
Appeal Decision

Site visit made on 8 October 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2019

Appeal Ref: APP/J1535/W/19/3233110

land adj. to Ninnings, Middle Street, Nazeing, Waltham Abbey EN9 2LH

- 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 Mrs L Keeling against the decision of Epping Forest District Council.
 - The application Ref EPF/0265/19, dated 31 January 2019, was refused by notice dated 4 June 2019.
 - The development proposed is described as 'outline application for the proposed erection of up to 7no. dwellings with new vehicular access'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant's name stated on the planning application form differs slightly from the name given on the appeal form. However, I have taken the appellant's name in the banner heading above from the planning application form.
3. The application was submitted in outline form with all matters reserved for future consideration, except for access and layout. Therefore, I have considered the access and layout details shown on the submitted plan, but I have treated the elevations and appearance of the proposed dwellings shown as indicative only. Furthermore, whilst the development description proposes 'up to' 7 dwellings, the layout plan clearly shows a total of 7 dwellings. I have considered the appeal on this basis.
4. The Council have made reference to policies from the 'submission version of the Local Plan 2017'. The Epping Forest District Local Plan Submission Version 2017 (the emerging plan) was submitted to the Secretary of State on 21 September 2018 for examination. It is not part of the adopted development plan. I have not been provided with a copy of any of the policies within the emerging plan referred to by the Council, nor is it clear the extent to which any objections to its policies are unresolved, or the extent to which its policies are consistent with the National Planning Policy Framework (the Framework). I have given it limited weight in the determination of this appeal and instead I have therefore relied upon the adopted development plan and the Framework, referred to in the Council's reasons for refusal, in reaching my decision.

Main Issues

5. The main issues in this case 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 proposal on the openness of the Green Belt;
- The effect of the proposal on the character or appearance of the area bearing in mind it would be within the Nazeing and South Roydon Conservation Area, and within the settings of nearby listed buildings;
- The effect of the proposal on highway safety with particular regard to the proposed access;
- The effect of the proposal on the designated Epping Forest Special Area for Conservation (SAC); and,
- If the development would be inappropriate, 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 necessary to justify the proposal.

Reasons

Inappropriate development

6. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Saved Policy GB2A of the Epping Forest District Local Plan Alterations adopted July 2006 (the Altered Local Plan) seeks to restrict inappropriate forms of development in the Green Belt, which is consistent with the Framework. However, paragraph 145 of the Framework makes it clear that while new buildings are inappropriate in the Green Belt, an exception is made in the case of limited infilling in villages.
7. The appellant has referred to the settlement within which the appeal site falls as 'Lower Nazeing', which appears to form part of the wider settlement of 'Nazeing'. The main parties agree that the appeal site forms part of a village.
8. The appeal site occupies land in between 'Ninnings' and an associated cluster of buildings to the east, and several properties and buildings to the west. From the street each of these buildings is relatively inconspicuous owing to existing vegetation and/or the extent of set-back of the buildings from the road. In relation to the existing sporadic development form, the width and extent of the appeal site lying in between these properties appears relatively substantial and by no means limited.
9. The illustrative details show seven relatively large residential units which would be located close to one another, of notable scale and visibility from the street, which would contrast with the irregular and sparse pattern of development which occupies this side of Middle Street. Given the particular circumstances evident on the ground, the development would not be 'limited' either by virtue of the large extent of the gap that exists between properties, or by the

considerable extent of the built form proposed, irrespective of the detailed design, scale and form.

10. Consequently, the proposal would not represent limited infilling in a village. For the foregoing reasons it would comprise inappropriate development in the Green Belt that would, by definition, be harmful to the Green Belt. It would fail to meet the exceptions set out in paragraph 145 of the Framework. There would also be conflict with Saved Policy GB2A of the Altered Local Plan which seeks to restrict inappropriate forms of development in the Green Belt.

Openness

11. Paragraph 133 of the Framework states that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence.
12. The presence of surrounding vegetation, trees and a substantial hedgerow fronting the road do not detract from views of this sloping and prominent part of the countryside which is eminently open. Even though I am only considering the layout and access as part of this appeal, it is apparent from the submitted plans that each of the dwellings would occupy a notable footprint, and the indicative drawings show dwellings of fairly considerable width and overall mass. Therefore, the openness of the appeal site would be curtailed by the proposal such that I find that the openness of the Green Belt would be reduced by a significant degree.

Character and appearance

13. The site lies within the Nazeing and South Roydon Conservation Area (CA). A conservation area appraisal for the CA has not been submitted to me but I have based my assessment of the significance of the CA on my site visit and the evidence before me.
14. Middle Street is defined by a bespoke assortment of properties, along with a few listed buildings. Despite the more recent age of many of the properties, they are mainly of traditional design, their presence softened by a variety of planting and their relative set back from the road. On the same side of the road as the appeal site properties have less linearity and are more interspersed. The space between them, coupled with the greenness of the appeal site, contributes to the verdure of the area. These attributes contribute to the character and appearance of the area and significance of the CA.
15. On my site visit I viewed the appeal site from several elevated points along Perry Hill which lies generally to the south of it. From here, and when viewed from Middle Street, it was apparent that the proposed dwellings would be positioned relatively close to each other in an arrangement which would be out of step with the more organic layout of other properties on the same side of the road, and the verdant character of the site and its immediate surroundings. Whilst details of their appearance would be a reserved matter, the alignment and closeness of the proposed dwellings, combined with the prominent position of the site in the street, would result in the replacement of an open and substantial green gap with an obtrusive development form, to the detriment of the character and appearance of the CA. The retention of most of the hedgerow and additional landscaping proposed would not compensate for a

significant loss of spaciousness and rural quality with the introduction of such an extensive and closely positioned built form as proposed.

16. In terms of the impact on the setting of nearby grade II listed buildings, 'Ninnings' lies generally to the east of the appeal site, 'Shadwalkers' lies generally to the west, and 'Smalldrinks' lies on the opposite side of Middle Street facing the appeal site. Both Shadwalkers and Ninnings are situated within relatively expansive plots and are well screened from the appeal site by extensive areas of planting close to each of their respective boundaries. There is nothing in the evidence before me to suggest how any part of the appeal site forms part of the setting of these listed buildings or, if it does, how their significance would be harmed. In light of this, and based on my site visit, I am satisfied that the appeal site does not have a visual, historic or functional relationship with the listed buildings such that the development would be within their respective settings.
17. In respect of Smalldrinks, the property faces the appeal site and enjoys views of the open countryside. Whilst I accept that the setting encompasses at least part of the appeal site, there is nothing in the evidence before me, nor was there an appreciable physical or functional relationship between them on my site visit to suggest that the setting contributes to the significance of the listed building, which lies on the opposite side of the road and amidst an existing row of houses. However, this does not detract from the harm I have identified to the character, appearance and significance of the CA.
18. Heritage assets are an irreplaceable resource, and therefore any harm requires clear and convincing justification. In accordance with the relevant statutory duties¹, for the foregoing reasons, I conclude that the development would harm the character and appearance of the area and would fail to preserve the character or appearance or significance of the Nazeing and South Roydon Conservation Area which would be contrary to Saved Policies DBE1, DBE4, HC6 and HC7 of the Epping Forest District Local Plan adopted January 1998 (the Local Plan). These policies require, amongst other matters, that development preserves or enhances the character and appearance of an area and has regard to local landscape character. As I do not find harm to the significance of the listed buildings I have referred to, I do not find any conflict with Saved Policy HC10 of the Local Plan in this case.
19. The harm to the heritage asset I have identified would be 'less than substantial', as guided by paragraph 193 of the Framework. In accordance with paragraph 196 of the Framework, I am obliged to consider the public benefits against the identified harm, a matter I shall return to in the planning balance section of this decision.

Highway safety

20. The proposal would involve a new access off Middle Street. The Council do not object to the proposed access in terms of its geometric layout and the visibility available from it for use by vehicles. Their concern stems from the lack of existing footpath provision alongside the road fronting the appeal site, and the inadequate design of the junction to safely cater for pedestrians.

