



Appeal Decision

Hearing held on 16 December 2014

Site visit made on 16 December 2014

by K R Saward Solicitor

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

Decision date: 28 January 2015

Appeal Ref: APP/H1515/A/14/2225964

**Site adjacent to Carmel, Mascalls Lane, Warley, Brentwood, Essex
CM14 5HX**

- 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 Maylands Green Estate Co. against the decision of Brentwood Borough Council.
 - The application Ref 13/01351/OUT, dated 20 December 2013, was refused by notice dated 24 March 2014.
 - The development proposed is formation of new access way and erection of 11 new dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Council at the Hearing against Maylands Green Estate Co. This application is the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with details of access and layout included. Matters of appearance, landscaping and scale are reserved for future determination. Illustrative only plans of the proposed dwellings were submitted as part of the application. I have considered the application on that basis.
4. A completed unilateral undertaking made under Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted by the appellant in favour of the Council. With my agreement, the plan missing from the undertaking was provided after the Hearing had closed. The undertaking provides for a financial contribution towards public open space in the vicinity of the appeal site and to secure four of the eleven proposed units as rented affordable housing. I return to this matter below.
5. At the Hearing the parties confirmed that drawing No PL 06 entitled 'site plan as proposed' and 'ground floor plans' did not form part of the application. I have disregarded this plan accordingly. Instead, another drawing also numbered PL 06 illustrating plots 6 and 7 did form part of the Council's consideration. A copy was produced at the Hearing and I have taken it into account.

Main Issues

6. The appeal site is in the Metropolitan Green Belt. Paragraph 89 of the National Planning Policy Framework (the Framework) establishes that new buildings within the Green Belt are inappropriate unless they fall within a prescribed exception. It is common ground that none of the exceptions apply and the proposal would be inappropriate development. Therefore, the main issues are:
- the effect of the proposed development on the openness of the Green Belt and the purposes of including land in it;
 - the effect of the proposed development on the character and appearance of the surrounding area; and
 - 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

7. The appeal site is approximately 0.34ha of vacant land fronting Mascalls Lane; a narrow, winding road off the busy Warley Hill which leads towards Brentwood town centre. On one side of the site is a pair of semi-detached houses. A development of 75 new homes at Mascalls Park is under construction on the other side. The rear boundary abuts the rear gardens of a row of detached houses in a residential cul-de-sac at The Dell. Opposite part of the appeal site, the car park is being extended for the pub on the corner of the lane with Warley Hill. It is also in a Special Landscape Area. The proposal is for eleven residential properties accessed off Mascalls Lane.

Openness of the Green Belt

8. Paragraph 79 of the Framework identifies openness as an essential characteristic of the Green Belt. There is no definition of "openness" in the Framework, but it is commonly taken to mean the absence of built or otherwise urbanising development rather than being primarily about visual effects. The introduction of eleven dwellings onto previously undeveloped land which is completely open apart from boundary trees would undoubtedly have a significant effect on openness.
9. The appellant maintains that the appeal site is both visually and functionally part of the suburb of Brentwood. Whilst there is surrounding development, the appeal site is not a small gap in an otherwise built-up frontage. It is a reasonably sized and fairly regular shaped parcel of land providing a clear visual and physical separation between built form.
10. The adjoining land at Mascalls Park is a brownfield site having previously contained hospital buildings. The car park being built opposite is an extension. Thus, although both sites are also in the Green Belt the considerations differ. In any event, as a flat surface behind boundary trees the car park will have much less visual impact than a housing development. Neither diminishes the value of the site as an open, natural environment which contributes to the rural qualities of the lane deriving from the abundance of trees and hedgerow with fields behind. The appeal site is seen and experienced in this context. Rather than 'rounding off' or consolidating development in Warley, the proposal would palpably extend development further into the countryside.

11. Consequently, the appeal site checks the unrestricted sprawl of the built-up area and assists in safeguarding the countryside from encroachment. These are two of the five purposes served by the Green Belt identified in Paragraph 80 of the Framework. The proposal would thus conflict with these purposes in addition to having a significant detrimental effect on openness contrary to Policy GB2 of the Brentwood Replacement Local Plan (LP), 2005 and Paragraph 79 of the Framework.

