
Appeal Decision

Site visit made on 21 July 2020

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2020

Appeal Ref: APP/M1520/W/19/3240145

Land to the rear of 301 Rayleigh Road, Thundersley, Benfleet SS7 3XA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Millen of Millen Homes Ltd against the decision of Castle Point Borough Council.
 - The application Ref 19/0545/OUT, dated 24 July 2019, was refused by notice dated 25 September 2019.
 - The development proposed is 19 dwellings and new estate road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is made in outline with all matters reserved other than for access and layout.
3. A pre-submission draft of the emerging Local Plan published in December 2019 identified the site as part of a wider strategic housing allocation. The draft Plan is still at an early stage in its development and there is no certainty that the allocation will be included, either as currently proposed or in some modified form. For that reason, I am unable to place any material weight on the emerging plan.

Main Issues

4. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt
 - the effect on openness of the Green Belt
 - whether the timing of the proposal is premature
 - the effect on badgers as a protected species
 - the effect on protected trees
 - the effect on the living conditions of future occupants in respect of garden space
 - the effect on the living conditions of neighbouring occupants in respect of noise and disturbance

- if the development is inappropriate, whether the 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 necessary to justify the development.

Reasons

Inappropriate development

5. The site lies within the Green Belt. In the Green Belt the construction of new buildings is regarded as inappropriate development other than for certain exceptions listed in paragraph 145 of the National Planning Policy Framework ('the Framework'). The proposed residential development does not fall within any of those exceptions.
6. The appellant has drawn attention to one of the listed exceptions¹, relating to the provision of limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites). Policy H7 of the Castle Point Borough Council Local Plan ('the Local Plan') supports the provision of affordable housing in appropriate circumstances but does not specifically support affordable housing provision as an exception to other policies in the Plan, including the Green Belt. I consider that the exception listed in the Framework is therefore inapplicable in this case.
7. I do not consider the urban area of Thundersley to be a rural village for the purpose of considering rural exception site policy as set out in paragraphs 77-78 of the Framework. It is not identified as a rural village in the Local Plan, and its character is of a predominantly residential suburb rather than as a self-contained rural settlement.
8. I conclude that the development falls to be considered as inappropriate development in the Green Belt.

Openness

9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. In this case a development of 19 dwellings together with an access road and associated garaging and parking would significantly interrupt the openness of the site, which is undeveloped. The development would be seen from neighbouring dwellings, gardens and grazing land which surround the site. It would have both a spatial and visual impact on the openness of the site.
10. I conclude that the harm to the openness of the Green Belt would therefore be considerable.

Prematurity

11. The Council has argued that the proposal is premature in advance of a new Local Plan being adopted. Paragraph 49 of the Framework advises that arguments on the grounds of prematurity are unlikely to justify a refusal of planning permission other than in limited circumstances where both the development is so substantial that to grant permission would undermine the plan-making process, and the emerging plan is at an advanced stage but not yet formally adopted.

¹ National Planning Policy Framework paragraph 145 (f).

12. The emerging Local Plan is still at an early stage in its development, consultation on a pre-submission draft having finished in February 2020 with responses still being analysed. Paragraph 50 of the Framework advises that refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination. The emerging Local Plan has not reached that stage.
13. I conclude that dismissal of the appeal on the grounds of prematurity is not justified in this case, because the emerging Local Plan is not at an advanced stage, contrary to the advice in the Framework.

Badgers

14. The evidence before me on whether there are badgers present on or using the site is conflicted. On the one hand, a Preliminary Ecological Appraisal² found no active or inactive badger setts on the site, with no evidence of badger activity identified. On the other hand, the Essex Badger Protection Group considers that the evidence points overwhelmingly to there being badger setts on the site due to sightings by adjoining neighbours who see badgers entering and leaving the site on a daily basis.
15. The Preliminary Ecological Appraisal accepts that given the density of the vegetation in some areas, it was not possible to identify field signs nor identify whether active setts were present on the site. The Appraisal therefore acknowledges that it is possible that badgers may be present in the area, and advises a precautionary approach is appropriate.
16. In my view, having regard to the difficulties experienced in carrying out a comprehensive survey of the site because of its overgrown nature, and the sightings of badgers reported by neighbours, I cannot be sure that one or more badger setts are not present on the site or that it does not form an important part of their foraging area. If that is the case, development on the site would cause harm to a protected species. It is possible that if badgers were found to be present on the site, retention or removal of this protected species could be addressed through a license from Natural England but that has not been sought or obtained prior to this appeal.
17. In the absence of a more definitive investigation as to whether badgers are present on the appeal site, I conclude that the development is likely to have an adverse impact on badgers, which are a species afforded protection under the Protection of Badgers Act 1992, and would conflict with Policy EC13 of the Local Plan, which opposes development that would be prejudicial to the interests of wildlife.

Protected trees

18. The site contains a number of mature trees protected by a tree preservation order including a line of trees along the southern boundary, and three trees on the northern boundary. The appeal scheme has been designed to retain all the protected trees, subject to 'no dig' requirements in certain areas and suitable protection during construction.
19. The Council is concerned that there would be pressure from future occupants to remove or severely reduce the protected trees along the southern boundary of

² Preliminary Ecological Appraisal, T4 Ecology Ltd, April 2019

the site. However, the nearest dwellings would be sited some 5-7m from the crowns; and importantly the trees would be outside the private garden areas of the dwellings, on land managed by an appointed management committee. I consider this degree of separation and form of management would reduce the likelihood of the trees being removed in the future.

20. Other non-protected trees and shrubs would be removed but these are of lesser public amenity value and their loss would not cause harm to the character or appearance of the area.
21. I conclude that subject to suitable protection and management measures as proposed in the Arboricultural Planning Report³, the development would not cause harm to the protected trees on the site, and therefore complies with Policy EC22 of the Local Plan, which seeks to retain existing trees, hedgerows and woods in new developments wherever possible.

