



Appeal Decision

Site visit made on 30 October 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2025

Appeal Ref: APP/B1550/W/24/3339583

Magnolia Lodge, Lower Road, Hockley, Essex SS5 5LD

- 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 Julia Marie Spearpoint against the decision of Rochford District Council.
- The application reference is 23/00750/FUL.
- The development proposed was originally described as 'new residential development of 3 x three bedroom detached houses on a previously developed site formally occupied by a light industrial business. Change of use from B1(c) Offices to C3 Dwelling houses.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 12 December 2024, an updated National Planning Policy Framework (the Framework) was published. The main parties have been afforded the opportunity to comment on the revised Framework and I have taken the responses received into consideration. References hereafter in the decision to the Framework are to the December 2024 version.
3. The application form described the existing use as B1(c) office, but the Council's decision notice and subsequent appeal form correctly refer to the current use class for offices since September 2020: Class E(G)(i).¹

Main Issues

4. The appeal site lies within an area of Green Belt. The main issues in this case are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to relevant development plan policies, the provisions of the Framework and the effect on the openness of the Green Belt;
 - The effect on the character and appearance of the area;
 - Whether the proposal would provide a suitable standard of accommodation for future occupants, with respect to noise from adjacent uses;
 - The effect of the proposal on protected habitats sites.

¹ Use Class B1(c) replaced by Class E under The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

- If the proposal would be inappropriate development 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 it.

Reasons

Whether Inappropriate Development

5. The Government attaches great importance to Green Belts. Paragraph 154 of the Framework states that the construction of new buildings within the Green Belt is inappropriate development but it lists certain forms of development which are not regarded as inappropriate. This includes criterion (e) limited infilling in villages, and criterion (g) limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.

Limited Infilling in Villages

6. The site is located within a small cluster of development that forms one of a number of clusters and single properties along the length of Lower Road. The dwellings are interspersed by agricultural fields and the wider surroundings are overtly rural in character. Development along Lower Road does not exhibit a defined centre and has a sporadic, rural character. Consequently, I find that the site does not lie within a village, and therefore the proposal would not accord with the exception to inappropriate development at criterion (e).

Previously Developed Land

7. The Council sets out that the site was historically in use as a small holding or horticultural nursery, a use that would not amount to previously developed land (PDL) under the Framework definition. It is indicated that the site has been subdivided with the front of the site, that part lying within the red line, used for storage and offices, including in relation to an engineering and electrical contractor. The use of the site for light industrial purposes was found not to be lawful under a 2020 application² for a lawful development certificate (LDC), with the Council concluding that the evidence only showed continuous use as warehouses since 2015 and offices since 2016.
8. The definition of PDL in the 2024 Framework is: Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed.
9. The appellant attests that the existing use of the land is lawful. I saw the site to contain a single storey office block, partly formed of portacabins, in front of two large sheds/workshops at the rear. The Council's evidence includes the officer report for the 2020 LDC application that accepts the portacabins and warehouse to the rear were in situ as of July 2013, based on aerial

² Council Ref 20/00087/LDC

photography. As such, the evidence suggests that the buildings on the site have existed for more than ten years, and therefore are likely to now be lawful through the passage of time.

