



Appeal Decision

Site visit made on 2 June 2025

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

Appeal Ref: APP/M1520/W/24/3357595

460 Daws Heath Road, Hadleigh, Benfleet, Essex SS7 2UD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Bolt against the decision of Castle Point Borough Council.
 - The application Ref is 24/0233/OUT.
 - The development proposed is replace existing dwelling and outbuildings with three detached residential units comprising chalet style two storey dwellings fronting Daws Heath Road, together with ancillary car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the interests of clarity, I have taken the description of development above from the planning application form as I have not been provided with any confirmation that the change to the description provided on the Council's decision notice was agreed to by the appellant.
3. The proposal has been made in outline form with matters of layout and scale to be considered. The matters of access, appearance and landscaping are reserved and do not form part of this proposal.
4. A revised National Planning Policy Framework (the Framework) was published during the course of the appeal, which amongst other things included revisions to Section 13, Protecting Green Belt land. The parties have had the opportunity to comment on the revisions set out in the Framework through the appeal process.
5. A completed Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted with the appeal which provides obligations relating to mitigation in relation to European sites. I will return to this matter later in this decision.
6. I am not directed to any development plan policies contained in the Castle Point Borough Council Local Plan Adopted 17 November 1998 (LP) in either of the Council's reasons for refusal. I have therefore considered the proposal against the requirements of the Framework and the relevant legislation in respect of the main issues.

Main Issues

7. The main issues are:

- whether or not the proposed development would be inappropriate development in the Green Belt having regard to the Framework, including the effect upon the openness of the Green Belt;
- whether the proposed development makes adequate provision for Biodiversity Net Gain (BNG); and
- if the proposed development is inappropriate, 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 the development.

Reasons

Inappropriate development and openness

8. There is no dispute between the parties that the appeal site is located within the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings in the Green Belt is inappropriate development, other than for the specific exceptions set out in the Framework. Paragraph 154 g) of the Framework allows for the limited infilling or the partial or complete redevelopment of previously developed land, which would not cause substantial harm to the openness of the Green Belt. Paragraph 153 states that when considering any planning application, substantial weight should be given to any harm to the Green Belt, including harm to its openness.
9. The appeal site comprises a single storey dwelling, a single storey garage/workshop building and a shed along with the garden and external space associated with the dwelling. The proposal is to remove the existing buildings and hardstanding on the appeal site and provide three new dwellings. The appellant and the Council agree that the appeal site is not within a built-up area and therefore the garden land that forms part of the appeal site can be considered previously developed land, in line with the definition identified in the Framework.
10. Nevertheless, the Council contend that in order for the whole garden area to be considered previously developed it would need to contain a permanent structure or fixed surface structure that has not blended into the landscape. Having read the Framework definition, I do not find this is a requirement of identifying whether residential garden land can be considered previously developed land. In any case the appeal site does contain existing buildings that I consider to be of permanent construction. The garden land and external space is clearly related to the residential use and would represent the curtilage of the developed land.
11. Even though I accept that the Framework definition indicates that it should not be assumed that the whole curtilage should be developed, the appeal site would represent the redevelopment of previously developed land. I will therefore go onto consider the second part of the requirement under paragraph 154 g) with regard to openness.

