



Appeal Decision

Site visit made on 3 December 2024

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2025

Appeal Ref: APP/V1505/W/24/3345053

The Willows, Moores Avenue, Fobbing, Essex SS17 9HQ

- 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 David Martin MMD Developments Ltd against the decision of Basildon Borough Council.
 - The application Ref is 23/01419/FULL.
 - The development proposed is the construction of 2 no. two bedroomed, semi-detached bungalows with private parking and amenity.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 2 no. two bedroomed, semi-detached bungalows with private parking and amenity at The Willows, Fobbing SS17 9HQ in accordance with the terms of the application, Ref 23/01419/FULL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matter

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024. The main parties were given an opportunity to comment on this matter and I have taken the comments made into account.
3. The appeal site is in proximity to the Essex Coast Habitat Sites. In particular, it is within the zone of influence of the Outer Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar. The Council has confirmed that a payment¹ has been received in respect of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) in relation to the development proposed and the above Habitats sites. The Council has confirmed that this such overcomes the second reason for refusal and I have proceeded on that basis.

Main Issues

4. The main issue is whether the appeal site is grey belt land and whether the proposal would be inappropriate development.

Reasons

5. The appeal site is within the Green Belt, whereby saved Policy BAS GB1 of the Basildon District Local Plan, September 2007 sets out that the boundaries of the Green Belt are drawn with reference to the foreseen long-term expansion of the built-up areas acceptable in the context of the stated purposes of the Green Belt.

¹ Payment Reference: WEB-06673907

The Council has not referred to any development plan policies within its reason for refusal, instead relying on the paragraphs within Chapter 13 of the Framework.

6. Paragraph 153 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt. However, unlike previous iterations, the updated Framework at paragraph 155 now states that development of homes need not be regarded as inappropriate subject to satisfying all the criteria a) to d).
7. Criterion a) is where development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. The Framework defines grey belt as previously developed land in the Green Belt and/or land that does not strongly contribute to any of purposes in paragraph 143: a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; and d) to preserve the setting and special character of historic towns.
8. However, following the update, the Council is of the view that the appeal site together with adjoining land strongly contribute to purposes a) and b). This is due to the conclusions of the Council's Green Belt report 'Basildon Green Belt Study, December 2023. This has placed the appeal site within a large land Parcel BA-SE4. This identifies its release overall would result in 'Very High' harm to purpose a) and 'High' harm on Purpose b), and I have taken account of this.
9. However, the appeal site is but one small part of the wider parcel of the land within BA-SE4. There are a number of homes and open spaces running along Moores Avenue. The Council has identified that this forms the Crooked Brook 'plotland' estate which has a traditional 'plotland' character of sporadic residential development interspersed with vacant or overgrown plots.
10. The appeal site is one such vacant plot. It is situated next to the grounds of an existing dwelling called Alba and a recently constructed substantial access road. This leads to residential development between the rear of homes on Moore Avenue and the railway line. On the other side of the access road is a property called Magnolia. There are also properties opposite the appeal site facing Moores Avenue. This generally linear arrangement of homes continues along Brook Drive, Woodlands Drive and Hertford Drive forming a distinct and constrained cluster of homes largely surrounded by open farm land. Although land to the north of the appeal site comprises some of this open farmland, the site only has a relatively small length of boundary alongside it. It is also well enclosed along this boundary by tall close boarded fencing.
11. The appeal site is visually and physically confined by the surrounding features and layout of this modest enclave of homes. Therefore the site specific characteristics and setting of this individual site really does not strongly contribute towards checking the unrestricted sprawl of a large built-up area. Nor would it have any impact on neighbouring towns merging or fail to preserve the setting and special character of a historic towns.
12. For the reasons given above on an individual basis the proposal would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. The appeal site can be considered as grey belt land falling within the definition set out in Annex 2 of the Framework. The proposal would therefore comply with criterion a) of paragraph 155.

13. Paragraph 155 also requires criterion b) to d), where relevant, to be met. The Council's officer report identifies that the Council has a 1.85 year housing land supply. As such, this demonstrates that there is currently a shortfall in the Borough's housing land supply position and a demonstrable unmet need for the type of development proposed. Thus the proposal would be in accordance with criterion b) of Framework paragraph 155.
14. The Council has not advanced any argument that the site would not be suitable for housing development, having regard to access to services and facilities. I am mindful that there are no paved footpaths or street lighting along this part of Moores Avenue. This is likely to discourage walking. The site is not in an inherently rural area. I did note bus stops along High Road which would be relatively easy to access from the appeal site thus providing access to some sustainable forms of transport. Furthermore, significant new housing development is located opposite the entrance to Moores Avenue.
15. Overall the appeal site is close to existing homes and is not in any less of a sustainable location than those. Nor have any highway safety issues been raised. On balance, therefore, the appeal site is a sustainable location for the erection of this scale of development of two homes satisfying criterion c). The appeal proposal does not comprise major development and criterion d) is not relevant.
16. Therefore in conclusion following the changes to the Framework, I am satisfied that the proposal is not inappropriate development within the Green Belt. The proposal would be in accordance with paragraphs 153 and 155 of the revised Framework 2024. It is not necessary for me to consider the effect of the proposals on the openness of the Green Belt, nor is it necessary for the appellant to demonstrate very special circumstances to justify a grant of permission.

Other Matters

17. Although the Council has not sought to refuse the proposal for its impact on the character and appearance of the area, it considered that it would be detrimental to the visual appearance of this locality by virtue of developing an undeveloped open site. Saved Policy BAS BE12 of the Local Plan states that planning permission for new residential development will be refused if it causes material harm to the character of the surrounding area.
18. The proposal essentially follows the linear arrangement of homes on Moores Avenue, and therefore it would not be out of character with the pattern of development in the area. The proposal would adequately reflect the local vernacular in terms of the overall scale, form, massing and external appearance of the homes. Sufficient space is afforded around the appeal site by virtue of the access road and land to the side of Alba, such that it would not appear unduly cramped. I am of the view that there would not be overriding harm upon the character and appearance of the area such that it would conflict with Policy BAS BE12 of the Local Plan, which seeks to ensure development does not harm the character of the surrounding area or street scene.
19. The Council raise no further concerns in respect of standard of accommodation, amenity space, refuse and recycling, the living conditions of the occupiers of neighbouring homes or highway safety. I am satisfied that subject to the suggested conditions that the development could be made acceptable in all other respects.

20. The Outer Thames Estuary and Marshes SPA and Ramsar site is classified for bird species and habitats that are rare and/or vulnerable. The Conservation of Habitat and Species Regulations 2017 (as amended) (the Regulations) imposes a duty on the competent authority to consider whether a proposed development may have a significant effect on the conservation objectives of such sites either alone, or in combination with other plans and projects within the context of an Appropriate Assessment (AA).
21. The proposed dwellings would be likely to result in additional recreational pressure locally on sensitive coastal areas and such activity could cause disturbance to birds and their habitats. The increase from the development alone would be small, but it is likely that in combination with other developments, the proposal could have a significant impact on the integrity of the Habitats sites.
22. The RAMS Supplementary Planning Document, May 2020 (RAMS SPD) sets out a strategic approach to mitigate such adverse impacts, and details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. These include a range of habitat-based measures, education, communication and monitoring. As set out in the RAMS SPD the approach is endorsed by Natural England.
23. In this case, the appropriate contribution has been secured through a direct payment to the Council. I have no clear reason to doubt that the Council, as a responsible public body, would not spend the money in the way as envisaged by the RAMS SPD, or within a specified timetable.
24. As such, the contribution may be taken into account as mitigation to effectively mitigate the recreational impacts of the proposed development on the nature conservation interest of the Habitats sites and avoid adverse effects to their integrity. I am satisfied that the mitigation measure would be used for the intended purpose. In light of the above and following an AA, I find that the proposal would not adversely affect the integrity of the Habitats sites.

Conditions

25. The council have recommended conditions, which I have considered in accordance with national guidance. The appellant has been afforded the opportunity to agree to pre-commencement conditions. I have imposed conditions relating to the commencement of development (1) and specifying the approved plans (2) for the sake of certainty.
26. Given the importance of ensuring that the finished building sits comfortably within the street scene conditions requiring details of ground and floor levels (3) external materials, those to be used in hard surfaces and boundary treatments (4, 5 and 6) are reasonable and necessary. It is necessary for condition 4 to be pre-commencement as the agreed levels will inform the finished height of the building relative to its neighbours, and to ensure that it will sit comfortably in the street scene. A condition restricting permitted development rights for the approved homes (7) is reasonable in this instance given the characteristics of the surrounding environment.
27. Conditions requiring landscape details, details of the timing, species and ecological enhancements (8, 9 and 10 and 15) are necessary and reasonable for the visual amenity of the area and bio-diversity.

28. A condition requiring sustainable transport information to be provided is necessary and reasonable due to the location of the site and to encourage sustainable transport options (14). A condition requiring an energy reduction strategy is reasonable and necessary in the interests of reducing carbon emissions (17).
29. Conditions requiring refuse (11) and parking facilities (12), suitable vehicle crossing points (13), measures seeking to incorporate secured by design principles (16), land contamination investigations and potential remediation (18, 19, 20, 21) and connection to the public foul sewer (22) are necessary and reasonable. These will ensure that the development is suitable for future occupiers and the amenity of the area. The land contamination conditions need to be pre-commencement due to the timing of these works to make the site safe to develop if contamination is found.

Conclusion

30. The updated Framework is a material consideration. I conclude that the proposal would be in accordance with the development plan and the Framework. Therefore, for the reasons set out above, the appeal is allowed.