10. Regarding the use of the land, the evidence is less conclusive. Reference is made to documents submitted under previous applications, but none of these are before me as evidence in this appeal. The officer report for the 2020 LDC application notes a 2015 planning application³ where the planning officer recorded the use at the time as the same engineering and electrical contracting business making the LDC application in 2020, and to the use being lawful in 2015. However, the Council concluded in 2020 that the evidence was insufficient to determine a continuous use over ten years and refused to issue an LDC.
11. There has clearly been a further passage of time since that application, and the timelines are such that uses recorded in 2015, if the same as now, may be approaching or have passed the ten-year threshold. However, I have no evidence before me which substantiates this. There are allusions to continuous use since 2015, but the evidence is also vague as to the exact nature of the use, being described generally as light industrial and storage purposes, and it does not provide me with confidence as to the actual lawful use of the land.
12. However, the Council's officer report for the LDC application states that there is evidence that the units have not been used for agricultural purposes and have been in some form of commercial use since 2015. In these respects, whilst the evidence is not conclusive of a lawful commercial use, there is nothing before me to suggest any use for agricultural purposes in close to ten years. Indeed, whilst the Council alludes to a previous use for agricultural or horticultural purposes, I have no evidence before me to demonstrate what activity may have taken place and when. Moreover, there is no indication that the Council has sought to take enforcement action against any allegedly unlawful use in the timeframes discussed in the evidence.
13. It is not my role in this appeal to determine the lawful existing planning use of the land. However, I must make a judgment on the evidence before me as to whether the proposal amounts to the redevelopment of PDL in the Green Belt. Whilst the evidence of light industrial use is not conclusive, it suggests such use for close to ten years, and possibly longer. What is not in dispute is that the buildings themselves are in situ more than ten years. Drawing these considerations together, I am satisfied that the site can be considered to amount to PDL within the meaning of the Framework. Therefore, to determine whether the proposal meets with exception (g) of Paragraph 154, it is necessary to consider the effect of the proposal on openness.
14. The test under Paragraph 154(g) is that development of PDL does not cause *substantial* harm to the openness of the Green Belt. This is a notable change from the previous iteration of the Framework where the test relevant to the proposal, that set out under the first limb of exception (g), was that development *should not have a greater impact* on openness of the Green Belt than the existing development.
15. The proposed dwellings would stand in a linear pattern towards the centre of the site, addressing the road with a parking and turning area to the front and

³ Council Ref 15/00435/FUL

gardens to the rear. Each would be two storeys in height with front facing gables and pitched roofs. Each would have an addition to one side creating a roughly T-shaped footprint and roofscape.

16. The appellant gives the volume of the existing buildings on site as 2080m³ and the footprint as 486.6m², though this is stated by the Council not to include areas of open storage and a container located to the rear corner of the site which are not considered permanent structures. The proposed dwellings would have a combined volume of 1890m³ and footprint of 591m². Thus, the dwellings would increase the footprint of development by some 21.4%, but the volume of buildings would decrease by some 9.1%. The Council notes the maximum height of the existing buildings is 5.64m, with the dwellings proposed at a maximum height of 7m. It also points to the dwellings having a greater internal floorspace than the existing buildings.
17. The proposal would introduce a different form of development with a different layout and massing compared to the existing buildings. There is some sense of openness to the existing site due to the fact that the buildings are located towards the sides and rear and a large forecourt to the front creates a sense of space. However, viewed as a whole, there is considerable built form already established on site. In particular, the warehouse structure to the rear has significant size and bulk and blocks views beyond the site. Indeed, there are even larger structures immediately to the rear which enclose the site from the wider countryside. Within this context, the existing site has a considerable adverse effect on openness and makes little contribution to the purposes of the Green Belt.
18. The proposed dwellings would alter the shape and form of development on the site, but the stated measurements indicate that there would not be a significant difference overall in the quantum of development. A 21.4% increase in footprint would be relatively limited, and this would in part be mitigated by the proposed reduction in overall volume. As such, openness in spatial terms would be reduced to a modest degree.
19. I acknowledge that the dwellings would stand taller than the existing buildings and in spanning across the centre of the site would bring the massing closer to the road. As a result, the development would appear somewhat more prominent than the existing buildings and in terms of the visual aspect of openness, there would be a moderate adverse effect.
20. Overall, therefore, I find that the proposal would cause moderate harm to openness. The Council concluded in similar terms. However, as set out above, the test in this case is that development does not cause *substantial* harm. The proposal to replace a considerable quantum of established built form with buildings of moderately greater impact, on a site surrounded by other well-established development, would not reach the threshold of substantial harm to openness of the Green Belt in this case.
21. Therefore, I conclude that the proposal would constitute redevelopment of PDL which would not cause substantial harm to the openness of the Green Belt. Therefore, it meets with the exception at Paragraph 154(g) of the Framework and would not constitute inappropriate development in the Green Belt. No conflict therefore arises with Policy GB1 of the Core Strategy (December 2011) (the CS) which directs development away from the Green Belt as far as

practicable and will prioritise the protection of Green Belt land based on how well the land helps achieve the purposes of the Green Belt.