12. The Planning Practice Guidance (PPG) advises that openness is capable of having both spatial and visual aspects and that the degree of activity likely to be generated can also form a consideration, amongst other things.
13. It is inevitable that the replacement of one dwelling with three dwellings would give rise to the loss of spatial openness, as it would increase the footprint of built development on the site. This is demonstrated by the appellant's figures which confirms that a significant increase in the footprint of built development would result, compared with the existing situation. That built development would be spread out, in some cases on areas where there is currently no development.
14. The scheme would also result in built form that is taller than currently exists on site and the overall volume of built form would be significantly more. The separation of the existing site into three plots would also increase the presence of other features such as boundary treatments and residential paraphernalia that would add to the harmful impact on the visual and spatial openness of the site. The additional activity that would result from an additional two dwellings in terms of comings and goings to and from the appeal site would also undermine the openness of the Green Belt further.
15. Whilst the appeal proposal would be significantly screened in views from the main road that runs along the western boundary, due to the significant vegetation present, it would be at least partially visible in views from Daws Heath Road to the east of the site boundary. Whilst the visual impact of the proposal would be localised, it would still harm the visual openness of the Green Belt.
16. I find, when taking the spatial and visual effects of the layout and scale of the proposed built form and the intensification of the residential use together, that there would be a significant and demonstrable loss of openness. I have not been provided with any substantive information that suggests that a particular design approach or landscaping scheme would be able to mitigate the impact on openness.
17. The fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open. Although the proposal would not conflict with the purposes of the Green Belt as set out in paragraph 143 of the Framework, the redevelopment of the site in the manner proposed would fail to keep land permanently open. For the reasons given above, I find that the proposal would result in substantial harm to the openness of the Green Belt.
18. The appellant has not suggested that any other exceptions set out in the Framework apply. I therefore find that the proposal would be inappropriate development in the Green Belt, having regard to the Framework, in particular paragraph 154 g).

Biodiversity net gain

19. Schedule 7A of the Town and Country Planning Act 1990 (as amended) introduced a statutory framework for BNG, and it applies to all planning applications for non-major development submitted on or after 2 April 2024. The application was dated 17 April 2024. As such, unless exempt, the proposed development would be subject to the mandatory BNG condition, which requires developers to deliver a BNG of at least 10%.

20. Whilst the application was submitted after 2 April 2024, the Council validated the application despite an exemption being identified in relation to BNG, which identified the reasoning as 'temporary exemption for non-major developments (small sites exemption)'. However, the appellant's planning statement submitted with the application recognised that BNG became mandatory on 2 April 2024 and identified that given landscaping is a reserved matter, the implications for existing onsite habitats and the contribution to onsite gains may be uncertain at the time of the determination of the application and therefore it was expected by the appellant that a condition would be imposed by the Council in this regard. The appellant has further recognised in their Statement of Case that the appeal proposal is not exempt from BNG requirements. Without any evidence to suggest that any other exemptions are applicable, then the proposal is subject to a requirement for 10% BNG.
21. Article 7(1A) of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended) (DMP) sets out the minimum information requirements that should accompany applications that are subject to the BNG requirement. The appellant has provided BNG baseline units and the total net change with the appeal which suggests that a minimum of 10% BNG can be achieved on site. However, all of the minimum information requirements set out under Article 7(1A) have not been provided, including but not limited to a plan showing onsite habitat existing on the date of the application. This information should have been submitted with the application as required by the DMP and not left to be dealt with by planning conditions. As such, insufficient information has been provided and I cannot be satisfied that the BNG requirement would be fulfilled.

Other considerations

22. The Framework states that inappropriate development should not be approved except in very special circumstances. These circumstances will not exist unless the development's harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
23. I am provided with information relating to three applications which were submitted for the erection of outbuildings, single storey side and rear extensions and an upward extension to the dwelling. The applications relating to the extensions were granted by the Council. The application for the outbuildings was not granted but only on the grounds that the height of the eaves was slightly higher than is allowed for under permitted development rights. The appellant contends the eaves height issue could easily be resolved, a point which is not disputed by the Council. In line with the case law¹ referenced, I have no reason to doubt that there is a possibility that the extensions and outbuildings referred to could be built. Therefore, this fallback position is relevant and capable of being a material consideration.
24. It is stated that the overall footprint of the appeal proposal would be 27% less than in the case of the fallback position with very slightly less gross internal floor area and overall volume also. The height of the existing dwelling should the upward extension be constructed would also be 1m higher than the height of the proposed dwellings.

¹ Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

25. Whilst the overall height of the upward extension would result in a dwelling that would be higher than the proposed dwellings it would relate only to one of the buildings on the site. The outbuildings would remain lower in height. As the appeal proposal relates to the provision of two additional dwellings, rather than extensions to an existing dwelling or ancillary or incidental domestic structures, intensification of the residential use of the appeal site would ensue. Inevitably the provision of two additional dwellings is likely to result in additional vehicular accesses, more boundary treatments, more residential paraphernalia and more activity in terms of movements to and from the appeal site. This would be unlikely in the case of the fallback position.
26. Therefore, given the resultant intensification of the residential use, the proposed dwellings, whilst they may result in a smaller footprint of built form compared with the fallback position, would have more visual and spatial prominence than the fallback scheme, even when taking into account the cumulative effect of both the possible extensions and outbuildings. This is due to the sub-division of the site and the presence of independent properties spaced across the site. For the same reasons, I find that the appeal proposal would be likely to result in urban sprawl to at least an equal level to that of the fallback position.
27. Consequently, I find that the appeal proposal would cause more harm to the openness of the Green Belt than the fallback position. I therefore find that the fallback position would not justify the appeal scheme.
28. In accordance with the Framework, the proposal would support the Government's objective of significantly boosting the supply of homes, being a small site which could make an important contribution toward the housing requirement of the area, providing family sized dwellings. The development would provide some minor economic benefit during the construction phase and after through occupants supporting local services and facilities. It is asserted that the proposal would be energy efficient, bringing sustainability benefits that works to the existing dwelling would not. It is also stated that ecological and environmental benefits could be secured. However, given the scale of the proposal, the extent to which these factors would be beneficial is limited.
29. It is stated that the proposal would be in keeping with the massing, scale, materiality and design of development elsewhere in the local area and that it would result in a coherent design approach. It is also asserted that the proposal would provide dwellings with accommodation that would meet the Technical housing standards – nationally described space standards (March 2015), that existing trees would be retained and that sufficient garden space would be provided. Compliance with policy or a lack of harm in these respects is a neutral consideration that weighs neither for, nor against the proposal.
30. In combination, due to the scale of the proposal, I ascribe moderate weight to the other considerations in favour of the proposal.

Other Matters

31. The Council accepts that it cannot currently demonstrate a sufficient supply of housing land. However, even if paragraph 11 of the Framework were relevant to the appeal, the application of policies in the Framework which protect the Green Belt provide a strong reason for refusing the development proposed. As such the

proposal would not benefit from the presumption in favour of sustainable development set out in the Framework.

32. The appeal site is located within the Zone of Influence of a number of European sites which are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). In this regard, a UU is submitted which would secure a mitigation payment in relation to the requirements set out in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) May 2020. However, Regulation 63(1) of the Regulations indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is being dismissed on other grounds it is not necessary for me to consider this matter further.

Green Belt Balance and Conclusion

33. As established above, the proposal would be inappropriate development in the Green Belt. In this respect, the proposed development would not accord with the Framework. I attach substantial weight to this harm, as indicated by the Framework. I also have insufficient information before me in terms of the requirements set out under Article 7(1A) of the DMP in relation to BNG.
34. I have assessed the other considerations advanced by the appellant. However, these circumstances either individually, or cumulatively, would not clearly outweigh the totality of harm by reason of inappropriateness, and other harm that I have identified in this case. Consequently, the very special circumstances necessary to justify the development do not exist.
35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.
36. There is no dispute between the parties that the proposal would be in accordance with the relevant saved policies of the LP which relate to design, protection of wildlife, and parking provision. However, the Framework is a material consideration, and in the absence of any relevant policies in relation to the construction of new dwellings in the Green Belt in the LP, I have had regard to the requirements of the Framework in this respect.
37. The proposal would accord with the development plan, but the application of the Framework is a material consideration that indicates a decision other than in accordance with the development plan. The appeal is therefore dismissed.

G Dring
INSPECTOR