

Appeal Decision

Site visit made on 29 August 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2024

Appeal Ref: APP/J1535/W/23/3331218

Rest Harrow, Millers Lane, Chigwell, Essex IG7 6DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Marc Yallop of Stonebond Estates Limited against the decision of Epping Forest District Council.
 - The application Ref is EPF/1288/23.
 - The application sought planning permission for the demolition of existing dwelling houses and garage building on the sites of No 1 and No 2 Rest Harrow and erection of two new dwellinghouses without complying with a condition attached to planning permission Ref EPF/0028/23, dated 31 March 2023.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out and retained strictly in accordance with the following approved plans:*
DL-011, TDL-001 Site Location Plan, TDL-011 Existing Site Block Plan, TDL-012 Existing Plan, TDL-013 Existing Elevations and street scene, TDL-021 Proposed Site Block Plan, TDL-022 Proposed Ground Floor Plan, TDL-023 Proposed Roof Plan, TDL-024 Proposed Elevations and street scene, Preliminary Ecological Appraisal & Roost Assessment by Arbtech, dated 3/2/23 issue 1, Design and Access Statement, Phase 1 Geo-Environmental Site Assessment reference: 1CO107141P1R0 dated March 2019, Sustainability Checklist.
 - The reason given for the condition is: *For the avoidance of doubt and to ensure the proposal is built in accordance with the approved plans.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling houses and garage building on the sites of No 1 and No 2 Rest Harrow and erection of two new dwellinghouses at Rest Harrow, Millers Lane, Chigwell, Essex IG7 6DG in accordance with the application Ref EPF/1288/23, without compliance with condition number 2 previously imposed on planning permission Ref EPF/0028/23 dated 31 March 2023 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended.
3. In addition, on 30 July 2024 the Government published a consultation on proposed reforms to the Framework and a written ministerial statement. While these proposed changes can only be given limited weight at this stage, those parts most relevant to the appeal are not proposed to be amended. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by my taking this approach.
4. The site address refers to Rest Harrow only. However, the description of the development on planning application Ref EPF/0028/23 and the submitted plans reference No 1 and No 2 Rest Harrow. Within my decision, I have therefore had regard to both No 1 and No 2 Rest Harrow as forming part of the appeal site.

Main Issues

5. In order to facilitate a revised siting for both properties, the appellant seeks to vary the list of approved plans imposed by condition 2 of EPF/0028/23. Therefore, the main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the revised design of the proposal on the openness of the Green Belt; and
 - 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 required to justify the proposal.

Reasons

6. The appeal site lies within the Green Belt. Policy DM4 of the Epping Forest District Local Plan 2011-2033 Part One Adopted 2023 (LP) states, among other things, that within the Green Belt, planning permission will not be granted for inappropriate development, except in very special circumstances, subject to a number of exceptions. The exceptions listed reflect those within the Framework.
7. The Framework establishes that new buildings within the Green Belt should be regarded as inappropriate development. There are exceptions to this, including paragraph 154 d), which allows for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
8. The appeal site comprises two single storey, semi-detached properties, with a garage. The appeal scheme seeks to demolish these properties and erect

two detached single storey dwellings. The new buildings would therefore be in the same use as those they are to replace.

9. The appellant highlights that the proposed properties are identical in size as the two replacement dwellings granted permission under ref EPF/0028/23 (the approved scheme). The approved scheme sought consent to demolish the two existing dwellinghouses and garage and erect two detached dwellings. A copy of the Council's delegated report, decision notice and approved plans in respect of the approved scheme have been submitted with this appeal.
10. With regard to the approved scheme, the Council considered that the proposed development would be materially larger than the dwellinghouses it sought to replace. Consequently, they concluded that the development proposed constituted inappropriate development within the Green Belt.
11. Based on the evidence before me, including the existing and proposed volume and height calculations detailed within the Council's delegated report for the approved scheme, I see no reason to disagree with this assessment. Therefore, given that the appeal proposal would be identical in size to that granted consent under the approved scheme, the proposed development would be materially larger than the dwellinghouses they are to replace.
12. Consequently, the appeal scheme would comprise inappropriate development within the Green Belt and would not satisfy LP Policy DM4 or the exception set out in paragraph 154 d). In accordance with paragraph 153 of the Framework, I give substantial weight to the harm identified.

