



Appeal Decision

Inquiry held on 15-17 May 2018

Site visit made on 17 May 2018

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 June 2018

Appeal Ref: APP/M1595/W/17/3188665

Land at Little Thurrock Marshes, off Thurrock Park Way, Tilbury and off Churchill Road, Grays, Essex

- 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 Nordor Holdings Ltd against the decision of Thurrock Council.
 - The application Ref 15/01354/OUT, dated 12 November 2015, was refused by notice dated 26 June 2017.
 - The development proposed is the development of 13.11 ha to provide up to 280 residential units, a 250 m² health centre (Use Class D1) and 1,810 m² of commercial floorspace (Use Classes B2/ B8) with associated landscape, flood improvement and access works.
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Decision

1. For the reasons given below, the appeal is dismissed.

Preliminary matters

2. The application was made in outline form with all matters reserved, save for access and layout. As layout was not a reserved matter it was agreed at the inquiry that it was reasonable to assume that the number of dwellings would be 280 and not a lesser number. Prior to the council's decision the description was changed to replace the health centre with a community facility of the same size. This was because the consultation response from NHS England indicated that a health facility of this size and in this location was not required. The application site was also extended to include an area of privately owned land between the site boundary and the adopted road at Thurrock Park Way.
3. The appellant requested a minor amendment to the layout on the western part of the appeal site. This involved the provision of a landscape buffer adjacent to Jubilee Gardens and the consequent movement of 15 of the units further away from the shared boundary. The council had no objection to this minor change and I am satisfied that no third party interests would be prejudiced. In the circumstances my decision will be based on the amended drawings detailed as Plan B. The relevant Masterplan is drawing number: 131 Revision I.
4. The appellant has submitted two Planning Obligations by Unilateral Undertaking (UU). The second one relates to the management and maintenance of the communal areas and the need for it arose through discussion at the inquiry. I allowed additional time for the submission of this document after the close of the inquiry and also agreed to accept comments on it from the main parties.

The fully executed legal documents along with the main parties' further comments have been taken into account in my decision.

Main Issue

5. There is no dispute that apart from a small portion of land on the western side, the appeal site is located in the Metropolitan Green Belt (GB). It was agreed that the proposals would be inappropriate development and therefore, by definition, harmful to the GB. The main issue is whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations.

Inspector's Reasons

6. The *Core Strategy and Policies for Management and Development (CS)* has been reviewed for consistency with the *National Planning Policy Framework (the Framework)*. Following an examination this was adopted by the council in 2015. Policy CSSP4 seeks to achieve a sustainable GB by maintaining its boundaries and permanence apart from at the Broad Locations identified for sustainable development. The detailed boundaries of these areas were to have been identified in a further development plan document but this has not been progressed. Nevertheless, the appeal site does not fall within any of the Broad Locations shown on the Key Diagram. Policy PMD6 aims to maintain, protect and enhance the open character of the GB. It sets out a number of development types that would be acceptable but these do not include new housing or employment as is being proposed here. The appeal scheme would therefore be contrary to policies CSSP4 and PMD6 in the CS.
7. The Framework indicates that substantial weight should be given to any harm to the GB. This includes the harm arising from inappropriateness and also any harm to the openness and purposes of including land in the GB.

The effect on openness

8. The Framework makes clear that openness is an essential characteristic of the GB. At present the land comprises open grass, scrub and marshland. It does not contain built development, although I did note a small horse shelter on the western side. When considering this matter it is important to remember that the GB is primarily a spatial concept and not a landscape designation. However, the Courts have determined that openness also has a visual dimension. In this case it is relevant to consider the visual impact on the wider GB in the assessment of the effect on openness.
9. The appeal site is an irregular shaped area of land that essentially wraps around the southern and eastern side of a residential development on the edge of Grays known as Thurrock Park. It adjoins an employment area on its southern side whilst to the east is the Dock Approach Road. This is a dual carriageway that serves Tilbury Docks and is elevated above the surrounding marshlands, including the appeal site and Tilbury Marshes to the east.
10. At this point the main extent of the GB lies to the east of the Dock Approach Road. With the construction of Thurrock Park the land to the west, primarily comprising the appeal site until it opens out north of the Dock Road, is relatively narrow. Nevertheless, the GB around Grays and Tilbury is not remote countryside unaffected by urban influences. There are two very large warehouses that have recently been constructed on the southern edge of

Tilbury Marshes. The urban edge is also very clear with the cranes and dock related development being very prominent features in the overall vista.

