
Appeal Decision

Inquiry Held on 2 - 5 February 2021

Site visit made on 17 March 2021

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2021

Appeal Ref: APP/H1515/W/20/3256968

Ingatestone Garden Centre, Roman Road, Ingatestone, CM4 9AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Redrow Homes Ltd against the decision of Brentwood Borough Council.
 - The application Ref 17/01815/OUT is dated 20 November 2017.
 - The development proposed is described as Outline application to demolish and re-develop site to provide up to 110 residential units with associated open space with access from Roman Road (Appearance, Landscaping, Layout and Scale reserved matters).
-

Decision

1. The appeal is allowed and planning permission is granted for Outline application to demolish and re-develop site to provide up to 110 residential units with associated open space with access from Roman Road (Appearance, Landscaping, Layout and Scale reserved matters)Ingatestone Garden Centre, Roman Road, Ingatestone, CM4 9AU in accordance with the terms of the application, Ref 17/01815/OUT dated 20 November 2017, subject to the conditions in Annex A.

Application for costs

2. At the inquiry an application for costs was made by Redrow Homes Ltd against Brentwood Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The description of development was changed by Council from the application form. The appellant provided a note which details agreement to this changes. I have therefore used this description in this decision. The application is made in outline with the matter of access submitted for consideration at this stage. The appeal is considered on this basis.
4. The emerging Brentwood Local Plan (ELP) was submitted for examination on 14 February 2020¹. The plan is yet to be examined and found sound.

¹ CD 7.5 para 3.6

Main Issues

5. As set out above, this appeal is against the failure of the Council to determine the planning application. There is not, therefore, a formal decision of the Council. The evidence² makes it clear that, had it been in a position to determine the planning application, the Council would have refused planning permission for the scheme.
6. The main issues in the appeal are:
 - Whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (The Framework) and development plan policy;
 - the effect of the proposal on the openness of the Green Belt; and
 - if the 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 within the Green Belt.

Reasons

Whether the proposal would be inappropriate development for the purposes of the Framework and development plan policy

7. There is no dispute between the parties that the scheme, for 110 residential units on the site, would represent inappropriate development in the Green Belt for the purposes of the Framework. It would not fall within any of the types of development identified as being exceptions. The applicable policies of the Brentwood Replacement Local Plan (RLP) would be GB1 and GB2 which refer to new development in the Greenbelt and the need for very special circumstances where development is inappropriate. The Statement of Common Ground sets out that these policies are out of date. As such the inquiry focused on the effects of the proposal on the openness of the Green Belt and whether very special circumstances exist that would justify the development within the Green Belt.

The effect of the proposal on the openness of the Green Belt

8. Paragraph 133 of the Framework advises that one of the essential characteristics of the Green Belt is its openness. The landscape witnesses agreed that it was appropriate to assess impact on openness by reference to both spatial and visual considerations³.
9. The appeal site would be formed from land that was formerly Ingatestone Garden Centre. As a result, the site contains some buildings and areas of hardstanding associated with the previous use. The inquiry focussed on the Brownfield Land Register and the associated overlay⁴. This document clearly shows the extent of the existing buildings associated with the garden centre. In addition, it includes areas of hard standing within the garden centre operation and a large car park area. The extent of this was not a significant area of dispute between the landscape witnesses. In addition, having been to

² CD 7.4 LPA Statement of Case

³ ID4 referenced by the Council

⁴ CD 9.3 and 9.4

the site I am satisfied that the overlay is a fair representation of the extent of the previous previously developed areas of the site. However, there was a difference in position regarding this element and the consideration effect of the scheme on openness, which I turn to next.

