sites. It makes no other provision to mitigate the LSEs and maintain the integrity of the Habitats sites.
12. In the absence of appropriate mitigation being secured the appeal scheme would have LSEs upon the Habitats sites, so would fail to adhere to their conservation objectives. Imperative reasons of overriding public interest do not exist and it is not demonstrated there are no alternative solutions, or that other adequate measures will be provided. Section 63(5) of the Regulations states the competent authority may agree to a plan or project, only after having ascertained that it will not adversely affect the integrity of Habitats sites. Therefore, it precludes the proposed development from proceeding.
13. For the reasons set out, the proposed development would have LSEs upon designated Habitats sites, in conflict with section 63(5) of the Regulations, the relevant provisions of which are set out above. It would also conflict with paragraph 186a) of the Framework which states that if significant harm to biodiversity cannot be avoided, then planning permission should be refused.

Inappropriate development

14. The site lies within the Green Belt designated under Policy GB1 of the Basildon District Local Plan Saved Policies (2007) (the LP). Paragraph 142 of the Framework states that 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 Framework states the construction of new buildings should be regarded as inappropriate development, subject to certain exceptions.
15. The main parties have assessed whether the development falls within the exception at paragraph 154 e) of the Framework, for limited infilling in villages. Neither the Framework or Policy GB1 define the terms limited, infilling or village. The main parties have provided me various previous appeal decisions² and references to caselaw judgements upon these matters, and a one of the judgements³. The question of whether a development meets the exception, will be a question of fact and planning judgment.
16. I do not share the Council's suggestion that to meet the exception, a proposal should generally only be for a single dwelling, although regard should be had to surrounding development. The site is adjoined to the east and west by residential plots with buildings quite close to the appeal site boundary. To the south is the made surface of Southlands Road and other dwellings and

² Refs. APP/V1505/W/20/3255498, APP/J1860/W/22/3311462, APP/W4223/W/22/3299298, APP/V1505/W/22/3309566, APP/W4325/W/22/3311323 and APP/V1505/W/22/3307147.

³ Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195.

associated buildings. The totality of dwellings proposed are of limited number, height, massing, and scale, and reflective of the surroundings. Given the nature and extent of surrounding development, this proposal can be regarded as infilling. Therefore, as a matter of judgement based upon the evidence and what I saw, the proposed development would constitute limited infilling.

17. My view of whether the site is within a village is a matter for assessment on the ground and having regard to the evidence before me. Development plan settlement boundaries may not be determinative, and these were drawn-up some years ago since which time, Crays Hill has undergone change.
18. Both parties' comment upon the decision letters⁴ of three other Inspectors that considered whether or not Southlands Road is within a village (2019, 2020 and 2023). From what I observed I see no reason to disagree with the Inspectors' wider settlement descriptions. The Inspectors conclude that taking into consideration the overall settlement characteristics of Crays Hill, the location of Southlands Road relative to the main built-up area further west, the limited built form, the number of dwellings along it, and its more sparsely developed plotland characteristics, it is outside the village.
19. Despite the appellant's lengthy submissions in this regard, there is not substantive evidence demonstrating meaningful recent change on Southlands Road, such as new buildings materially altering the pattern of development. There is still quite sparse development between the appeal site and dwellings on Gardiners Lane North. Given the pattern of development, as a matter of judgement, I do not take the view the site can currently be regarded as a part of peripheral cluster so as to mean it is within the village.
20. That the part of the site with the proposed dwellings was indicated as being included within the village in the previous emerging local plan and the remaining site and neighbouring land an allocation⁵ is noted. However, there is limited evidence explaining the rationale, and ultimately the Council did not proceed with a plan with the proposed settlement changes indicated.
21. The Inspector's findings in 3326702⁶ are matters of judgement based upon the specific pattern of development around that site. It was at a different settlement, in a different context, related to a different policy, not in the Green Belt, for a single dwelling in a much tighter knit cluster of dwellings and appears to be consistent with the findings of another Inspector. Consistency in decision making is an important tenet of the planning system. That Inspector's findings do not outweigh those of the Inspectors who dealt with appeals in Southlands Road very close to this appeal site.
22. The appellant does not advance a substantive case in respect of other exceptions. Having regard to what I saw, the evidence before me, and mindful of my findings in respect of openness below, I cannot conclude any of the other exceptions would be met. Whether or not the proposal is consistent or conflicts with certain Green Belt purposes is not a determinant of whether or not it would meet the exception for limited infilling in a village.