Living conditions of future occupants

22. Policy H17 of the Local Plan and the Council's Residential Design Guide set out minimum requirements for private amenity space for new development. For individual dwellings, the requirements are based on the number of habitable rooms, with a minimum of 50m² of amenity space. For the purposes of the Design Guide amenity space is defined as garden area excluding parking and servicing areas.
23. Having regard to the layout plan and calculations included in the Council's report at least three of the garden areas for plots P6, P9 and P12 (the mid terraced units) fall below the minimum amenity standards as set out in the Residential Design Guide. The garden area for plot P7 is also below the minimum standard but it appears this is as the result of an error on the layout plan and could be easily corrected.
24. On those plots which do not have sufficient garden area the variance is not great (5-10m²) so it is possible that the layout could be amended to achieve these minimum amenity space requirements for all dwellings. However, I am required to consider the layout submitted as part of the appeal and based on that layout the scheme does not meet the required amenity space standards.
25. I conclude that due to the lack of garden space on plots P6, P9 and P12, the proposal would harm the living conditions of their future occupants thereby conflicting with Policy H17 of the Local Plan and the Residential Design Guide, which amongst other objectives require that amenity space should cater for all the outdoor needs of all occupiers.

Living conditions of neighbouring occupants

26. The new access would create a road in front of a pair of bungalows and the flank of another bungalow in Kingshawes. While this would result in traffic passing these properties where it does not at present, the relationship between the access road and these properties would not be unusual and is no different to that which may be found elsewhere on the same estate in terms of separation and layout. I consider the living conditions of their occupants would not be harmed by the proposed development.

³ Arboricultural Planning Report, Tracy Clarke Tree Consultancy, July 2019

27. The internal access road would pass along the flank of 20 Kingshawes and the rear gardens of some of the properties in Greenleas. In this case the amount of traffic using that road would be limited and there is a strip of land between the road and the rear boundaries of the neighbouring properties that could be landscaped to provide additional screening.
28. I conclude that the proposed development would not cause a level of noise or disturbance such as to materially harm the living conditions of neighbouring occupants, and would therefore comply with Policies EC2 and EC3 of the Local Plan, which seek a high standard of design and avoid development that would have a significant adverse effect on neighbouring residential amenity.

Other Considerations

Lack of housing supply

29. The appellant reports that the Council currently only has a 1.1 year supply of housing, which is severely below the supply of housing land that the Council is expected to be able to demonstrate by national planning policy. Furthermore, previous attempts to increase housing supply through the Local Plan process have failed with draft plans having been withdrawn prior to adoption. The current iteration of the draft Local Plan is still at an early stage in its development.
30. The proposed development would provide an additional 19 residential units, which would help alleviate, albeit in a small way, the lack of housing supply in the Borough. This is a benefit on which I place some limited weight.

Affordable housing

31. The development would in principle also help meet a specific need for affordable housing in the Borough, the appellant having indicated that all 19 units would be delivered as affordable housing in partnership with a housing association. However, there is no legal agreement or unilateral undertaking submitted with the appeal that would secure this benefit as part of the current proposal, and this is not a matter that could be satisfactorily addressed through the imposition of a condition. For that reason, I only give limited weight to this particular benefit of the scheme.

Habitats Regulations

32. The appeal site lies within a zone of influence of European sites of ecological importance as defined in the emerging Essex Coast Recreation Disturbance Avoidance and Mitigation Strategy. This strategy is designed to mitigate potential harm to sites along the Essex coast designated under the Habitats Regulations. The Council considers that the development is likely to have a significant effect on these designated sites and as such requires an appropriate assessment under the Habitats Regulations.
33. Although still in draft, the Mitigation Strategy provides such an appropriate assessment, agreed with Natural England, that for proposals of less than 100 dwellings that are not within or directly adjacent to a designated site, mitigation of the impact of the proposal can be secured through the provision of a financial contribution.

34. Were I minded to allow the appeal, this is a matter that would have required further investigation. However, given my decision there is no need to consider the implications upon the European sites any further because the scheme is unacceptable for other reasons.

Planning Balance

35. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
36. The harm caused by the inappropriate nature of the development in the Green Belt attracts substantial weight. In addition, considerable harm would be caused to the openness of the Green Belt, and more limited harm would be caused to protected species and the living conditions of some future residents because of lack of garden space. These add weight to the harm already identified.
37. Balanced against that harm are the limited benefit of providing 19 additional residential dwellings to help meet the Borough's housing need, and the intention that they would all be affordable, for which there is also a need in the area.
38. I consider that the limited benefits offered by these other considerations do not clearly outweigh the substantial harm to the Green Belt and other issues identified above. Consequently, very special circumstances to justify the inappropriate nature of the development do not exist.
39. Because of the lack of a five year housing land supply, I consider the policies relating to housing provision in the Local Plan are out of date within the context of paragraph 11 of the Framework. In such circumstances, the Framework directs permission to be granted (the 'tilted balance') unless, amongst other criteria, policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development proposed.
40. Green Belt land is recognised as one such area of particular importance⁴. As I have concluded that the development is inappropriate within the Green Belt and that there are no very special circumstances to justify making an exception in this case, Green Belt policy as set out in paragraphs 133-147 of the Framework provides a clear reason for refusing the development. It follows that the 'tilted balance' in paragraph 11 of the Framework does not apply in this case.
41. The appeal must therefore fail.

Conclusion

42. I conclude that the appeal is dismissed.

Guy Davies

INSPECTOR

⁴ National Planning Policy Framework, footnote 6.