10. The overlay document is annotated with a delineation of the broad edge of the brownfield area which contrasts with the area further to the east. This area contains grass and trees and the overall appeal site extends up to the edge of the site with the railway line. The plan shows that this would also be contiguous with the extent of the dwellings along Burnthouse Lane. As such the appeal scheme would include land beyond the areas shown as previously developed land.
11. The existing buildings have a low level form. The intervening and car park areas, whilst laid to hard standing, are in essence open and the uses of them would have been transient. By contrast the appeal scheme would extend built form across the entire site area. As such the physical presence of buildings across the site would increase if the scheme went ahead. Matters of scale and appearance are reserved for future consideration. Nonetheless, the Design and Access Statement⁵ indicates that the height would vary across the site. The building heights plans shows a range of 1 storey garages through to 2, 2.5 and 3 storey dwellings. As such the appeal scheme would have a greater scale of buildings than the existing situation as well as adding built form across a greater area of the site.
12. There was no dispute regarding the summary of visual effects of the proposed scheme set out in the Landscape and Visual Impact Assessment (LVIA). These are set out in the appellant's landscape proof of evidence⁶. In particular the table confirms that there would be harm to openness in visual terms from all but one of the representative viewpoints. There is no dispute between the parties that the harm would be negligible. In addition to the viewpoints in the LVIA the Council raised the visual impacts that would arise along Roman Road and Burnthouse Lane⁷ if the scheme were to be built. In particular the impact of three storey apartment blocks along this frontage, shown on the indicative masterplan.
13. The site is contained by dwellings on Burnthouse Lane, Roman Road and the A12 and the railway line. The south and west part of the site is adjacent to the civic recycling centre. From within the site the dwellings on Burnthouse Lane are visible. The presence of existing trees and hedgerows serve to limit views through the site and of it from a distance. The indicative landscape masterplan shows that this could be supplemented and reinforced by a detailed landscape strategy. Nevertheless, the new dwellings would be visible from views along Roman Road in particular.
14. Openness is the result of absence of built development, the provision of dwellings on the appeal site would inevitably reduce and harm the openness of the Green Belt to a degree by reason of its siting on land which is currently free from significant buildings on a large area and has low level buildings in other areas.

⁵ CD 1.8

⁶ 6.30 Timothy Jackson Proof of Evidence

⁷ Appendix SP5 Steve Plumb Proof of Evidence

15. The appeal site was assessed as part of the study work which forms the evidence base for the ELP⁸. More specifically the appeal site is one of a number of sites to be prioritised for housing development. The reason given for this is that the site has a 'Medium-High' capacity to accommodate new development. In addition to this the Council's Green Belt Study assesses the contribution that the appeal site makes to the purposes of the Green Belt as being 'Low to Moderate'. The Council did not offer any evidence that would lead me to take a different view to these documents on these specific matters.
16. The site is adjacent to the existing built up area and forms part of a wider area of Green Belt that separates Ingatestone from Brentwood. In addition, the sites contribution to the purposes of the Green Belt is low-moderate. Nevertheless, the proposal would result in the introduction of residential development onto this partially open site, which would result in a reduction in its openness. I have taken into account the amount of previously developed land and I accept that the vegetation cover along the site boundary and the additional proposed landscaping would restrict some views of the development. However, there would inevitably be a permanent change to the character of the site, which would spatially and visually be perceived to some extent, by users of adjacent highways, footpaths and occupiers of adjacent buildings.
17. Due to the scale of the proposed development relative to the existing openness of the appeal site, I conclude that there would be a moderate loss of openness. This would be additional to the harm by reason of its inappropriateness, and in accordance with paragraph 144 of the Framework, together carry substantial weight against the proposal.

Other considerations

18. Paragraph 143 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 goes on to state that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
19. In addition to this the Council's position is that the issue of prematurity should also be considered as a harm and weighs against the scheme. The Council considers that the grant of planning permission at the site would be premature. Guidance on the issue of prematurity is set out in paragraph 49 of the Framework. Paragraph 49 has 2 limbs both of which have to be satisfied. The first limb is that the development is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan making process by predetermining decisions that are central to the emerging plan. The second limb is that the emerging plan is at an advanced stage.
20. Dealing with the second limb first there was no dispute that the ELP is at an advanced stage. However, both limbs have to be satisfied for the scheme to be considered to be premature. The area of difference between the parties was whether criterion (a) would be relevant. The Council's concerns centred around whether the grant of planning permission in this case would predetermine if

⁸ CD 7.12, CD 5.29, CD 5.10

there should be an alteration to the Green Belt boundary and if the evidence base in support of the strategic need is in fact robust.