22. As the proposal does not amount to inappropriate development, there is no requirement to assess if there are other considerations that amount to very special circumstances needed to justify the development.

Character and Appearance

23. This part of Lower Road contains a mix of residential and commercial uses. Immediately to the south of the appeal site is a fencing business with a two storey office building and substantial external storage and parking area. Large industrial buildings stand to the rear of the appeal site and the fencing business. To the northern side are three detached dwellings standing on spacious plots, beyond which is a large collection of agricultural sheds. The western side of the road is notably less developed, with a single dwelling and ancillary sheds opposite the fencing business, but otherwise open fields visible beyond the roadside hedgerows. Other sporadic development is glimpsed in the distance where longer views are possible.
24. Whilst there is established development to the immediate area, there is still a discernible rural character exemplified by the low density, detached housing on spacious grounds with natural boundaries. The commercial uses are not inherently rural in nature, but with large open forecourts and sheds which are agricultural in appearance, they exhibit some elements of rural character.
25. Given the adjacent presence of other dwellings, the proposed residential use would not be uncharacteristic of the area. However, the dwellings would be laid out tightly across the site with limited spaced between them or the side boundaries. The plot density of the site would far exceed that of nearby dwellings, and would fail to reflect the prevailing spacious rural character of the surroundings. It would instead introduce a distinctly more urban scale and density that would appear alien in this context.
26. It is indicated that the dwellings have been amended from a previous application to a 'chalet' style design that is lower in height. However, the inclusion of a bulky, side addition with a crown roof would not reflect the lower profile of neighbouring dwellings, which have low eaves and true dormers within the roof space. Instead, this form, identically repeated across three units, would add to the anomalous estate-type form and character of the proposal.
27. I recognise that the existing site is of little aesthetic merit and there is no objection to the removal of the existing buildings. However, their functional form and the recessed position of most of the massing help to temper the prominence of the site in the streetscene. In contrast, the dwellings would appear much more prominent due to being located further forward in the site and standing taller. As such, whilst there is some minor benefit to be had from redeveloping the existing site, this would not justify the harm that the proposal would cause to the character and appearance of the area.
28. For these reasons, I conclude that the proposal would harm the character and appearance of the area, contrary to Policy CP1 of the CS and Policies DM1 and DM3 of the Development Management Plan (December 2014) (the DMP), which together promote good, high quality design that has regard to local

flavour; promote the character of the locality to ensure that development positively contributes to the surrounding natural and built environment; and that the design of infill development positively addresses the existing street pattern, density of the locality and existing character.

Standard of Accommodation

29. The Council's concern relates to the use of industrial activity on neighbouring sites and the potential for this to cause disturbance to occupants of the proposed dwellings. It is critical of the appellant for not submitting a noise survey to understand existing background noise levels.
30. The adjacent uses are stated to be a fencing business to the south and a plant hire company to the rear. Both are likely to involve regular comings and goings of work and visitor vehicles, but from my time on site, it appeared traffic would not be constant and is unlikely to give rise to demonstrable noise and disturbance. However, I have limited information about the nature of either operation, in particular whether either involves noisy work or work at unsociable hours. I recognise that other dwellings exist nearby, but the proposed dwellings would be closer to both uses than the next nearest dwelling, Beckney Lodge. In the absence of substantive information relating to the adjoining uses, and given the very close proximity to the proposed dwellings, including their private rear gardens, I am not satisfied that future occupants would enjoy satisfactory living conditions with respect to noise and disturbance from industrial activity.
31. Therefore, I conclude that the proposal has failed to demonstrate that a suitable standard of accommodation would be provided, contrary to Policy DM1 of the DMP, which requires that proposals contribute positively to residential amenity and have positive relationships with existing and nearby buildings.

