

Appeal Decision

Site visit made on 7 and 21 February 2017

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 21 March 2017

Appeal Ref: APP/J1535/W/16/3162580

Debbies Garden Centre, Riddings Lane, Harlow, Essex CM18 7HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr N White against the decision of Epping Forest District Council.
 - The application Ref EPF/0718/16, dated 15 March 2016, was refused by notice dated 16 June 2016.
 - The development proposed is proposed development for housing.
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Decision

1. This appeal is dismissed.

Application for costs

2. An application for costs was made by Mr N White against Epping Forest District Council. This application is the subject of a separate Decision.

Procedural matter

3. The application was made in outline with all matters reserved. An indicative site layout was submitted with the planning application, this plan was for illustrative purposes only and I have determined the appeal on this basis.
 4. I visited the site on an unaccompanied basis on the 7 February 2017. However, views into the site were limited and as the appellant is advocating that the site is previously developed land I considered that it was necessary to access the site in order to assess the extent of development. I therefore revisited the site on an accompanied basis on the 21 February 2017.
 5. During the course of determining the planning application the Council amended the description of development to 'outline application (all matters reserved) for between 45-80 dwellings'. The Council did this on the basis that within the design and access statement that accompanied the application the appellant made reference to the proposal being for between 45 and 80 dwellings. However, the appellant advocates that the proposal would be for 43 dwellings. This is supported by the indicative site layout and the planning application form both of which indicate that the scheme would deliver 43 units. I am satisfied on the basis of the indicative site layout and the further confirmation provided within the appeal documentation that the scheme before me would be for 43 units. Given the Council's concerns regarding the constraints of the site and the amount of development proposed I consider that the use of a suitably worded condition limiting the number of dwellings to 43 would resolve this confusion. As a consequence I have considered this appeal on the basis that the proposal would be for 43 units.
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6. In their appeal statement the Council indicated that following the submission of additional highways information and a detailed arboricultural survey they no longer wished to defend their second and third reasons for refusal. In light of all I have read and seen I have no reason to disagree with this position and have revised the main issues to reflect this.

Main Issues

7. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- the effect on the openness of the Green Belt; and
- would any harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Is the proposal inappropriate development in the Green Belt and would it affect the openness of the Green Belt?

8. The Council is in the process of developing a new development plan, the emerging Local Plan (the eLP). As part of this process the Council has undertaken a review of the Green Belt boundaries which includes considering alterations to the Green Belt boundary around Harlow. One of the draft policies (policy SP 3) has highlighted an area which would include the appeal site as a potential housing site.
9. However the eLP itself is at a very early stage in the process and whilst it has been out for consultation it has not yet been the subject of any robust testing. Furthermore, it is clear from the evidence provided by the Council that it has received comments about potential changes to the Green Belt boundaries including those that would involve the appeal site. The Framework is clear¹ that it is not the purpose of an appeal to review a Green Belt boundary; this being one of the functions of a Local Plan examination. As a result I consider that there is a degree of uncertainty as to whether the changes proposed in the consultation draft of the eLP would be included within the final version of the eLP. Therefore, having regard to the advice provided by the Framework², I have attached limited weight to the policies of the eLP. As a consequence I consider that for the purposes of this appeal and until such time as a new development plan is adopted the site falls within the Green Belt and I must give this issue due consideration.
10. Paragraph 89 of the Framework states that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt but then details six exceptions to this rule. A similar list is contained within policy GB2A of the Alterations to the Epping Forest District Local Plan (2006) (the Local Plan). In the Framework the sixth exception in this list advocates that:

“limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use

¹ Paragraph 83 of the National Planning Policy Framework (2012)

² Paragraph 216 of the National Planning Policy Framework (2012)

(excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”

11. The proposal is for the erection of 43 residential units which would be constructed on the site of a former garden centre. The appellant advocates that by reusing the site the proposal would reuse previously developed land and the proposal would fall within this sixth exception of paragraph 89.
12. The Framework³ defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. Having visited the site I observed that there are the remains of a number of buildings and sizeable areas of hard surfacing and as a consequence I agree with both the appellant and the Council that parts of the site are capable of being considered as previously developed land.
13. However, the exception in the Framework also requires that any development of previously developed land should not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
14. The proposal would result in the replacement of areas of hard surfacing and the remains of buildings with 43 residential units. Whilst I recognise that the existing mature vegetation along the site boundaries affords some screening of the site and due to the topography there are limited views of the site from the surrounding countryside, openness in the context of the Green Belt means freedom from development. The proposal would result in the introduction of built form into what is currently a relatively open area.
15. Paragraph 79 of the Framework indicates that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open. The site is located on the edge of Harlow adjacent to open countryside and would have the effect of spreading the buildings further south thereby extending the urban area and eroding the overall openness of the Green Belt.
16. As a consequence I consider that the proposal would not fall within the exceptions set out in paragraph 89 and for the purposes of the Framework would be inappropriate development.
17. Having come to this conclusion, paragraph 90 of the Framework then provides a list of five other forms of development that are also considered not inappropriate. I have assessed the proposal against this list and consider that it would not fall within any of these categories and as a result my previous conclusion that the proposal would be inappropriate development remains unaltered.
18. I therefore conclude that the proposal would not fall within the exceptions of development in the Green Belt contrary to the Framework and policy GB2A of the Local Plan. Furthermore, the scheme would be contrary to policy CP2 of the Local Plan which states that the quality of the rural environment will be maintained by enhancing and managing land in the Green Belt and on the urban fringe.