21. There was no dispute that at the time of the inquiry that the inspector's findings on the Council's approach to the release of Green Belt land were not known. The appellant's planning witness accepted that the strategic need for Green Belt land is one of the most important issues in the district. Nonetheless, within that it is reasonable to consider the extent to which the appeal scheme would in fact be central to the ELP. It was agreed that a significant proportion of the Brentwood Borough is Green Belt and that the Council has 13 different housing sites proposed for allocation. Indeed, the appeal scheme, as one of these sites, would in fact represent a small proportion of the overall housing requirement⁹. Further the Council's witness did not dispute that to meet its housing requirement the Council would expect the ELP to include the release of land from the Green Belt.
22. In coming to an overall conclusion on this point it is necessary to consider both limbs of the Framework in paragraph 49 and the instruction within paragraph 50. Acknowledging agreement on limb (b) in considering limb (a) the Council has not shown that allowing this site, which is a small proportion of the Boroughs overall housing requirement, would be so substantial or cumulatively significant that it would predetermine decisions central to the ELP such that it would prejudice the strategy of the plan. Therefore, I do not consider that this issue would weigh against the scheme.
23. The agreed position statement¹⁰ produced by the main parties sets out an agreed set of very special circumstances relevant to the appeal. Alongside this is an agreed terminology for the hierarchy of weight to be applied. Therefore, I consider each of the circumstances presented to the inquiry in turn.
24. The RLP is agreed to be out of date¹¹. The present Green Belt boundary means that the authority is not meeting, and has not met, its objectively assessed need for housing. The emerging plan is currently being examined but this has not been concluded nor has the plan been found sound and adopted. The site is identified within the Council's Green Belt Study¹² which forms part of the evidence base for the ELP. Within the study the appeal site is described as making a 'low to moderate' overall contribution to the Green Belt purposes. This document underpins the draft allocation R21 and the justification for the Council's approach in the ELP that would see the site allocated for housing.
25. Within the ELP the site has been allocated as being suitable for housing development. The site is allocated as site 'R21' and the area of the appeal site would be within the area shown on the draft allocation plan¹³. It is not disputed that the appeal scheme being carried out would not prejudice the remainder of the site allocation. The Council accepted that as part of the local plan process it has supported the allocation and has in fact provided evidence to demonstrate why this a suitable site but for this scheme considers that it has not advanced enough. The Council's support for housing development on the site is known and a level of objection to it within the plan process remains

⁹ The appellant considers the appeal site would represent about 1.8% of the dwellings proposed in the ELP, this was not disputed

¹⁰ CD 7.11

¹¹ CD 7.5 Section 3

¹² CD 5.10

¹³ CD 5.2

outstanding. Indeed, some of the objections suggest that the site should be deleted as an allocation¹⁴. Nevertheless, within the context of a district where it is acknowledged that there is a significant need to deliver housing I consider that the weight to be applied to the draft allocation should be significant.

26. There is no dispute that part of the site is on the Council's Brownfield Land Register. There is also agreement that there are existing buildings on the site, an open sales area and parking area, and that these are derelict. The appellant is concerned about the extent of anti-social behaviour and fly tipping associated with the condition of the site and that development of the site would resolve these matters. I understand that this would be the case. However, the existing site is not widely visible and in its current state the site does not adversely impact on the openness of the greenbelt. Therefore, I consider that the weight to be attached to this consideration should be moderate.
27. The scheme would deliver market housing. It is agreed that the Council cannot demonstrate a five year housing supply. More specifically that currently the Council's latest position is 2.36 years¹⁵. The Council does not dispute the shortfall and it is substantial. The appeal site is owned by the appellant, a national house builder, and the site can be considered deliverable in that regard. Therefore, I attach substantial weight to the provision of market housing.
28. The appeal scheme would make provision for 35% of the dwellings to be provided as affordable housing. This is secured through the planning obligations¹⁶. There is no dispute that the borough has a significant under supply of affordable homes and that this has been for a prolonged period of time¹⁷. The Council's housing monitoring report confirms that for the year 2019/20 the supply was just 40 homes and that this was below the requirement. Therefore, this is a benefit of the scheme to which I attach substantial weight.
29. In addition to the very special circumstances already outlined the appellant put forward a number of 'further benefits'¹⁸. I understand that the Council is concerned about double counting of other considerations.
30. The appeal scheme would deliver open space on site. It was agreed that the requirement of the applicable planning policy¹⁹ would be for at least 15% of the site to be set aside for open space. The indicative plan for the appeal scheme shows provision of about 26% of the site area. At the inquiry the appellants planning witness agreed that to attract weight that the open space would need to be deliverable. The appellant has provided a planning obligation²⁰. Under the definition of open space this makes provision for '*...an area equivalent to at least 20% of the total area of the property to be laid out and delivered as open space*'. The amount that would be 'secured' would be above the 15% referred to in the policy. However, the policy is expressed in the terms 'at least' which allows for provision in excess of this. Therefore, overall, my view is that a moderate weighting to the provision of the open space would be fair.