Openness

13. The Framework defines one of the essential characteristics of the Green Belt to be its openness. There is no formal definition of openness but, in the context of the Green Belt, it is generally held to refer to an absence of development. Openness has both a spatial dimension, and a visual aspect.
14. Given that the dwellings proposed would be larger than those they are to replace, the proposed development would, in both spatial and visual terms, lead to a loss of openness.

Other considerations

15. While noting the Parish Council object to applications which may result in inappropriate development irrespective of whether very special circumstances exist, 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.
16. In this regard, my attention has been drawn to the planning history of the site, specifically the approved scheme. I have limited evidence before me which indicates the approved scheme could not be built and, as such, there is a greater than theoretical possibility that the development might take place as a fallback position should this appeal fail. The approved scheme is

therefore a material consideration in respect of the appeal, to which I attach significant weight.

17. The proposed properties would be identical in size to those granted consent as part of the approved scheme. When compared with the approved scheme, the appeal proposal seeks to re-position both properties further back into the appeal site, away from the highway. The proposal also seeks to increase the spacing between the two dwellings.
18. Re-positioning the proposed dwellings away from the highway would reduce their prominence when viewed from Millers Lane. Increasing the separation between the two dwellings would allow for views through the appeal site, to the open fields beyond.
19. Moreover, the appeal proposal would be contained within the confines of the appeal site. Having regard to this, the extent of the separation between the proposed dwellings and that the size of the built development would be identical when compared with the approved scheme, there would be no material increase in urban sprawl as a result of the appeal scheme.
20. With regard to the proposed hardstanding, the appellant has highlighted that this could be controlled through the imposition of a suitably worded landscaping condition. Such a condition could reasonably control the amount of hardstanding areas within the appeal site, in order to ensure that there is no greater impact upon the openness of the Green Belt when compared to the approved scheme.
21. The Council have highlighted that the curtilage of the properties has previously been extended. Given that the appeal proposal would reduce the size of the rear gardens, the Council has raised concerns in respect of likely future encroachment into the adjoining field. However, the appeal site boundary remains the same as that considered as part of the approved scheme. Therefore, any future proposals to amend the appeal site boundary would be considered on their own merits.
22. Having regard to these matters, the difference between the approved scheme and the proposal before me is limited in terms of the impact upon the openness of the Green Belt. Consequently, the appeal scheme would not result in material harm to the openness of the Green Belt when compared to the fallback position.
23. For the reasons stated above, I consider the fallback position to be a material consideration of significant weight in this case, and in the overall Green Belt balance.

Green Belt Balance

24. Having regard to the development plan and national planning policy, the proposal comprises inappropriate development in the Green Belt. There would also be harm arising from the proposal on the openness of the Green Belt. However, for the above reasons, I consider that the fallback scheme to be an other consideration of sufficient weight which clearly outweighs the substantial harm to the Green Belt by reason of inappropriateness. Thus, very special circumstances necessary to justify the development proposed have been demonstrated.

25. Accordingly, whilst there would be conflict with LP Policy DM4, having regard to paragraph 153 of the Framework, the balance of the considerations in this case means the appeal should succeed.

Conditions

26. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
27. The PPG states that a grant of planning permission under section 73 of the Act should not extend the time period for implementation. Therefore, I shall vary the standard time condition in order to ensure the commencement of development is three years from the date the original permission was granted.
28. For clarity, a condition is required to ensure the development is completed in accordance with the approved plans. In order to ensure a satisfactory finish, a condition relating to materials has been re-imposed.
29. A condition removing permitted development rights is necessary to ensure the acceptability of the scheme in terms of Green Belt. To safeguard the openness of the Green Belt, trees, shrubs and hedges and to ensure a satisfactory appearance, a condition relating to hard and soft landscaping is required.
30. In the interests of securing appropriate drainage and noting the District is in an area of severe water stress, it is necessary to re-impose conditions relating to foul and surface water disposal and water efficiency. To ensure risks from land and water contamination are identified and remediated as necessary, a contamination condition is re-imposed. Conditions are also necessary in order to conserve protected species or their breeding sites or resting places.
31. To ensure sustainable building design is promoted, a condition requiring solar panels to be installed in accordance with the submitted details is necessary. As are conditions requiring the installation of necessary infrastructure, to ensure the development contributes towards improved digital connectivity, and electric vehicle charging points, to support improvements to air quality.
32. A pre-commencement condition requiring a Construction Method Statement is necessary to ensure the effects of construction are adequately mitigated in the interests of the living conditions of nearby residents.