11. The appeal development with its 280 dwellings, employment units and community building would result in a considerable diminution to the openness of this GB site itself. There would be some undeveloped features, including green spaces, gardens and waterbodies but to my mind the overall impression would be that the current open site would largely be replaced by urbanisation. Due to its present low lying nature there is little visual connection with the wider GB when viewed from within the western part of the site. However, from within the eastern section the scarp slope to the north of Tilbury Marshes, which is also within the GB, becomes visually apparent. From the higher vantage point of the Dock Approach Road the observer is much more aware of the visual connectivity between the appeal site and the GB land to the east. Although there is a barrier down the centre of the dual carriageway, this is a mesh fence and does not prevent views through. The appeal site therefore comprises open green land that has some visual connection to the wider area of GB.
12. In any event the development itself would fundamentally change the visual prominence of the site. This is because the buildings would be atop a raised platform of around 2.03 AOD in order to address flood risk. The cross-section that was provided by the appellant through the eastern part of the site clearly shows that the finished land level would be higher than that of the Dock Approach Road. Furthermore, an acoustic fence between the new residential properties and the Trunk road would be constructed in order to address the noise arising from the large volume of heavy dock-related traffic. In my opinion this would need to be a substantial feature in its own right in order to be effective in mitigating noise to the new houses on the eastern part of the site.
13. The appellant considered that the layout would maintain openness, for example through the gap proposed at the southern end of the site between the residential and employment areas. Whilst this may provide an attractive landscaped feature, the layout does not indicate planned open vistas across the site from which this undeveloped area would be appreciated. Indeed at this point to the east the large Travis Perkins and Amazon warehouses act as something of a visual barrier. The overall housing layout shows closely grouped houses and six blocks of flats. Within this context the waterbodies and open spaces would have little meaningful function in terms of retaining openness in GB terms. For all of these reasons I consider that there would be very significant harm to the openness of the GB.

The effect on the purposes of the GB

Checking the unrestricted sprawl of large built-up areas

14. There is no dispute that Grays comprises a "large built-up area" and the first purpose of the GB is to check unrestricted sprawl. It seems to me that a development of 280 houses would not be an insignificant extension to the town. Indeed Thurrock Park itself is something of an outlier to the main built-up area, which lies to the north of the Chadwell New Cross Sewer. This housing development was permitted on GB land through a complex series of permissions that also included dock-related uses. It was eventually built out in the 1980's and comprises about 250 dwellings.

15. The residential element of the present proposal would essentially wrap around this existing estate and share the same road access that provides the sole link across the Chadwell New Cross Sewer. It could reasonably be said that Thurrock Park has resulted in a degree of sprawl itself. However, the addition of a similar sized housing development into the open land to its south and east would exacerbate this considerably.
16. It is appreciated that the appeal site has some strong physical boundaries, including existing development and the Dock Approach Road. If the adjacent allocated commercial site is also developed there will be a built up edge here too. However, that does not mean that it has no function in terms of checking urban sprawl. This is not an insubstantial sized area of land and the proposal would not be small scale in nature. I have already come to the conclusion that once development takes place there would be some visual connection to the GB beyond the Dock Approach Road. In the circumstances the appeal scheme would lead to a degree of urban sprawl outward of Grays.

Preventing neighbouring towns merging into one another

17. The neighbouring towns in question are Grays and Tilbury. It seems generally agreed that the Thurrock Park Way commercial area, including the ASDA superstore, is part of Tilbury and that Thurrock Park is part of Grays. Whether or not the appeal site has remained undeveloped as a result of historical happenstance, it nevertheless remains as an open area of GB that lies between the two.
18. I acknowledge that the development of Tilbury docks alongside the river has already blurred the distinction between the two settlements as separate entities. The construction of the Amazon and Travis Perkins warehouses has further added to the sense of proximity between them. However, assuming the allocated commercial land is eventually built out the process of coalescence would effectively be completed by the development of the appeal site. All that would be left between the two settlements would be an inconsequential remnant of GB land to the north of the ASDA car park and the southern corridor and roundabout of the Dock Approach Road. In the circumstances the appeal proposals would contribute to the coalescence of Tilbury and Grays.