¹⁴ CD 5.3

¹⁵ Five year Housing Land Supply Statement 31 March 2019, para 3.10 and 5.1 (15) Statement of Common Ground

¹⁶ ID9, ID10

¹⁷ CD 5.25

¹⁸ 3.31 Ms Parsons Proof of Evidence

¹⁹ Adopted policy LT4 and emerging policy BE22

²⁰ ID9, ID10

31. The scheme also makes provision for transport improvement measures. These contributions are set out in the planning obligation²¹ at schedule 8 and are also detailed within the agreed planning conditions²². Specifically, they include bus stop improvement, underpass improvement and a warning sign contribution for a queue warning sign on the A12 slip road. The Local Highway Authority²³ required the bus stop improvement on both sides of the underpass to their specifications. The matter of how these should be secured is considered further below. Nevertheless, for the purposes of the consideration of weight the key point is that these benefits could be secured for the locality. I would therefore give moderate weight.
32. The provision of a new footpath and cycle link could also be secured. The appellant submits that these links would further encourage the use of non car modes of transport. I would therefore give moderate weight to this consideration.
33. There would be economic benefits arising from the scheme²⁴ which the appellant sets out as being the provision of jobs during construction and expenditure by new residents. Some of these benefits, such as construction jobs, would not be permanent. The expenditure of local residents would be longer term but it cannot be assumed it will necessarily be local as the appellant suggests. Therefore, overall, I would attach limited weight to this consideration.

If the 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 within the Green Belt

34. The starting point is that substantial weight is attached to any harm to the Green Belt by reason of inappropriateness and any other harm arising from the proposal. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The appeal scheme is inappropriate development and there would be some harm, albeit at the low end of the spectrum, to openness. The single issue of unmet demand for housing and affordable housing is unlikely to outweigh the harm to constitute very special circumstances. Therefore, in this case, it is whether the other considerations²⁵, taken together would outweigh the Green Belt harms. Therefore, I conclude that the substantial harm by reason of inappropriateness and the effect on openness would in this case be clearly outweighed by these other considerations. I therefore conclude that very special circumstances exist to justify inappropriate development in the Green Belt.

Other matters

35. In addition to concerns raised about development on land within the general extent of the Green Belt, interested parties have also made representations on other issues. In particular the inquiry heard about concerns relating to the

²¹ ID9

²² ID19

²³ CD 3.11

²⁴ Summarised in Appendix NP5 to Ms Parsons Proof of Evidence

²⁵ Delivery of market housing, affordable housing, the draft allocation and evidence base, open space and transport improvements

existing natural watercourse, surface water flooding and the disruption to local residents from the construction.

36. The appellants provided a technical note to the inquiry on the matters of flood risk and drainage²⁶. In particular it demonstrates that the development does not cause offsite impact, but rather provides the opportunity to deliver betterment. There is no technical evidence that would lead me to a different conclusion. There are conditions (6, 7, 8) which would control the schemes for surface and foul drainage and secure its management. At the inquiry the Council confirmed it would consult the residential dwellings adjoining the site regarding these details when they are submitted.
37. Impacts from construction would be managed through the construction management plan. In particular it will include controlled delivery routes and requirements on parking related to the construction²⁷. This would be covered by condition 4.

Planning obligations

38. The appellants have provided a unilateral undertaking under section 106 of the Town and Country Planning Act 1990, which includes a number of obligations which would come into effect if planning permission were to be granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and as set out in paragraph 56 of the Framework. These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
39. In this case the appellant submitted two obligations²⁸. The appellants expressed a preference for document ID9 which include provisions for off-site highways works which, by contrast, the Council consider could be addressed by condition. I have considered the provisions of document ID9 in this section. This comprises a range of contributions that would be provided were the appeal to be allowed.
40. Affordable Housing: There is a significant need for affordable housing in the Borough which is identified in the Brentwood Monitoring Report: Housing Delivery 2019/20²⁹. This identifies that the delivery of affordable housing remains below the requirement. The delivery of 35% affordable housing would be in line with the Council's current policy requirement³⁰. Furthermore, the provision of affordable houses as part of the development would accord with the Framework which seeks to ensure a sufficient supply of homes to reflect identified needs. I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary. I give this obligation significant weight.
41. Open Space: The obligation requires the provision of an area of at least 20% to be laid out and delivered as open space. This is to be delivered by through an open space scheme which would include the future management and

²⁶ Appendix NP2 to Ms Parsons Proof of Evidence

²⁷ Appendix NP3 to Ms Parsons Proof of Evidence

²⁸ ID9 and ID10

²⁹ CD 5.25

³⁰ RLP Policy H9: Affordable Housing on Larger Sites

maintenance of the open space. The policy requirement would be 15% of the site area³¹ and the indicative masterplan demonstrates how this could be provided within a scheme of 110 units. This would be required to meet the needs of the future residents of the scheme and so is necessary.

42. Healthcare Contribution: The obligation makes provision for a contribution to secure the provision of additional primary healthcare services and improve capacity at New Folly Surgery to mitigate the impacts of the provision of new dwellings. This is supported by a Healthcare Impact Assessment provided by the Basildon and Brentwood Clinical Commissioning Group and the Mid and South Essex Sustainability and Transformation Partnership³². I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary.
43. Education: Contributions would go toward primary and secondary school places to enable them to accommodate the additional pupils that would be generated by the appeal scheme. The contributions have been calculated based on the Essex County Council Developers Guide to Infrastructure Contributions³³. I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary.
44. Highways: The highway works to be secured would include the construction of the site access, a pedestrian footway on each side, a visibility splay and new boundary planting. The obligation also includes transport improvement measures which include a bus stop improvement contribution, transport improvement measures to include a contribution for a warning sign and underpass improvement. Residential Travel Information is also secured. These measures reflect the measures identified by the County Council as being necessary to make the scheme acceptable³⁴. I am satisfied that these obligations meet all three planning obligation tests and so are necessary.
45. Biodiversity Net Gain: The appellant's ecologists have proposed mitigation measures which have been considered by the Council³⁵. It is agreed that the objective of this would be to achieve a measurable uplift in the ecological value of the site. The contribution is defined as to be used towards habitat creation and/or enhancement of existing sites and the future management of the same. I am satisfied that this obligation would meet all three planning obligation tests and so would be necessary.
46. The above obligations comply with Framework and CIL Regulations and I have taken them into account in coming to my decision.

Conditions

47. I have considered the conditions suggested by the Council in the light of the advice given in the Planning Practice Guidance (PPG). The appellant has made clear³⁶ which conditions are deemed to be acceptable, including those that are pre commencement. Whilst I impose most of them, I do not impose those that do not meet the required tests or those that are covered in the planning obligation. Conditions can only be imposed where they are necessary, relevant

³¹ RLP policy LT/4 and ELP policy BE22

³² Appendix 2 ID3

³³ Appendix 3 ID3

³⁴ CD3.11

³⁵ Appendix 4 ID3

³⁶ Notes included in ID19

to planning and to the development being permitted, enforceable, precise and reasonable in all other respects. I have combined conditions and amended the wording where necessary, in the interests of precision and enforceability.

48. There was discussion around the off site highway conditions and the provision of the residential travel packs. Specifically, whether these matters should be covered in the planning obligation or secured by condition. The PPG advises that conditions requiring works on land that is not controlled by the appellant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability³⁷. In addition, in this case I do not consider it would be reasonable to attach Grampian conditions to address these matters as it could result in an unreasonable time limit on the scheme rather than the 'prior to occupation' provision in the obligation.
49. In addition to the standard time limit condition (1)³⁸ and reserved matters condition (2), I impose a condition specifying the approved plans for reasons of certainty (3). The submission and implementation of a construction management plan (4) is necessary to minimise detrimental effects to the living conditions of neighbouring residents, to protect the natural environment from pollution and ensure highway safety during the construction phase. It also requires a further that condition to include the inclusion of measures to avoid protected and priority species (5).
50. To manage the surface water environment of the scheme a condition is necessary that secures a detailed surface water drainage scheme to be submitted to and agreed by the Council (6) and details of both foul and surface water drainage works to be agreed (8). In addition, any agreed scheme would require maintenance and as such it is reasonable and necessary to require the submission of a maintenance plan (7).
51. There are a number of trees on the site that would require protection during construction (9) in the interests of the character and appearance of the area. To protect future residents from the risks from landfill gas a condition is necessary for ground gas monitoring (10) as is a condition to secure a remedial scheme for gas protection (15).
52. ELP policy R21 requires a heritage assessment taking account of archaeological potential for the proximity to Roman Road. Therefore, it is reasonable that an assessment of the archaeological potential of the site is a requirement secured by condition (11).
53. RLP policy CP1 (vii) refers to the impact of new development on the environment and amenity. In this context the provision of a condition to secure the details of provision for refuse and recycling would be reasonable and necessary (12). The provision of cycle parking in accordance with the approved details will protect the character and appearance of the development and promote sustainable travel (13). In the interests of the living conditions of future occupiers condition 14 secures a scheme of sound attenuation measures.
54. The details of a scheme for the electric charging of vehicles would be reasonable (16) and would accord with the Framework which seeks new development that is designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

³⁷ Paragraph: 009 Reference ID: 21a-009-20140306

³⁸ Numbers relate to those in the schedule of conditions

55. The planning obligation secures the biodiversity net gain contribution. Condition 17 seeks to secure the details of a scheme prior to the development commencing. This would not be duplication of the obligation and would accord with paragraph 170 of the Framework. A condition is necessary relating to any unforeseen contamination that may come to light whilst carrying out the development, in order to protect future users of the land, existing neighbours, properties, controlled waters and ecological systems (18).