Conclusion

33. For the above reasons, I conclude that the appeal should be allowed.

S Pearce INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin within 3 years from 31 March 2023.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: TDL-001, TDL-021, TDL-022, TDL-023, TDL-024, TDL-025.
- 3) Prior to preliminary ground works taking place, details of foul and surface water disposal shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and shall be provided on site prior to the first occupation and shall be retained for the lifetime of the development.
- 4) A) No work on any phase of the development (with the exception of demolition works where this is for the reason of making areas of the site available for site investigation), shall commence until an assessment of the risks posed by any contamination within that phase shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of Potentially Contaminated Sites - Code of Practice and the Environment Agency's Guidelines for the Land Contamination: Risk Management (LCRM 2020) (or equivalent if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The development shall only be carried out in accordance with the approved details unless the Local Planning Authority gives its written consent to any variation. The assessment shall include: (1) A survey of the extent, scale and nature of contamination and (2) An assessment of the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes; adjoining land; groundwater and surface waters; ecological systems; and archaeological sites and ancient monuments.
B) If following the risk assessment unacceptable risks are identified from land affected by contamination in that phase, no work on any phase of the development shall take place, until a detailed land remediation scheme has been completed. The scheme will be submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. (The remediation scheme shall be sufficiently detailed and thorough to ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990). The development shall only be carried out in accordance with the approved scheme. Following the completion of the remediation works and prior to the first occupation of the development, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.

- 5) A specialist bat consultant, registered to use the Low Impact Class Licence, must be engaged to ensure that demolition works to the building are undertaken in accordance with the relevant legislation and guidance issued by Natural England. A letter from the hired ecologist stating that they have been engaged to carry out this work will be submitted to the Local Planning Authority for approval.
- 6) The Proposed Development should be undertaken in accordance within the recommendations within table 8 of the Preliminary Ecological Appraisal & Roost Assessment by Arbtech, dated 3/2/23 issue 1.
- 7) Prior to any above ground works, full details of both hard and soft landscape works (including tree planting) and implementation programme (linked to the development schedule) shall be submitted to and approved in writing by the Local Planning Authority. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the building or completion of the development, whichever is the sooner. The hard landscaping details shall include, as appropriate, and in addition to details of existing features to be retained, proposed finished levels or contours; means of enclosure; car parking layouts; other minor artefacts and structures, including signs and lighting and functional services above and below ground. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place.
- 8) Prior to any above ground works, documentary and photographic details of the type and colours of the external finishes of the development 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.
- 9) The solar panels shall be installed in accordance with the details shown on plan number TDL-023 unless otherwise agreed in writing with the Local Planning Authority.
- 10) Prior to first occupation, the applicant/developer shall ensure that each dwelling has been provided with the necessary infrastructure to enable its connection to a superfast broadband network or alternative equivalent service.
- 11) Prior to first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in

writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

1. The parking of vehicles of site operatives and visitors
 2. Loading and unloading of plant and materials
 3. Storage of plant and materials used in constructing the development
 4. Measures to control the emission of dust and dirt during construction, including wheel washing. With regards to dust control measures and wheel washing, reference shall be made to the Institute of Air Quality Management (IAQM) best practice Guidance on air quality monitoring in the vicinity of demolition and construction sites and Guidance on the assessment of dust from demolition and construction.
 5. Tree protection measures.
- 13) Prior to first occupation of the development hereby approved, 1 Electric Vehicle Charging Point shall be installed and retained thereafter for use by the occupants of the site.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking and re-enacting that order) no development permitted by virtue of Classes A, B and E of Part 1 to schedule 2 shall be undertaken, without the prior written agreement of the Local Planning Authority.

End of Schedule