Assisting safeguarding the countryside from encroachment

19. There is no dispute that the appeal site is an area of countryside outside any settlement limit. Insofar as it is influenced visually by built development of various types it is typical of its urban fringe location. It does not have any particular landscape quality but it is not particularly despoiled either as is often the case with land close to an urban area. Road traffic noise is clearly evident, especially that associated with the vehicular activity on the Dock Approach Road. There is not the same tranquillity as I would expect in the more remote parts of Tilbury Marshes, for example. Nevertheless, the site clearly has value as countryside as is indicated in the many representations from local people.
20. The harmful effect of encroachment would also affect parts of the GB to the east of the site due to the visibility of the completed development for the reasons that I have given above.

Conclusions

21. There is no dispute that the purposes relating to historic towns and urban regeneration would not be offended. I note that the appellant does not contend that there would be no harm to the three aforementioned purposes but that this would be of limited importance. For the reasons I have given I consider that the extent of harm has been underestimated.

Any other harm

22. The appeal site is within Zone 3a and has a high risk of tidal and fluvial flooding. Along with Grays and Tilbury it benefits from existing flood defences. The proposals would involve general raising of ground levels above about 2.03m AOD along with attenuation water storage areas provided by deepening and widening existing drainage ditches and providing new waterbodies. The Environment Agency is satisfied that the proposed works would protect new residents and ensure that existing residents would not be exposed to increased flood risk. In addition a flood warning and evacuation plan is proposed by virtue of a planning condition. The council's evidence is that the sequential and exception tests would be passed in this case and I have no reason to take a different view.
23. There was a great deal of local concern about problems of land stability and I saw examples of this on Thurrock Park during my site visit. However, the proposed development would be built on a raised platform and bearing this in mind there is no evidence that a satisfactory means of construction could not be achieved. It is appreciated that the extensive groundworks and subsequent building operations may result in a considerable amount of noise and disruption to those living nearby. It is proposed that all construction traffic, including that relating to land remodelling, would be from Thurrock Park Way to the south. In addition planning conditions could ensure that inconvenience and disturbance during the construction process would be alleviated as far as possible.
24. Access to the proposed employment area would be from Thurrock Park Way to the south. This would also provide an emergency access point for the housing area. Although there is a small strip of land between the edge of the site and the public highway, there is an easement that allows vehicular access. There is no evidence that this right of passage would not include access for the purposes that are necessary to implement the planning permission.
25. Residential access would be from Churchill Road. Residents on this estate were concerned about the impact of the additional traffic, including at the roundabout junction with the Dock Road, especially at peak times. Whilst I can appreciate that traffic flows would increase there is no evidence that this would lead to dangerous conditions either along Churchill Road or at the roundabout. I appreciate that the Dock Road can become congested especially at peak periods and when there are problems on the A13. However, this is not unusual in an urban area and the Transport Assessment indicates that the proportional increase in traffic flows would be relatively small.
26. I understand there have been some accidents and "near misses" along Churchill Road but the recorded history does not show this residential street to be of particular risk in this respect. The council as Highway Authority has not objected to the proposals on the grounds of highway safety or junction

capacity. Highways England was also consulted but concluded there would be no harm to the strategic highway network. In the circumstances I do not consider that there would be unacceptable harm in respect of this matter.

Benefits of the scheme

Provision of housing

27. The evidence indicates that the council cannot demonstrate a 5 year supply of deliverable housing sites against the most up-to-date assessment of housing need. Its past record of delivery is very poor and, even though this may now be improving, it was agreed that there is only a supply of some 2.5-2.7 years. This is clearly a serious shortfall when considered against the Framework's objective of boosting significantly the supply of housing. Taking account of paragraph 49 the CS policies for the supply of housing, which include policy C SSP4, are not up-to-date.
28. The Planning Practice Guidance indicates that unmet housing need on its own would be unlikely to outweigh the harm to the GB. Nevertheless, the weight to be provided to this benefit is a matter of planning judgement. Thurrock is a local authority tightly constrained by the GB and the evidence suggests that its housing requirement will not be able to be met solely on brownfield sites. The council is currently undertaking a GB assessment as part of the evidence base to its new Local Plan. However, this is still at an early stage and therefore cannot be relied on to address housing needs at the present time. The Framework makes clear that the supply of homes to those that need them is a matter of great importance. Furthermore, the appellant agreed to a shorter implementation period so that the site could reasonably be expected to contribute to short term housing supply.
29. The evidence also indicates that there is a serious shortfall of affordable housing against identified needs and that this is getting worse year-on-year. The proposal would include 35% affordable housing, which accords with the provisions of policy CSTP2 in the CS. I have some concerns about the viability work that has been undertaken. The main parties now agree that the proposed provision would be viable. However, this appears to be based on an incorrect input of Section 106 costs and also an assumption that an affordable rented product would be used whereas the relevant covenant in the Unilateral Undertaking makes it clear that 70% of the affordable housing would be social rented housing. I do not consider that the viability work is particularly convincing as I made clear at the inquiry. However, the relevant UU includes provisions for the delivery of the affordable housing. The covenants would bind the landowners or successors in title for at least 5 years, which would be beyond the lifetime of the planning permission in this case.
30. Bearing all of the above points in mind, the overall provision of market and affordable housing is a benefit of very significant weight.

Connectivity improvements

31. The appeal proposals would include improvements to connectivity that would provide a benefit to existing as well as new residents. At present the site acts as a barrier to movement south of Thurrock Park and the appeal scheme would address this by providing through routes for cyclists and pedestrians. These would include a new link on the western side of the site leading to Manor Road

- and the Thamesmead infant and junior schools. In addition to the benefit to new residents, this would provide a more attractive and shorter walking or cycling route for those living on Thurrock Park. It would have the potential to encourage less car use for these school trips. This would also provide a slightly shorter route to Grays station and the shopping centre, although the distance saving would be marginal and would still involve a trip of over 2km. The journey would be along more secondary streets but would not avoid the busy Dock Road altogether.
32. Provision of this link would involve crossing third party land between the site boundary and the public highway at Manor Road. This land is the subject of a planning application for development and would rely on the appeal site to provide a buffer zone along the watercourse as well as access over the bridge and through the appeal site. There are clearly reciprocal benefits but although there is an agreement between the appellant and the adjoining landowner this has not been formalised through any binding legal document. The probability that this link would be provided may be high but not certain.
33. A pedestrian and cycle link would also be provided from the north-eastern corner of the site and this would join directly to the public highway and the cycle and pedestrian path along the Dock Approach Road. This would formalise a link that is clearly already well-used, albeit that it crosses the appellant's land to the south of the Chadwell New Cross Sewer. Both of these links would involve a new bridge over the drainage channel and a planning condition would require this to be completed before 100 dwellings have been occupied. I note the council's reservations about delivery but I am satisfied that the suggested wording would be suitably robust. A contribution is also included in one of the UUs to cover the cost of providing the links between the edge of the appeal site and Manor Road and the Dock Approach Road.
34. There would also be a link to the south so that existing residents would be able to walk or cycle through the site and access the ASDA superstore, Tilbury town centre and its station via Thurrock Park Way. This would be a much shorter and more pleasant route than the existing alternative via the Dock Road and Dock Approach Road. Notwithstanding my slight concern about the delivery of the Manor Road link, I consider that these linkages would provide important accessibility advantages that should be given significant weight.
35. The council is intending to build an off-road cycleway between Tilbury and Grays as part of the national cycle network. Parts of this route have already been built and parts are under construction, including a shared cycle and footway along Thurrock Park Way. The northern section, which would link into Manor Road, requires construction across a narrow strip of the appeal site and a new bridge across the drainage ditch. There is a covenant in one of the UUs to allow the council access to undertake this work and an agreement that the route will be freely dedicated thereafter. However, there would be alternatives should the appeal proposals not go ahead. There is no evidence that an agreement with the landowner could not be negotiated and as a last resort the council has powers of compulsory acquisition. In the circumstances I give this benefit moderate weight.