Conclusion

56. I have concluded above that, for this appeal, very special circumstances exist to justify inappropriate development in the Green Belt. My findings on other matters do not lead me to reach a different conclusion. Consequently, I conclude overall that the proposal would comply with the relevant provisions of the Framework and the development plan when considered as a whole. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be allowed.



INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker of Counsel	Instructed by Alastair, Council Legal Services
He called	Steve Plumb BSc (Hons) MSc DMS CMLI MCIEEM CEnv Karen Haizelden BSc (Hons) MSc MRTPI

For the Round Table Discussion

Caroline McCaffrey	Brentwood Borough Council
Matthew Bradley	Essex County Council Highways

FOR THE APPELLANT:

Alexander Booth QC	instructed by Nicola Parsons of Pegasus Group
--------------------	---

He called	Timothy Jackson BA (Hons), Dip LA, CMLI Nicola Parsons BA (Hons), Dip UP, MRTPI
-----------	--

For the Round Table Discussion

Ian Dimbylow	RPS
Nicola Hines	Solicitor for Redrow

INTERESTED PERSONS:

Lisa Bryanton	Local resident
Geoffrey Green	Local resident
Andrew Stephenson	Mountnessing Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1	Opening statement for Appellant
ID2	Opening statement for Local Planning Authority
ID3	CIL Compliance Statement
ID4	Samuel Smith [2020] P.T.S.R. 221
ID5	Conditions Schedule v3.2.1
ID6	ECC position statement on highway works
ID7	Appendix to ECC position statement on highway works
ID8	Extract from Developer Contribution Guide
ID9 ³⁹	Unilateral Undertaking version 1
ID10	Unilateral Undertaking version 2
ID11	Closing Statement for Local Planning Authority
ID12	Closing Statement for Appellant
ID13	Corbett v Cornwall Council [2020] Civ 508
ID14	ECC Developer's Guide to Infrastructure Contributions, 2020
ID15	Policies C3 and CP4 of the adopted LP
ID16	Appellant's Costs Application
ID17	Appendix 1 to Appellant's Costs Application
ID18	LPA's response to Costs Application
ID19	Agreed Planning Conditions

³⁹ Signed and dated copies of ID9 and ID10 submitted by email date 8 February 2021

Annex A – Conditions

1. Details of the appearance, layout, scale and landscaping (hereinafter called “the reserved matters”) shall be submitted to and approved in writing before any development is commenced and the development shall be carried out as approved. Such details shall include details of any phasing proposals for the delivery of the approved development.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of this permission, or before the expiration of three years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
3. The development hereby permitted shall be carried out in accordance with the following plans: Site Location Plan: P17-0783_05_01 Rev D; Proposed Vehicular Access Arrangement: 3243-SK-01B
4. No development shall take place, including any ground works or demolition, until a Construction Management Plan 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:
 - the parking of vehicles of site operatives and visitors
 - loading and unloading of plant and materials
 - storage of plant and materials used in constructing the development
 - wheel and underbody washing facilities.
5. Prior to commencement of the development (with the exception of works associated with the site access), a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP will demonstrate mitigation measures to monitor and control environmental impacts through the construction phase of the project specifically in relation to the protection of protected species including hazel dormouse, badger, bat roosts, breeding birds and reptiles and in line with current guidance as well as invasive species highlighted in the ecology report. The CEMP shall identify that construction activities so far as is practical do not adversely impact amenity, traffic or the environmental of the surrounding area by minimising the creation of noise, vibration and dust during the site preparation and construction phases of the development.

The CEMP shall include a site specific risk assessment of dust impacts in line with the guidance provided by IAQM (see <http://iaqm.co.uk/guidance/>) and include a package of mitigation measures commensurate with the risk identified in the assessment.

All works on site shall be undertaken in accordance with the approved scheme.

6. No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
- i. Run-off from the site should be restricted to the 1 in 1 greenfield rate.
 - ii. Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event. Any storage should have a suitable half-drain time and include provision for urban creep.
 - iii. Final modelling and calculations for all areas of the drainage system. Surcharging of the outfall should also be modelled and any appropriate measures should be put in place.
 - iv. Demonstrate that sufficient measures will be put in place in an event of surface water pump failure.
 - v. The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753.
 - vi. Ensure that all properties on site are safe from surface water flooding for all events up to the 1 in 100 +40% climate change storm event.
 - vii. Ground testing across the site
 - viii. Detailed engineering drawings of each component of the drainage scheme.
 - ix. Provide further information in regard to the land raising proposed. It should be demonstrated that land raising will not increase flood risk.
 - x. A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
 - xi. A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall be implemented prior to occupation.

7. No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system, the keeping of yearly logs of maintenance in accordance with the Maintenance Plan and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. That Plan shall then be implemented as approved. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided. The yearly logs must be made available for inspection upon a request by the Local Planning Authority.
8. Prior to commencement of construction details of foul and surface water drainage works shall be submitted to and approved in writing by the Local Planning Authority, and the works shall be carried out in accordance with

these approved details.

9. Prior to the commencement of development, including the importing of materials and any excavations, a method statement regarding protection measures during construction for the existing trees shown to be retained on the approved drawings shall be submitted to and approved in writing by the Local Planning Authority. All works on site shall be undertaken in accordance with the approved statement for the duration of the construction period.

This statement shall include details and locations of protective fencing, and construction details where any change in surface material or installation of services (trenches, pipe runs or drains) is proposed within the canopy spread and likely rooting zone of a tree.

10. Prior to commencement of any groundworks (excluding access works and above ground demolition) a ground gas monitoring and a risk assessment shall be carried out by a competent person to assess landfill gas generation and migration. The findings shall be submitted to and approved in writing by the local planning authority. Based on the results of the gas monitoring and risk assessment, the detailed design of a gas protection system shall be submitted to and approved by the local planning authority and then installed prior to above ground works.
11. No groundworks shall take place until a written scheme of investigation (WSI) for the archaeological project has been submitted to and approved by the local planning authority in writing. The approved scheme shall be implemented prior to construction.
12. Concurrent with the first Reserved Matters submission development details of the provisions for the storage and recycling of refuse shall be submitted to and approved in writing by the Local Planning Authority. Such provisions shall be made/constructed prior to the first occupation of the building(s) that the provision serves and shall thereafter be made permanently available for the occupants of the building(s).
13. Concurrent with the first Reserved Matters submission details of covered and secure cycle parking for each dwelling shall be submitted to and approved in writing by the Local Planning Authority and shall be carried out in accordance with the approved details prior to the first occupation of each dwelling that the provision serves.
14. Prior to any occupation, the applicant shall submit to and have approved in writing by the Local Planning Authority, an assessment to demonstrate that the development has been constructed to provide sound attenuation against external noise in accordance with BS8233:2014. The following levels shall be achieved:
 - i. Maximum internal night noise levels of 30dB LAeq,T for living rooms and bedrooms with windows open (or closed with provided acoustic mechanical ventilation including heat recovery).
 - ii. For bedrooms at night individual noise events (measured with F time-weighting) shall not (normally) exceed 45dB LAmax. The outdoor sound level should not exceed 55 dB LAeq in provided

amenity areas.

15. Prior to occupation of the development, the approved remedial scheme (including the gas protection system and the redistribution of ash and clinker beneath highways or a 600mm 'clean' cover layer in gardens or landscaped areas) must be carried out and a verification report that demonstrates the effectiveness of the remediation must be produced and is subject to the approval in writing of the Local Planning Authority.
16. Concurrent with the first Reserved Matters submission of an Electric Vehicle Charging Scheme for those dwelling with on street or shared parking provision shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the dwelling that it serves.
17. Prior to the commencement of any landscaping or lighting works details of measures to enhance biodiversity shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development and the works shall be carried out in accordance with the approved details. The submitted details shall include a timetable for implementation and the approved details shall be implemented in accordance with that timetable.
 - The required details shall include the following:
 - Native tree and hedgerow planting,
 - Dormouse mitigation measures
 - Wildflower meadow seeding
 - Bat and bird boxes.
 - Lighting scheme that avoids light spill onto the boundary features and retained mature trees.
18. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

END



Costs Decision

Inquiry Held on 2 -5 February 2021

Site visit made on 17 March 2021

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2021

Costs application in relation to Appeal Ref: APP/H1515/W/20/3256968 Ingatestone Garden Centre, Roman Road, Ingatestone, CM4 9AU

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Redrow Homes Ltd for a full award of costs against Brentwood Borough Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for Demolition and redevelopment of the site to provide up to 110 residential units with associated open space, landscaping, infrastructure and access from Roman Road.