⁴ Refs. APP/V1505/W/18/3215940, APP/V1505/W/20/3255498 and APP/V1505/W/22/3309566.

⁵ H22d on Page 16 of the Appellant's Appeal Statement.

⁶ Ref. APP/C3105W/23/3326702 and APP/C3105/W/23/3336047.

23. For the reasons set out above, the proposed development would be inappropriate development in the Green Belt, which as identified by paragraph 152 of the Framework, would be by definition, harmful to the Green Belt.

Openness

24. The appeal site is an unused paddock which for the most part, has undergone succession and is now more of a scrubland type character save for a derelict stable/farriers building, a metal storage container, discarded equipment and some piles of what appear to be fly-tipped waste materials. These occupy a limited proportion of the site, and it appears that the significant majority is largely free of operational development. Site vegetation is low level and not development, so I cannot conclude it could be regarded as harming openness.
25. The proposed development would result in a marked increase in built development by virtue of four dwellings, associated subdivision of the appeal site, hardstanding areas such as access, circulation and parking areas, paraphernalia, and associated activity and comings and goings. There would be a marked adverse effect upon the spatial openness of the Green Belt.
26. The buildings are of a limited height and appeal site has some containment to the wider area from site boundary trees neighbouring and wider buildings, which serve to limit some middle to longer distance views. Nevertheless, there would still be harm to the visual openness of the Green Belt, which would be primarily visible from Southlands Road in the vicinity of the site, and to a limited and more filtered degree from some properties and land to the north, east and west.
27. Therefore, for the reasons set out above, the proposed development would be harmful to the openness of the Green Belt, so it would conflict with the aims of paragraph 142 of the Framework insofar as this aims to keep land permanently open. While it designates Green Belt, I have not concluded against Policy GB1 of the LP, as the policy text does not appear to specifically refer to exceptions or Green Belt openness.

Character and appearance

28. The area is one with dwellings addressing Southlands Road of varying styles, forms, scales and plot sizes. Immediately surrounding the appeal site, plots are spacious and wide, although within its visual context to the east are dwellings on narrow plots with close gaps to neighbouring buildings. There is a mixed character and appearance to the built form within a rural verdant setting. Notwithstanding its largely open character, boundary vegetation, trees and limited built development, its disused appearance means it makes only limited positive contribution to the character and appearance of the area.
29. It is unavoidable there would be urbanisation of the appeal site through the new built development. However, the dwellings would be in keeping with the linear pattern of development. Their architectural appearance with hipped roofs, bonnet dormers and front gable projection, in render and boarding with tiled roofs are of a high-quality design, reflective of other bungalows and chalets in the locality, and have a synergy with some surrounding buildings.
30. The plot widths and gaps between the proposed dwellings would mean they appear of a greater density than some immediately around them. The gaps are also less than indicated under Policies GB3 and GB4 of the LP for the

replacement or extension of existing dwellings, and the plot widths narrower than the average width set out by the Council. However, the roof forms sloping away from plot boundaries means they would feel well spaced.

31. The new dwellings would have reasonably sized frontage spaces that could be suitably landscaped to soften the appearance. Between the gaps mature boundary trees would remain visible, retaining views to the rural sylvan setting. Overall, I am of the view the scheme strikes a good balance between the varied development patterns and would be sympathetic to the street scene as a whole. As a matter of planning judgement, they would not be out of keeping, and the appeal scheme would have a marked overall positive effect upon the character and appearance of the area.
32. Therefore, for the reasons set out above, the proposed development would not be harmful to the character and appearance of the area. It would not conflict with Policy BE12 of the LP which states that development will not be permitted if it causes material harm to the character and appearance of the area. The scheme would also not conflict with paragraph 135c) of the Framework, which expects development to be sympathetic to local character and history, including the surrounding built environment and landscape setting.