Character and appearance

12. It has not been established with certainty that the appeal site is within the Thames Chase Community Forest as referred to by the Council. If so, it would be at the very edge. At one time the appeal site was a verdant setting, but it has been substantially cleared leaving overgrown grassland and trees solely at the perimeters. Those along the frontage form part of a long row of tall trees and hedgerow lining both sides of the lane which heavily characterise it and create a distinctly rural feel. Only the pair of semi-detached houses next to the appeal site and a detached property at Mill House have frontages along this part of the lane.
13. Reasonably large rear gardens would be provided to achieve a relatively spacious development in keeping with its surroundings. Although the frontages would comprise large areas of hard surfacing to accommodate car parking, this could be softened by appropriate landscaping upon the submission of details.
14. However, instead of a natural buffer between housing, there would be a continuous line of built form. This would erode the rural characteristics of the lane especially as the proposal would necessitate removal of some trees to facilitate the vehicular access and visibility splays. Parts of the development would thereby be exposed to public view. Whilst this could be mitigated by boundary planting at reserved matters stage, it is difficult to envisage how sufficiently robust landscaping could be achieved to preserve the character of the lane given the close proximity of Plot 5 in particular to the highway boundary. This is especially so if the dwellings closest to the road are two storey, thus increasing their visual impact and the degree of harm from urbanisation. Additionally, Plot 7 and two garages would be very close to the boundary with properties in The Dell. This would compromise the ability to provide adequate boundary planting to retain its character.
15. Therefore, I consider that there would be a moderately harmful effect on the character and appearance of the surrounding area contrary to the corresponding aims of LP Policy CP1. It would also conflict with Paragraphs 56 and 58 of the Framework insofar as they promote high quality design that responds to local character, and with one of the core planning principles in Paragraph 17 thereof to recognise the intrinsic character and beauty of the countryside.

Other considerations

16. Paragraph 87 of the Framework states that inappropriate development is by definition harmful to the Green Belt. Paragraph 88 requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.
17. The Council acknowledges that it cannot currently demonstrate a deliverable five year housing land supply. Given that position, the LP is out of date in relation to

housing supply policies as provided in Paragraph 49 of the Framework. LP policies GB1, GB2 and CP1 do not concern housing supply but Green Belt protection and generic design issues (amongst other matters), respectively. They are consistent with the Framework as acknowledged by the appellant and are not therefore out-of-date.

18. The parties disagree over the extent of the housing shortfall; the Council says it has 4.3 years supply, the appellant contends the figure is 1.69 years and that the Council has not objectively assessed its needs which would go against the requirements of the Framework. Even if its draft Local Plan were to proceed smoothly to adoption, it is likely to be a considerable time before allocations come to fruition. Indeed, the Council stated at the Hearing that it is to embark upon further consultation early in 2015 on its strategic growth options so that it can re-assess its options. It is evident from this that the Council is still at the early stages in progressing a revised Local Plan to address its housing need.
19. The appeal site is available now. It would deliver eleven dwellings towards the Council's existing shortfall. Of those eleven dwellings, four would be affordable housing units, as set out in the unilateral undertaking. This would fulfil the requirement for 35% affordable housing in LP Policy H9 and deliver an agreed mix of 1, 2 and 3 bedroom properties towards the Council's recognised affordable housing need which spans across housing types. I give substantial weight to the proposed provision of housing.
20. The appeal site was included in the Council's Strategic Housing Land Availability Assessment, published 2011 (SHLAA) as suitable for residential development, which is available and achievable. The document identifies potential housing sites only. It does not mean that it will be included in the Council's site allocations development plan documents or that planning permission will be granted. It is too uncertain whether this site would be allocated for housing for me to give its inclusion in the SHLAA more than very limited weight.
21. The appellant states there are many recent appeal decisions where significant weight has been given to a local authority's lack of a five year housing land supply overriding existing policies. It is unclear whether these decisions relate to development within the Green Belt as none specifically have been drawn to my attention. This limits the weight I can attach to the decisions.
22. The Council refers to a recent Appeal Decision¹ in its borough where the Inspector dismissed an appeal for development in the Green Belt having considered the Council's housing shortfall. That case concerned a single dwelling in a village location and so the circumstances are not comparable. It does not weigh against the proposal. I have also considered the Secretary of State's decision² for an outline proposal up to 165 dwellings in Thundersley, Essex. In dismissing the appeal, the Secretary of State found that factors in favour of the proposal including a severe lack of a forward housing land supply, did not clearly outweigh the harm to the Green Belt. In this appeal there are other factors advanced by the appellant which also need to be weighed in the balance.
23. The Council acknowledges if it is to meet its full housing need, then it is inevitable that a review of Green Belt boundaries will at least need to be considered. It is clear from Paragraph 83 of the Framework that once

¹ Appeal Ref: APP/H1515/A/13/2210524 dated 6 October 2014

² Appeal Ref: APP/M1520/A/12/2177157 dated 26 June 2013

established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. This is reiterated in Paragraph 044 of the National Planning Practice Guidance (PPG). Accordingly, I give very little weight to the appellant's submission that the Green Belt boundary is out-of-date in relation to this site. A decision on this issue should take place through preparation or review of the Local Plan where a strategic assessment of the need against the comparative suitability of any new land for development can be made and having considered what could be any number of objections in the consultation process.