Protected Habitats Sites

32. The site is indicated to lie within the 'zone of influence' of one or more designated European Sites, including the Crouch & Roach Estuary Special Protection Areas (SPAs) and RAMSAR sites which are designated as important estuarine habitats hosting a wide range of important and scarce flora and fauna. As the competent authority in this case, I am required to carry out an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (CHSR) in relation to the effect of granting permission on the integrity of the protected sites.
33. These sites are identified as being vulnerable to harm through recreational disturbance, which would be exacerbated by an increase in the local population resulting from new residential development. Additional residents from the proposal could cause an adverse effect on the integrity of the sites. Therefore, alone and in combination with other development, the proposal constitutes a likely significant effect to the protected sites. Mitigation has been developed to avoid such adverse effects in the form of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), which is funded through developer contributions.
34. In this case, the appellant indicates that the appropriate contribution has been secured through a direct payment to the Council. Whilst a direct payment to the Council would not be subject to a legal agreement, I am aware that the

RAMS is a well-established mitigation strategy, endorsed by Natural England and adopted by several local authorities working in partnership and with legal mechanisms in place. Consequently, I have no clear reason to doubt that the Council, as a responsible public body, would not direct the money in the way it is intended. I note in this case that the Council has sought this payment during the application process, as evidenced by an advisory note on a letter dated 4 September 2023 concerning the application being otherwise invalid.

35. However, beyond a brief assertion by the appellant at final comments stage, I have no evidence to verify that a payment has actually been made to the Council and therefore no certainty that money has actually been received that would be used to mitigate any adverse effects on the European sites. No other mechanism, namely a planning obligation, has been put forward to secure the payment. I have had regard to the Planning Practice Guidance which states that a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence is only appropriate in exceptional circumstances. No exceptional circumstances have been put to me and therefore I find a condition is not an appropriate means to secure mitigation in this case. As no planning obligation has been submitted, there is no mechanism by which I can be certain that the required mitigation would be secured.
36. No alternative solutions that would have a lesser effect, or avoid an adverse effect, have been provided. Therefore, the CHSR state the permission must not be granted, unless there are imperative reasons of overriding public interest. Given the scale of the proposal, I do not consider the provision of three dwellings, and the limited benefits this would deliver to the housing stock and economic output, would represent such an overriding public interest in this case.
37. Therefore, following Appropriate Assessment and adopting a precautionary approach, I cannot conclude that the development would not have an adverse impact on the integrity of the protected sites. This results in conflict with Policy ENV1 of the CS which seeks to maintain, restore and enhance sites of international, national and local nature conservation importance.

Other Matters

38. The Council's officer report refers to a potential loss of employment floorspace and up to 10 jobs should the site be redeveloped, but given the uncertainty over the lawfulness of the use, the Council did not attribute negative weight to this matter. There would be some economic benefits from the construction of the dwelling and future contributions of residents to the local economy. However, whilst acknowledging the uncertain planning status of the existing use, there would be an actual loss of a business and employment on the site that would significantly offset benefits from redevelopment and consumer spending. As such, I afford limited weight to economic benefits in this case.
39. The Council did not find harm in respect of the effect on parking, access and highway safety; neighbours' living conditions; internal and external space standards; trees or on-site ecology. Neither the evidence before me nor my observations on site lead me to different conclusions in any of these matters. A lack of harm in these respects means they are neutral considerations weighing neither for nor against the proposal.

Conclusion

40. I have found that the proposal would not be inappropriate development in the Green Belt, but this is a neutral factor in the overall balance. The proposal would deliver three dwellings to the housing stock, with modest economic benefits from their construction and subsequent engagement by residents in the local economy. It would also make productive use of previously developed land. However, whilst this would accord with the aims of the Framework to boost the supply of housing nationally and to support re-use of brownfield land, the small scale of the proposal means the social and economic benefits generated would attract limited weight.
41. Set against these benefits, the proposal would cause harm to the character and appearance of the area and has failed to demonstrate that future residents would have an acceptable standard of accommodation. Furthermore, the proposal has the potential to adversely affect a site of European habitat conservation. Indeed, my findings in respect of the European sites is a significant and decisive issue in this case, which in accordance with Paragraph 11(d)(i) of the Framework provides a strong reason for refusing the proposed development.
42. Therefore, I conclude that the proposal conflicts with the development plan, taken as a whole, to which I afford significant weight. Material considerations, in particular the Framework, do not indicate that permission should nevertheless be forthcoming in spite of this conflict. Consequently, the appeal should be dismissed.

K Savage

INSPECTOR