Other considerations

33. The most relevant LP policies are now of some significant age and may be regarded out of date. The previous emerging local plan was withdrawn, and an Inspector's decision letter⁷ for a previously approved scheme highlights that in the absence of an up-to-date development plan the Council's substantial unmet housing need, can only be met by suitable Green Belt sites.
34. The Council's Housing Delivery Test (HDT) Action Plan (2023) sets out adopting a new local plan as a key action to ensure land comes forward for development and boosts housing delivery. It also indicates that based upon past appeal decisions, permissions might be granted in the Green Belt to meet the undersupply. The appellant suggests a new adopted local plan is a considerable way off and the Council has not disputed this.
35. The Council's HDT measurement is well under half of what it requires, and it can only demonstrate an approximately 2.34-year Housing Land Supply (HLS), in an area where house prices have increased, and affordability ratios worsened. No dwellings were understood to have been completed in the village for 2022–23. These appeal dwellings can be designed to be suitable for those with disabilities or reduced mobility secured by a suitably worded planning condition, in a settlement where the appellant advises there is a greater proportion of older persons and a wider need.
36. In the foregoing context and Framework aims to significantly boost housing supply, these four new dwellings which might be delivered in the short to medium term, is a benefit of a high order. The proposal would result in a moderate temporary economic benefit during construction, and once constructed an on-going benefit to the local economy and supporting the nearby local rural services and facilities. It would provide a well-designed scheme that would bring redundant land back into use and be marked benefit

⁷ Ref. APP/V1505/W/22/3298599.

to the character and appearance of the area. The broad letters of support from some nearby residents in this regard are also noted.

37. From what is before me, subject to the imposition of suitably worded planning conditions advanced by the Council, the proposal could ensure there would not be harmful effects upon protected species, and it could secure an overall biodiversity net gain. Based upon the existing habitat value and the potential scope for enhancements within the appeal site and further landscaping, the proposal could secure a significant net gain.
38. Given its proximity to the appeal site and the number and type of dwellings, a condition for the provision of raised Kassel kerbs would appear to be directly relevant to the development and necessary. It would also be a wider public benefit. Subject to the imposition of suitably worded conditions, the dwellings would have a safe and suitable access onto Southlands Road, sufficient parking and circulation, and there would not be harmful effects upon the highway network, which would be neutral matters.
39. Due to it being incomplete, the planning obligation for a contribution of £240,000 towards affordable housing, would not secure a contribution. Moreover, it is not demonstrated that it would be appropriate to deal with this matter by planning condition having regard to the tests, and the guidance set out in the PPG⁸. This cannot attract any weight in favour of the scheme.
40. The minor works to and retention of trees on the appeal site, securing suitable protective measures, ensuring satisfactory living conditions to future and neighbouring occupiers would be neutral matters in the balance. Reducing resource and energy consumption would not be an overall net benefit, but more of a neutral matter.
41. The site allocations and settlement boundaries in the withdrawn emerging plan, would have been considered with some rationale. As the appeal scheme would be development outside the village, I do not agree the appeal scheme does not conflict with aims of the first and third Green Belt purpose. However, as the Council deems it outside the settlement, and it is questionable as to whether Crays Hill constitutes a large built-up area, I am unclear on why this scheme would conflict with the first Green Belt purpose. But Crays Hill is not a town, so I give little weight to the concern that developing the site would conflict with the second Green Belt purpose.

Green Belt & Planning Balance

42. The proposed development would be inappropriate development that would, by definition, harm the Green Belt, and would result in harm to visual and spatial openness. In accordance with the Framework, substantial weight should be given to any harm to the Green Belt. However, the proposed development would provide four new high-quality dwellings to meet a chronic shortage of housing delivery, with associated economic and social benefits. It would result in clear benefits to the character and appearance of the area and could secure a significant biodiversity net gain and further landscaping.
43. In this particular case, in combination the benefits attract very substantial weight, such that I consider that the harm by reason of inappropriateness and harm to the openness of the Green Belt, are clearly outweighed by the other

⁸ Paragraph: 010 Reference ID: 21a-010-20190723.

considerations identified. Were it not for the harm to designated Habitats sites, these would amount to the very special circumstances necessary to justify the proposal in the Green Belt. On this basis, the proposal would have been compliant with paragraph 152 of the Framework and Policy GB1 of the LP, the relevant provisions of which I have set out above.

44. However, I cannot be certain the proposed development would not result in LSEs upon Habitats sites. In accordance with paragraph 11d) of the Framework, the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development, for which the policies of the Framework have not been met. The harm from the LSEs to Habitats sites is of such a high order that it would significantly outweigh the benefits of the development, and section 63(5) of the Regulations precludes the proposal from proceeding. Therefore, the appeal should be dismissed.

Conclusion

45. While the proposed development would be compliant with the development plan read as a whole, it conflicts with the Framework read as a whole, and the Regulations preclude the proposal from proceeding. Therefore, there are material considerations that mean the proposed development should be determined other than in accordance with the development plan. Accordingly, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR