



Appeal Decision

Site visit made on 27 November 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2019

Appeal Ref: APP/J1535/W/19/3234838

The Ridings, Manor Road, Loughton IG10 4RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Wilce against the decision of Epping Forest District Council.
 - The application Ref EPF/3039/18, dated 12 November 2018, was refused by notice dated 9 April 2019.
 - The development proposed is demolition of a two storey 5 bedroom house and construction of 2No. new two storey apartment blocks with associated car parking below.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Within the appellant's statement of case, reference has been made to the proposal seeking outline planning permission with all matters reserved. However, it is clear from the original planning application form that the application seeks full planning permission. I have therefore assessed the appeal on this basis and in doing this, I am satisfied that the interests of the parties have not been compromised.
3. The Council are in the process of developing the Epping Forest District Council Local Plan (Submission Version) (2017) (the Emerging Plan). Whilst the plan has now been through examination, it is yet to be adopted, and in their evidence, the Council state that there are unresolved objections to the plan. I have not been made aware of the specific nature of these unresolved objections. However, due to the uncertainty around the emerging plan, I have not attributed any weight to the policies referred to by the Council in my assessment of the appeal.

Main Issues

4. The appeal site is located within the Green Belt. Accordingly, the main issues are:
 - i) whether the proposal would constitute inappropriate development within the Green Belt;
 - ii) the effect of the proposal on the Epping Forest Special Area of Conservation (SAC);
 - iii) the effect of the proposal on the character and appearance of the area;

- iv) the effect of the proposal on existing trees;
- v) whether the proposal would make suitable provision for affordable housing;
- vi) the effect of the proposal on flood risk;
- vii) whether the appeal site would be a suitable location for housing, having regard to local and national policy; and
- viii) if the proposal would be inappropriate development, 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 it.

Reasons

Inappropriate development

5. Paragraph 143 of the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate development in the Green Belt.
6. However, an identified exception to this is the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development, or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
7. The proposal would not provide any affordable housing, a matter that will be discussed further below. Consequently, when considering whether the proposal would represent inappropriate development within the Green Belt, the key assessment is whether the proposal would have a greater impact on the openness of the Green Belt than the existing development.
8. The appeal site is currently occupied by a large detached dwelling on a large parcel of land. The site is located on the corner of Manor Road and accordingly, it occupies a prominent location. The dwelling is set well back from Manor Road and it is also set away from the main road which lies adjacent to the western boundary of the site. Due to the location of the dwelling within the site, although it is a substantial and imposing structure, and includes a large pool building to the rear, there is a large amount of space about the existing buildings. As a consequence, the scale of the buildings is recessive to the overwhelming spaciousness of the site. Based on the evidence before me, the existing building could be extended, however, I have no clear evidence to suggest in what manner or whether such extensions would likely be implemented. Accordingly, I give this matter very little weight, and I have assessed the appeal based on the site as it exists currently. On this basis, the existing structures enjoy a spacious setting which provides the site with an intrinsic openness.

9. The proposal would result in the demolition of the existing structure and see it replaced with two separate apartment buildings, referred to as Structure 1 and Structure 2 on the proposed site plan. Structure 1 would be located on land to the front of the existing dwelling and Structure 2 would be located on land that is currently located behind it. Due to the proposed siting, the built form of Structure 1 would be located significantly closer to Manor Road. Additionally, Structure 2 would increase the scale of the built form further to the south of the site. The proposed layout would therefore increase the amount and presence of built form on the site. Such an increase would be to the detriment of its openness.
10. The structures would each provide three storeys of accommodation above a shared car parking area within a proposed basement, although the top floor would be located within the roofspace. They would be of a comparable width to the existing building, however, the depth of the structures would be considerably greater. As a consequence, the footprint, bulk and mass of each of the structures would be substantially larger than the existing building and when this is combined with their location on the site, the proposal would demonstrably harm the openness of the appeal site.
11. Consequently, for the reasons identified above, due to the substantial increase in scale, mass, and bulk, the proposed development would be significantly larger than the existing buildings on the site. The proposal would therefore have a substantially greater impact on the openness of the Green Belt. I therefore conclude that it would constitute inappropriate development within the Green Belt. Accordingly, it would fail to comply with the Green Belt protection aims of the Framework, as well as Policy DBE4 of the Epping Forest District Local Plan (1998) (LP) and Policies GB2A, GB7A, and GB15A of the Epping Forest District Local Plan Alterations (2006) (LPA). Taken together, these seek to protect the Green Belt from inappropriate development.

Epping Forest SAC

12. The appeal site is located within 3km of the Epping Forest SAC, and based on the evidence that I have before me, the SAC is vulnerable to increased levels of visitors using the Forest for recreation, as well as from air pollution generated by increased motor vehicle use.
13. Due to the location of the appeal site, the requirements of the Conservation of Habitat and Species Regulations 2017 apply (the Regulations). The regulations require that I, as the competent authority, must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC. When combined with other development within the area, and taking a precautionary approach, I am satisfied that the proposal would result in an increase in recreational activity as well as increasing levels of air pollution which would lead to a likely significant effect on the integrity of the SAC.
14. Due to the effect of the proposal, the Regulations place a duty on competent authorities to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives. On this point however, the appeal has not been accompanied by any mechanism to secure the necessary mitigation advocated by the Council.

15. The site may have been included in a previous call for sites and the development is relatively limited in scale. However, as identified above, the Regulations require the development to be considered in combination with other development in the area and on a precautionary basis. Taking such an approach, based on the evidence before me, I conclude that the proposal would be likely to result in a significant adverse effect on the integrity of the SAC. Accordingly, it would fail to comply with the requirements of the Regulations as well as Paragraph 175(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused. Additionally, it would fail to comply with Policies CP1 and CP6 of the LPA. Taken together, these seek to accommodate development in a sustainable manner which avoids impacts of development upon the environment, particularly in ways likely to affect future generations.

Character and appearance

16. The appeal site is located amongst a small cluster of houses which are set within very generous and spacious plots. In addition, the surrounding area is dominated by the presence of large trees and mature landscaping, the presence of which provide the area with a pleasing semi-rural character. Due to the space about the existing buildings on the appeal site, and the prevalence of mature trees on the site, the appeal site makes a positive contribution to the prevailing character and appearance of the area.
17. As identified above, the proposal would result in a substantial increase in the amount of built form on the site. As a consequence, due to the increased scale, mass and bulk of the proposal, the development would have a detrimental effect on the spaciousness of the surrounding environment. Although the proposed architecture would have similar characteristics with the existing dwelling, the proposed buildings would be significantly larger and more imposing. As a consequence, they would dominate the site in a manner that would be at odds with, and harmful to, the semi-rural character of the area.
18. I therefore conclude that the proposal would harm the character and appearance of the surrounding area. Consequently, it would fail to accord with Policies DBE1, LL1 and LL2 of the LP and Policy CP2 of the LPA. Taken together, these seek to conserve, enhance, respect, and improve the character and appearance of the countryside and the quality of the rural and built environment.

Trees

19. The appeal site hosts a number of large and mature trees, particularly on the north and west boundaries, as well as towards the southern section of the site. Due to the size and presence of these trees, they represent an important feature of the site, and accordingly, the site is subject to an area Tree Preservation Order.
20. The proposed layout includes basement car parking and the proposed access ramp would be located towards the western boundary of the site. The basement plan indicates that the ramp would be located within the root protection areas of two significant trees. The appeal has been accompanied by a tree survey and a tree constraints plan. However, the evidence does not

include an arboricultural impact assessment, and as a consequence, the effect of the proposed ramp on the adjacent trees is not certain.

21. Due to the importance of the trees and the lack of information in relation to the effect of the proposal, I cannot be certain of the effect that the proposal would have. Consequently, I conclude that the proposal could have a harmful effect on the trees on the site. Accordingly, it would fail to comply with Policy LL10 of the LP which seeks to resist development which makes inadequate provision for the retention of trees.

Provision of affordable housing

22. Policy H5A of the LPA states that the Council will seek an appropriate number and type of affordable dwellings on all suitable development sites. However, it is not explicit in relation to thresholds or the level of affordable housing that would be necessary.
23. Whilst the evidence is not clear in relation to the amount of affordable housing that should be provided, when assessed against the provisions of the LPA, I have no reason to consider that affordable housing should not be a necessary component of the proposed development. Indeed, it is common ground between the parties that the proposal should provide affordable housing, and the appellant has indicated their willingness to enter into a legal agreement to secure the relevant terms. However, no such agreement forms part of the appeal and consequently, this matter cannot attract any weight in my assessment of the appeal.
24. Therefore, in the absence of a suitable legal agreement, I conclude that the proposal would fail to make suitable provision for affordable housing. Accordingly, it fails to comply with policy H5A of the LPA which seeks the provision of affordable housing on all suitable development sites.

Flood risk

25. Both the County Council, as Lead Local Flood Authority, and the Council's Drainage Team have objected to the proposal on the basis that it would fail to reduce flood risk. Specifically, concern was raised in relation to run-off rates and water quality treatment.
26. Based on the evidence that I have before me, during the course of the application, additional information was submitted but this was not sufficient to overcome the concerns. The appeal itself has not been accompanied by any additional flood risk or drainage evidence and the appellant's statement of case does not address the issue. As a consequence, I have no reason to dispute the conclusions of the Council's drainage experts.
27. Therefore, in the absence of any evidence to the contrary, I conclude that the proposal would have a harmful effect on flood risk. Accordingly, it would fail to comply with Policy U1 of the LP and Policies U3A and U3B of the LPA. Taken together, these require development to have regard to the adequacy of the existing infrastructure, seek to resist development which would increase the risk of flooding elsewhere, and promote the use of sustainable drainage systems.

Location

28. Policy CP6 of the LPA seeks to accommodate development in a sustainable manner which counters trends towards more dispersed patterns of living, employment and travel. To do this, the policy seeks to concentrate new housing development within urban areas and applies a sequential approach to give preference to development within urban areas.
29. The appeal site is not located within an urban area and it is remote from nearby services. However, it is also located within a small cluster of existing houses and in this respect, it is not isolated. Although the location of the site would be likely to encourage use by the private car, it is also located close to an established bus service. Moreover, the Framework is clear that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
30. Despite the location of the site, I have no compelling evidence before me to suggest that this would be harmful. Consequently, having regard to local and national policy, and notwithstanding the conclusions identified above in relation to the Green Belt and the SAC, I conclude that the location of the site would be suitable for housing. In this respect therefore, it would accord with Policies CP1 and CP6 of the LPA which, taken together, seek to achieve sustainable development.

Other considerations

31. The Council accepts that they cannot provide a 5 year supply of deliverable housing sites. In this respect therefore, the proposal would make a small but important contribution to housing supply within a short term. This matter weighs in favour of the proposal and will be discussed further below.

Conclusion

32. Due to the housing supply position of the Council, the relevant policies for determining the proposal are out of date. Accordingly, the presumption in favour of sustainable development, as set out in Paragraph 11 of the Framework, is engaged.
33. The appellant has supplemented their appeal with evidence in relation to how they consider this matter should be approached, including reference to case law. In addition, reference has been made to a different appeal decision in the same district. However, based on the evidence that I have before me, the circumstances in that case were materially different to this scheme, with particular regard to an extant planning permission. Accordingly, due to the material differences between the proposal, I give this decision very limited weight in my assessment of the appeal.
34. Despite the evidence that has been presented, in my view, the requirements of the current Framework are very clear. Paragraph 11 states that where the policies which are most important for determining the proposal are out-of-date, permission should be granted unless one of two exceptions apply. The first exception relates to the application of policies in the Framework that protect areas or assets of particular importance and which provide a clear reason for refusing the development proposed. Footnote 6 to Paragraph 11 confirms that the policies referred to include those which relate to land designated as Green Belt as well as habitats sites.

35. As identified above, I have found that the proposal would constitute inappropriate development within the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm. I have also found that the proposal would fail to make suitable provision for affordable housing, and that it would harm the character and appearance of the area, have an adverse effect on protected trees, and potentially increase flood risk. Furthermore, I have also found that the proposal would likely result in a significant adverse effect on the integrity of the SAC, and in accordance with the requirements of Paragraph 11, this matter alone would provide a clear reason for refusing the development proposed.
36. The Framework states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Therefore, despite the housing supply position of the Council, and my findings in relation to the locational requirements of the development plan, the harm to the Green Belt, as well as the other harmful effects of the proposal identified above, including the effect on the SAC, would not be clearly outweighed by other considerations.
37. Consequently, the very special circumstances necessary to justify the proposal do not exist and therefore the proposal fails to accord with the Green Belt protection aims of the Framework. Moreover, the totality of the evidence overwhelmingly draws me to the overall conclusion that the appeal should not be successful.
38. Accordingly, the appeal is dismissed.

Martin Chandler

INSPECTOR