Employment

36. The Thurrock Employment Land Availability Assessment (December 2017) indicates that there is an over-supply of larger sites in terms of future

employment demand. The appeal site would provide a number of smaller units on the southern side of the site adjacent to the existing employment area. In the past planning permission has been granted for employment development of the southern part of the appeal site, most recently in 2012. However, such use has never materialised and no permission remains extant. Furthermore, there is an allocated, but undeveloped, employment site adjacent. I do not consider that the evidence of need for the units proposed here is particularly strong and I therefore afford this factor limited weight.

Other material factors in favour of the development

37. To my mind the accessibility of the appeal site is similar to many sites adjoining an urban area. The evidence indicates that there are relatively good bus services with bus stops in the Dock Road and Thurrock Park Way. It is also possible to travel on foot or cycle to the railway stations at Grays and Tilbury as well as to some employment destinations, schools, shops and other facilities. These are relevant factors but are nonetheless what one would expect when considering the acceptability of a site for a development of this nature. It is the proposed new links that would provide the positive benefit by improving accessibility both for the existing community and new residents. These have already been considered above as a benefit of the scheme.
38. The proposal would involve the construction of a community building. The appellant contends it is likely to function as a private day nursery. However, there is no evidence that there is any existing local need for such a facility. It is further noted that a financial contribution would be provided in one of the UUs for additional nursery places to meet the needs of the children on the new development itself. The appellant argued that the new housing development would be an extension to Thurrock Park and would provide a unique opportunity to provide a socially inclusive development. It has already been acknowledged that the connectivity improvements would offer a wider benefit but there is little evidence of any further social advantage to the established population.
39. The site does have a complex planning history and there have been planning permissions for various developments, including housing and employment uses. These were granted notwithstanding the GB status of the site. The appellant contends that they demonstrate that the council considered development of the site to be both acceptable and sustainable. All of these previous permissions have expired and most were historic. In any event, when considering GB development the relevant factors tend to be case-specific. The most recent permission was granted in 2012. It was only for employment uses and included a large swathe of open space between the proposed development and Thurrock Park. Furthermore, that permission was granted by the Thurrock Thames Gateway Development Corporation and economic regeneration was an important justification.

Conclusions and planning balance

40. The Framework makes clear that harm to the GB should be afforded substantial weight. In this case harm would arise not only because of inappropriateness and the effect on openness but also because it would conflict with three of the five purposes.

41. In terms of benefits, the provision of market and affordable housing should be given very significant weight. However, the Government has made clear that this in itself would be insufficient to outweigh harm to the GB. Improvement to connectivity would be a further benefit to which I have afforded significant weight. The provisions in one of the UUs to allow the council's cycleway scheme to cross the appeal site would also be an advantage to which I have afforded moderate weight. The employment use would result in some benefit but of limited weight in my assessment. There are other material factors that can also be included in the planning balance. In addition to those mentioned above, there would also be the economic advantages that would flow from the introduction of any new population, including additional spending in the local economy.
42. I have considered all of the benefits and material factors that would arise as a consequence of the proposed development. However, I do not consider that these either individually or cumulatively would be sufficient to clearly outweigh the substantial harm that would arise to the GB. Very special circumstances would not therefore exist in this case. As I have already indicated the appeal proposals would be contrary to the development plan. Although relevant policies for the supply of housing are out-of-date there are specific policies in the Framework relating to the GB that indicate development should be restricted. For the reasons given above the proposals would not accord with these policies and therefore the presumption in favour of sustainable development would not apply.
43. I have taken all other matters raised into account but I have found nothing to alter my conclusion that the appeal should not succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Morgan	Of Counsel, instructed by Ms B Edwards, Interim Deputy Head of Law (Regeneration), Thurrock Council
<i>He called:</i>	
Mr N Howard BSc(Hons) MRTPI	Team Leader with the Development Management Service of Brentwood Borough Council (jointly managed by Thurrock Council)
*Mr M Gallagher BA (Hons) DipTP CertUD MRTPI	Principal Planning Officer with Thurrock Council
* Mr J Howes CLIT MCIHT	Senior Engineer with the Development Control section of the Transportation Team at Thurrock Council
*Ms B Edwards LLB (Hons)	Employed Barrister and Interim Deputy Head of Law (Regeneration) with Thurrock Council