³ Annex 2 of the National Planning Policy Framework (2012)

19. As inappropriate development is, by definition, harmful to the Green Belt in accordance with paragraph 88 of the Framework I must give this substantial weight when reaching my conclusions.

Would any harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal

20. The Framework aims to boost significantly the supply of housing. The Council acknowledge that they do not have an up to date 5 year housing land supply. As such the appellant advocates that in accordance with the Framework⁴ the development should be approved. However, the Framework advocates that this approach only applies unless specific policies in the Framework, which include land designated as Green Belt, indicate that development should be restricted. Therefore, while the additional 43 units that would be generated by the scheme would provide a contribution to meeting the identified housing need I consider that this does not outweigh the harm to the Green Belt that I have already identified.
21. The appellant has indicated that all 43 of the proposed units would be affordable housing units and that this should be considered as a very special circumstance sufficient to outweigh the harm to the Green Belt. However, whilst I recognise that there is a national need for affordable housing no evidence has been submitted to demonstrate whether this need is or is not being met by other sites in Harlow or whether this proposal would deliver units for which there is a specific shortfall or recognised need. As a consequence whilst the scheme, subject to the submission of an appropriate legal agreement, could deliver affordable housing I do not consider that this would outweigh the harm to the Green Belt that I have already outlined.
22. Finally, the appellant has made reference to the current lawful use of the site for the storage of hard landscaping materials and for use as a contractor's yard associated with a hard landscaping business (composite use)⁵. Whilst there was some evidence of waste and spoil being stored at the site the effect of the current use would appear to be fairly limited and as a result does not lead me to a different conclusion.
23. As a result I consider that the scheme would be inappropriate development in the Green Belt as defined by the Framework. For the reasons I have already given I consider that the proposal would erode the openness of the Green Belt. Whilst the proposal may make a contribution to housing supply and subject to a legal agreement would deliver affordable housing it would result in the loss of Green Belt. Consequently, I conclude that on balance and on the basis of the evidence before me the benefits that the scheme would provide do not outweigh the totality of harm to the Green Belt.
24. Furthermore, I do not find that the other considerations in this case clearly outweigh the harm I have identified. Looking at the case as a whole, I consider that the very special circumstances required to justify the development do not exist. Consequently I conclude that the proposal would be contrary to policies GB2A and CP2 of the Local Plan and the requirements of the Framework.

⁴ Paragraph 14 of the National Planning Policy Framework (2012)

⁵ LPA reference: CLD/EPF/1493/02

Other matters

25. The Council considered, on the basis that the scheme would deliver up to 80 units, that the proposal would be contrary to policies CP3, CP7, H3A, LL3, DBE4, DBE5, DBE6, DBE7, DBE8, DBE9, ST4 and ST6 of the Local Plan. These policies set the parameters for the layout and design of new development including the effect on the living conditions of the occupants of existing properties. For the reasons I have already outlined I am satisfied that the proposal would deliver 43 units. Had I been minded to allow the appeal I would have sought the views of the Council with regards to whether it considers that a scheme for 43 units would contravene these policies prior to issuing a decision. However, as I intend to dismiss the appeal, because of the harm to the Green Belt that I have identified above, I have not pursued this matter further.
26. The Council has advised that a contribution towards the delivery of education would be required by the development which would need to be secured through the submission of a legal agreement. No legal agreement was submitted with the appeal. However, as I intend to dismiss the appeal, because of the harm to the Green Belt that I have identified above, I have not pursued this matter further.
27. Local residents have raised concerns with regards to the effect the additional traffic on the local road network, parking, construction traffic and the loss of trees at the site. However, I note that following the submission of the additional highways information and the detailed arboricultural survey with the appeal the Council no longer objects to the proposal on highways or loss of trees grounds. Whilst I acknowledge that the proposal would result in an increase in traffic on the local road network and would result in the removal of some trees, I have no substantive evidence to lead me to a different view to the Council on Highways and tree matters.
28. Concerns have been raised regarding potential flooding and issues with surface water. However, I note from the Council's evidence that the site falls within Flood Zone 1 where there is a low risk of flooding and that it considered that the issue could be addressed through the use of a suitably worded condition requiring the submission of a drainage strategy.

Conclusion

29. I conclude that the proposal would be inappropriate development in the Green Belt as defined by the Framework. The proposal would extend the built area and erode the openness of the Green Belt. As outlined above I give only limited weight to each material consideration cited in support of the proposal and conclude that, taken together and having regard to the letters of support for the development, they do not outweigh the harm that the scheme would cause. Consequently, I conclude that the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. For the reasons above, and having regard to all other matters raised, I conclude that the scheme is not sustainable development for which the framework indicates that there should be a presumption in favour and that, therefore the appeal should be dismissed.

Jo Dowling

INSPECTOR