K Williams

INSPECTOR

[Schedule of Conditions]

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawings:
 - 001 Iss. 01 a (Existing and Proposed Block and Location Plans);
 - 301 Iss. 01a (Proposed GA Ground Floor Plan);
 - 302 Iss. 01a (Proposed GA Roof Plan); and
 - 303 Iss. 01 a (Proposed – GA Elevations).
- 3) Before construction commences on site, details of existing site levels, and finished floor levels of the proposed dwellings shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development above ground level shall take place until samples of all external facing materials have been submitted to and approved in writing by the local planning authority in writing. The development shall be carried out in accordance with the approved sample details.
- 5) No development above ground level shall take place until details of the materials to be used for the parking area/turning area and any footpaths and other hard surfaced areas, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) Details of the fencing, walls and other means of enclosure to be installed on the site, shall be submitted to and approved in writing by the local planning authority prior to their erection. The development shall be carried out in accordance with the approved details.
- 7) Notwithstanding the provision of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no building, extension or other alterations permitted by Class A, B, C and E of Part 1 of Schedule 2 of the 2015 Order shall be erected, constructed or placed on any part of the plots subject of this consent without the prior approval in writing of the local planning authority.
- 8) No development above ground level shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of soft landscaping for the site, which shall include indications of all existing trees, shrubs and hedgerows on the site and details of those to be retained.
- 9) The landscaping scheme as approved in accordance with condition 8 shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with other of similar size and species unless the local planning authority gives written consent to any variation.

- 10) The landscaping scheme referred to in condition 8 shall seek to maximise the use of native plant species and be designed with the aim of improving and increasing biodiversity and demonstrating a net gain for pollinators in line with the Council's Pollinator Action Plan.
- 11) The dwellings hereby permitted shall not be occupied until refuse and recycling facilities for each of the proposed dwellings have been provided on site, details of which shall be submitted to and approved in writing by the local planning authority prior to their installation. The development shall be carried out in accordance with the approved details.
- 12) The dwellings hereby permitted shall not be occupied until the 2 car parking spaces within each of the proposed plots has been provided, as shown on the drawing numbered 001 Iss. 01a (Existing and Proposed Block and Location Plans), have been laid out. The vehicle parking shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority. Each parking space shall have minimum dimensions of 2.9 metres by 5.5 metres.
- 13) Prior to occupation of the development hereby granted, each vehicular access onto Moores Avenue shall be constructed at right angles to the existing carriageway and shall be provided with an appropriate crossing of the verge to the existing carriageway.
- 14) Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, which has been submitted to and approved in writing by the local planning authority. This shall include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) shall be provided by the Developer to each dwelling free of charge.
- 15) No development above ground level shall take place until a Biodiversity Enhancement Strategy for protected and Priority species for the site has been submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
 - a) Purpose and conservation objectives for the proposed enhancement measures;
 - b) detailed designs to achieve stated objectives;
 - c) locations of proposed enhancements measures by appropriate maps and plans;
 - d) persons responsible for implementing the enhancement measures; and
 - e) details of initial aftercare and long-term maintenance (where relevant). The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter
- 16) A) The development hereby permitted shall use reasonable endeavours to achieve a gold award of the Secure by Design Homes 2024 (March 2024) or any equivalent superseding the 2024 Guide.

B) A certified Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development, confirming that the agreed standards have been met.

C) In the event that the agreed standards at A. are not achievable then prior to completion of the development the applicant shall submit to the Local Planning Authority for approval in writing justification for this and details of the highest award of the Secured by Design for Homes (2024 Guide) or any equivalent document superseding this Guide which is achievable for the development.

D) A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development, confirming that the agreed standards at C, as relevant, have been met.

- 17) No development above ground level (excluding site clearance and demolition) shall take place until an energy strategy demonstrating a reduction in carbon dioxide emissions over Part L of the Building Regulations (2021) has been submitted to and approved in writing by the Local Planning Authority. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided, to demonstrate that the agreed standards have been met.
- 18) Land Contamination (Site Characterisation). No development shall take place until a desk-top study has been carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two copies of the desk-top study and a non-technical summary shall be submitted to and approved in writing by the Local Planning Authority without delay upon completion.
- 19) Land Contamination (Site Investigation). If identified as being required following the completion of the desk-top, a detailed site investigation (Phase II contaminated land assessment) shall be carried out prior to commencement of development to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway- Receptor principle, in order that any potential risks are adequately assessed, taking into account the sites existing status and proposed new use. Two copies of the site investigation and findings shall be forwarded to the LPA without delay, upon completion.
- 20) Land Contamination (Submission of Remediation Scheme). A written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority. No deviation shall be made from this scheme without the express written agreement of the Local Planning Authority. If during redevelopment

contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing with the Local Planning Authority.

- 21) Land Contamination (Implementation of Approved Remediation Scheme). Following completion of measures identified in the remediation scheme. One pdf copies of a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met. The closure report shall include a completed certificate, signed by the developer, confirming that the required works regarding contamination have been carried out in accordance with the approved written method statement. A sample of the certificate to be completed is available in Appendix 2 of Land Affected by Contamination: Technical Guidance for Applicants and Developers.
- 22) Prior to occupation of the dwelling hereby permitted an authorised connection to the public foul sewer shall be made prior to the first occupation of the development. The installation of the new drainage system shall comply with both Anglian Water and Building Control requirements in respect of approval and oversight.

[End of Schedule]