FOR THE APPELLANT:

Mr Paul Shadarevian	Of Queen's Counsel, instructed by Ms N Gooch, Irwin Mitchell LLP
<i>He called:</i>	
Mr A Rees BEng(Hons) CMILT MCIHT	Principal Transport Planner at Cambria Consulting Ltd
Ms V Ross BSc(Hons) PGBLA MA CMLI	Director of Arc Landscape Design and Planning Ltd
Mr B Rogers BSc DipTP MAUD MRTPI	Managing Director of Grade Planning
*Ms N Gooch	Senior Associate Planning Solicitor with Irwin Mitchell LLP

*Took part in the planning conditions and planning obligations sessions

INTERESTED PERSONS:

Ms B Okunade	Councillor of the Tilbury Riverside and Thurrock Park wards
Mr T Coughlin	Chair of the Thurrock Park Residents' Association
Mr V Offord	Chair of the Little Thurrock Community Forum
Mrs C Pitney	Local resident
Mr K Harrington	Local resident
Mr A Dickey	Local resident
Mr I Thompson	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Secretary of State's decision and Inspector's Report relating to land at Tilbury North, Tilbury (11 December 1980), submitted by Mr Morgan.
- 2 Extract from Thurrock Employment Land Availability Assessment (December 2017), submitted by Mr Morgan.
- 3 Email between the Council and Ms Gooch concerning a Freedom of Information Act request relating to the draft Thurrock Green Belt Study (19 April 2018), submitted by Mr Shadarevian.
- 4 Plans of the planning history of the appeal site, submitted by Mr Shadarevian.
- 5 Coloured copy of Mr Howard's appendix 8, submitted by Mr Morgan.
- 6 Final consultation response from Highways England and consultation responses from the Environment Agency, submitted by Mr Morgan.
- 7 Planning Committee Minutes for the meeting of 22 June 2017, including the planning application for the appeal proposals, submitted by Mr Morgan.
- 8 Extract from the Terms of Reference of the Planning Committee, submitted by Mr Morgan.
- 9 Newspaper extracts and photographs submitted by Mrs Pitney
- 10 Statement read to the inquiry by Mr Thompson
- 11 Statement read to the inquiry by Mr Dickey
- 12 Note from Irwin Mitchell LLP concerning the extent and scope of the reservation of a right of way to Thurrock Park Way, submitted by Mr Shadarevian.
- 13 Plan showing the area of land covered by the above Easement, submitted by Mr Shadarevian.
- 14 Further background information on viability, including a report on behalf of Thurrock Council, submitted by Mr Shadarevian.
- 15 Letter from BNP Paribas concerning viability (17 May 2018), submitted by Mr Shadarevian.
- 16 CIL compliance statement, submitted by Mr Morgan
- 17 Various new and amended conditions suggested by the main parties.
- 18 Plan showing bridge links and southern access referred to in proposed conditions
- 19 Signed statement of common ground
- 20 Email from Pimlico Property Investments, owners of land to the west, concerning linkages to Manor Road (16 May 2018), submitted by Mr Shadarevian.
- 21 Plans showing adopted highways in the vicinity of the appeal site, submitted by Mr Morgan.
- 22 Register of Title and associated plans relating to the appeal site, submitted by Mr Shadarevian.
- 23 Certified copy of the executed Planning Obligation by Unilateral Undertaking, dated 17 May 2018, submitted following the close of the inquiry and concerning affordable housing, financial contributions and provision for the Council's footway and cycleway link where it crosses the southern end of the appeal site.

- 24 Correspondence from the main parties following the close of the inquiry and a certified copy of the executed Planning Obligation by Unilateral Undertaking, dated 29 May 2018 concerning the management of the communal areas.

PLANS

- A Plans on which the council made its decision
- B Amended plans submitted at appeal stage
- C Plans showing site levels (taken from the Flood Risk Assessment)
- D Sectional drawings showing existing and proposed levels (submitted at the Inspector's request)

Richborough Estates