24. Paragraph 14 of the Framework provides that where relevant housing supply policies are out-of-date, planning permission should be granted unless specific policies in the Framework indicate development should be restricted. Land designated as Green Belt is listed in the footnote to Paragraph 14 as an example of such a restriction. The appellant's agent confirmed at the Hearing that in view of the footnote, it is not submitted that Paragraph 14 is invoked. Rather, it is argued that the proposal represents sustainable development which should be weighed in the balance.
25. Sustainable development is seen in the Framework as a golden thread running through decision taking. Paragraph 7 identifies three dimensions to sustainable development; economic, social and environmental. The construction of eleven dwellings would invariably assist the local economy in terms of labour opportunities and demand for materials/supplies along with the use of local services by future occupants. There would therefore be some economic benefit.
26. The social dimension concerns providing the supply of housing required to meet the need of present and future generations and accessible local services. I have already established the proposal would contribute towards the Council's recognised housing need. In this way, the social dimension is fulfilled.
27. The appeal site is approximately 1 mile from a mainline railway station and a reasonable number and variety of small shops. These would be easily accessible by cycle. It is possible that occupiers would walk the 20 minutes or so even though it is partly uphill. A lit footway runs from in front of the site to these facilities. The main town is further away and so less accessible. Buses operate between nearby Warley Hill and the town centre, but according to local residents the service is very infrequent so most people use their private cars into the town. Nevertheless, the availability of services and facilities within a reasonable distance makes the location relatively sustainable in both social and environmental terms.
28. However, the harm that I have already found to character and appearance impacts negatively on the environmental dimension. Indeed, good design which would include the layout is identified as a key aspect of sustainable development in Paragraph 56 of the Framework. Paragraph 8 also makes it clear that these roles should not be taken in isolation as they are mutually dependant. To achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously.
29. In view of this, I conclude that the proposal has no more than moderate sustainability credentials to which I afford corresponding weight.

Other Matters

30. The completed unilateral undertaking provides for a financial contribution of £60,000 towards public open space provision in the vicinity. The Council has submitted no evidence to justify this contribution. Therefore, I am not satisfied that the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and as repeated in Paragraph 204 of the Framework are fulfilled. The timing and delivery of the affordable housing is also uncertain. However, my decision does not turn on this matter.
31. I have taken into account the numerous representations from local residents on various matters including highway safety and living conditions for occupiers of adjoining properties in terms of outlook, privacy and sunlight.

Green Belt Balance and Conclusion

32. I have had regard to the *Hunston Properties* case³ as cited by the appellant noting that it is for the decision maker to assess whether housing need in common with other factors relied on in support of the development together clearly outweigh the identified harm to the Green Belt. I have also taken into account the passages from the *Doncaster*⁴ and *Wychavon*⁵ cases quoted by the appellant concerning the approach to undertaking the Green Belt balance.
33. The Framework sets out a clear ambition to significantly boost the supply of housing. This proposal would assist with additional dwellings and some other benefits to the area. However, the Framework also confirms the importance of Green Belts. The proposal would be inappropriate development in the Green Belt which is harmful by definition. According to the Framework substantial weight must be given to any harm to the Green Belt. There would be a significant reduction in openness and moderate harm to the Green Belt purposes of preventing urban sprawl and preventing encroachment in the countryside. Moderate harm would result to the character and appearance of the area.
34. I have balanced the totality of these factors against the combined weight of the other considerations raised in support of the application. In doing so, I have taken into account guidance within Paragraph 034 of the PPG that unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt. I have reached the view that these other considerations do not clearly outweigh the harm. Very special circumstances to justify the development do not therefore exist and the proposal would conflict with the aims of LP Policies GB1, GB2 and CP1 and the Framework.
35. For the reasons given above and, having had regard to all other matters raised including representations in support, I conclude that the appeal should be dismissed.

KR Saward

INSPECTOR

³ *Hunston Properties Limited v Secretary of State for Communities and Local Government and St Albans City and District Council* [2013] EWHC 2678 (Admin)

⁴ *Doncaster MBC v SSETR* [2002]

⁵ *Wychavon v Secretary of State for Communities and Local Government and Butler* [2008]

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Kathryn Mathews MRTPI	Senior Development Control Officer
Phil Drane	Planning Policy Team Leader
Philip Cunliffe-Jones	Planning Lawyer

FOR THE APPELLANT:

Matthew Driscoll	The JTS Partnership
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INTERESTED PERSONS:

Councillor David W. Tee	Ward member
Councillor Mrs Jill Hubbard	Ward member
Robert Flunder	Campaign for the Protection of Rural England
Len Fryatt	Great Warley Conservation Society
Bernard Lee	Local resident
Gerald Pearse	Local resident
Caroline Plumtree	Local resident
Brian Hastings	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Completed unilateral planning obligation deed dated 27 November 2014
- 2 Drawing No. PL 06 entitled 'Plots 6 and 7'
- 3 Costs application by the Council