Decision

1. The application for an award of costs is refused.

The submissions for Redrow Homes Ltd¹

2. The submission was made in writing and expanded upon orally. Put simply the applicant submits a full costs application on the basis of unreasonable behaviour on the part of the Council. The application is pursued on both procedural and substantive conduct of the Council. In particular that the Council should have determined the case and not contested the appeal as the overwhelming weight of considerations points to the grant of permission. The applicant considers that at appeal the case advanced by the Council is wholly lacking in substantive merit and raised four specific matters; the planning obligation, landscape and openness evidence, prematurity and the planning balance. As such the applicant is seeking a full award in respect of unnecessary costs which are listed in paragraph 10 of the written application.

The response by Brentwood Borough Council²

3. The response was made in writing and expanded on orally. In short the Council considers that the applicant's submissions are not specific. They do not accept that there has been unreasonable delay in providing feedback. In addition, the Council submits it has reasonably exercised its planning judgement in reaching the view that very special circumstances do not exist in this case.

¹ ID16, ID17

² ID18

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The same guidance³ provides that the costs of a planning appeal may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Procedural

6. On this point the applicant's concern relates to the planning obligation and more specifically a lack of response to requests for information and comments on the drafting. The Council's response suggests that the application is not clear and exact on this point. However, the application included a summary of activity⁴ regarding the progression of the planning obligation. Nonetheless, the issue is whether this summary demonstrates that the Council has behaved unreasonably in its approach to this matter.
7. It is clear from the summary document that discussions on the planning obligation have been ongoing for some time. It also shows that there have been responses from Council officers from both the planning department and legal services. Therefore, whilst I appreciate the applicant would have preferred the progress to have been quicker, the evidence does not suggest that the Council have been deliberately obstructive. Therefore, on this point I do consider that the Council has behaved unreasonably.

*Substantive**Landscape and openness evidence*

8. The applicant considers that the calling of witnesses on this matter proved to be wholly unnecessary especially as they accepted that the scheme would lead to harm to openness, albeit low. However, the Landscape Statement of Common Ground⁵ sets out that the area of disagreement is the level of the harm. The Council's proof of evidence alleges a significant impact on openness from the scale of the scheme. I appreciate that ultimately the witnesses both agreed that the impact on openness would be low. However, this was not the case at the submission of case and proof stages. In addition, there were other factors where evidence was presented by these witnesses, such as the existing situation, previously developed land and viewpoints. As such I do not agree with the applicant that this part of the inquiry was unnecessary.

Prematurity

9. The Council advanced a case regarding prematurity and specifically suggested that it should be considered as additional harm and tip the balance away from the grant of planning permission. The applicant's oral submissions suggest that their concern is that the Council's case on this lacked justification and that the planning witness did not provide substantive evidence to support the case

³ Reference ID: 16-030-20140306

⁴ ID17

⁵ CD7.12 para 6.0

on this point. The Council's planning proof of evidence addresses the issue at paragraphs 4.29 and 4.30. Whilst brief these paragraphs do address the criteria of paragraph 49 of the Framework. In addition, the Council signposted its concerns on this point in its statement of case⁶ and as such it should not have come as a surprise to the applicant. Therefore, whilst I understand the applicant does not accept this is an issue on the negative side of the balance, the Council's handling of it does no amount to unreasonable behaviour.

Planning balance

10. The nub of the matter on this issue is that the applicant considers that the Council's approach to the weighting of a number of issues that are identified in the position statement⁷ is not correct. In particular that, whilst the applicant acknowledges that judgement can be exercised, it is suggested that the approach should be reasonable. The applicant suggests that the Council has been blind to the considerations which amount to very special circumstances in this case and therefore the weighting and overall planning balance is affected.
11. The Council's planning witness addresses each of the very special circumstances identified in the position statement within her proof of evidence⁸. In each instance she applies a weighting. I understand that in cross examination the weighting changed in some instances in response to questions. Nevertheless, the overall conclusion of the council's witness was that there are no very special circumstances that would outweigh the substantial harms the Council identified by reason of inappropriateness, to openness and prematurity. Overall, this is a matter of judgement and I am satisfied that the Council explained and supported its position at appeal. Therefore, I do consider that there has been unreasonable behaviour on this point.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has not been demonstrated. For the reasons given above I refuse the application for an award of costs.


INSPECTOR

⁶ CD7.4

⁷ CD7.11

⁸ Paragraphs 4.32-4.36