¹ Under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

21. The proposed layout would include footpaths on either side of the internal road and, combined with its short length and design which would likely reduce the average speed of vehicles, the layout as proposed would allow pedestrians to move safely within the site.
22. However, the proposed junction layout would leave a small grass margin in between the carriageway of Middle Street and the footpaths located on either side of the proposed internal access road. Given the lack of footpath provision fronting the appeal site, those exiting the appeal site on foot would need to cross Middle Street in order to access the footpath on the opposite side of Middle Street. This would mean pedestrians would either be required to walk into the main carriageway of the proposed access, or walk across the small grass margins, before crossing Middle Street.
23. I observed that Middle Street was fairly regularly trafficked, and the general speed that vehicles were travelling was of sufficient note for me to exercise particular caution when crossing the road to conduct my site visit. The appellant accepts that a layout encouraging pedestrians to walk into the main carriageway of the proposed junction with Middle Street would represent an unacceptable risk of collision. To counter this, gateways are proposed on either side of the access so that pedestrians could exit via the grass verge instead, avoiding direct conflict with vehicles manoeuvring in and out of the proposed junction.
24. Whilst no specific details have been provided relating to the proposed gateways, given my foregoing observations concerning the speed and regularity of vehicles travelling along Middle Street, I find that a grass verge would not be an acceptable surface for use by pedestrians. At all times of the year, but particularly during periods of inclement weather, users of it would be liable to slip or fall and it would not provide them with a sure-footing, nor would it be suitable for certain users with impaired mobility. Given that no footpath would be provided fronting the appeal site, and having regard to the inadequate crossing facility proposed, the proposal would introduce additional conflict between pedestrians and vehicles, to the detriment of highway safety.
25. I am aware that the County Council's highways officers did not object to the volume of traffic which would be generated by the proposal. However, this does not compensate for the deficient and unsafe access and layout proposed which would be unsafe for pedestrians.
26. Consequently, I find that the development would not result in safe and suitable access for all users. As a result, it would conflict with Saved Policy ST4 of the Altered Local Plan which seeks, amongst other matters, to ensure that development would not be detrimental to highway safety. Furthermore, the development would not ensure that safe and suitable access could be achieved for all users which would result in unacceptable highway safety impacts, contrary to paragraphs 108 and 109 of the Framework.

Epping Forest SAC

27. The Epping Forest SAC is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63(5) imposes a duty on local planning authorities as the competent authority, to consider whether any

proposal may have a significant effect on such protected areas either alone, or in combination with other plans and projects.

28. Whilst the appeal site lies outside the 6.2km zone where recreational use of the SAC may be impacted, the Council raises concerns that additional vehicular activity arising from the proposed development could affect air quality of the SAC. However, whilst the Council refer to a requirement for the proposal to contribute 'to a programme of air quality monitoring' in respect of the SAC, I have not been provided with any information detailing why air quality monitoring would be required, nor have I been provided with details of the type of mitigation sought and, if it is a monetary contribution, how much it would be and how such a figure has been derived. Therefore, it has not been demonstrated that the mitigation suggested by the Council would be necessary to protect the SAC and would accord with the necessary tests relating to planning obligations², or has been properly considered in the context of Habitats Regulations³.
29. The appellant, whilst willing to provide the Council's requested mitigation, would wish to do so at reserved matters stage. However, in exercising my duty to protect the European Site, I must adopt a precautionary approach. I am aware that vehicular movements generated by the proposal could adversely affect air quality which, in turn, could compromise the integrity of the SAC. From the evidence before me I cannot be certain that the integrity of the protected site would not be harmed as a result of this proposal, either alone or in combination with other plans and projects. This is a matter which goes to the heart of determining whether planning permission should be granted in the first instance and I need to be satisfied that the SAC would not be unacceptably harmed in deciding this appeal, which deals with the principle of development, as opposed to the reserved matters which would be concerned with details of appearance, scale, and landscaping.
30. If I was minded to allow this appeal I would have sought clarity from the main parties on this matter and, if necessary, undertaken an Appropriate Assessment in order to consider the implications of the development on conservation objectives. However, as I am dismissing the appeal on other grounds, I do not need to pursue this matter further.
31. Having regard to the foregoing, I have no choice but to conclude that the development would fail to demonstrate that significant harm to biodiversity interests would be avoided, contrary to paragraph 175 of the Framework.

Planning Balance and Conclusion

32. The proposal would be inappropriate development in the Green Belt which is harmful by definition. According to the Framework, substantial weight should be attributed to any harm to the Green Belt. In addition, I have found that the development would lead to a significant loss to the openness of the Green Belt, which would be harmful. I have also found harm to the character, appearance and significance of the CA, a designated heritage asset. The development would also harm highway safety.
33. On the other hand, the development would result in additional dwellings which would make a relatively small but meaningful contribution to local housing

² See The Community Infrastructure Regulations 2010 (as amended)

³ The Conservation of Habitats and Species Regulations 2017

supply and make a direct and indirect contribution to the local economy through an increase in spending power, and through increased employment opportunities and the purchase of materials during construction. These are matters to which I attach significant weight and they would also constitute a form of public benefits as required by paragraph 196 of the Framework.

34. However, irrespective of attaching any weight to the harm to the integrity of the Epping Forest SAC, taking all of the above into account, the other considerations are clearly outweighed by the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist, and the proposal is therefore in conflict with the Framework in respect of Green Belt national policy and Saved Policy GBA2 of the Altered Local Plan and Saved Policies DBE1, DBE4, HC6 and HC7 of the Local Plan.
35. Accordingly, I conclude that the appeal is dismissed.

Matthew Woodward

INSPECTOR