
Appeal Decision

Site visit made on 14 May 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2020

Appeal Ref: APP/J1535/W/20/3244967

Carpenters, High Road, Thornwood, Epping CM16 6LR

- 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 Des Rees against the decision of Epping Forest District Council.
 - The application Ref EPF/0289/19, dated 1 February 2019, was refused by notice dated 14 August 2019.
 - The development proposed is erection of two storey dwelling house.
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matters

3. Although not a reason for refusal, the effect of the proposal on the Epping Forest Special Area of Conservation (SAC) is potentially a determinative issue. Therefore, I have elevated this matter to a Main Issue.
4. Within the evidence before me reference has been made to the Council's emerging Local Plan. The Epping Forest District Local Plan Submission Version (2017) (ELP) has reached an advanced stage and information has been provided as part of the appeal on the examining Inspector's advice regarding the main modifications to the plan. Therefore I have attached moderate weight to the emerging policies.

Main Issues

5. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt, including its effect on openness having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the development on the Epping Forest Special Area of Conservation (SAC) 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.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

6. The appeal site is situated in the Metropolitan Green Belt. The Framework indicates that other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.
7. The site, which is now vacant, was previously used as a car park in association with the former Carpenters Arms pub/restaurant which has subsequently been redeveloped for housing and is therefore considered previously developed land. The site is open albeit that there is existing planting on two sides and the frontage of the site contains a number of protected trees.
8. The appellant puts forward the argument that the proposal would comprise 'limited infilling in a village' with reference to Framework para 145(e). The characteristics of the area which would receive development are a material factor in considering whether the proposal would constitute such limited infilling. I consider that the development would not have to occupy the entire space between the buildings to constitute infilling, neither is the consideration related to the quantity of development proposed. I have taken account of the pattern and form of development which exists within the locality in coming to a judgement as to whether the development would be limited infilling.
9. The combination of the extent of the gap between the existing buildings, the scale of the development and the wider built context of the site with no development on one side of the site, all lead me to conclude that the development would not constitute the limited infilling in villages which the Framework considers to be not inappropriate development.
10. The Council considers that the development falls to be considered under paragraph 145(g) of the Framework which allows for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development. Both parties accept that the site comprises previously developed land.
11. Openness can be defined as the absence of built form. In the case before me the built form would increase significantly with the proposed dwelling being positioned across approximately two thirds of the plot. The development would therefore, in spatial terms, have a greater and harmful impact upon the openness of the Green Belt.

12. However, openness also has a visual aspect as well as a spatial one. I note that the proposed dwelling would be set back from the road and is located within a group of residential dwellings. The site is currently screened by extensive landscaping and even if this were to be removed in part, the dwelling would be seen within the context of these existing neighbouring dwellings. It follows that the proposed dwelling would not be visually intrusive. However, this absence of visual harm does not overcome the already identified spatial harm to Green Belt openness.
13. Therefore, the proposal would not comply with saved policy GB2A of the Epping Forest District Local Plan Alterations adopted July 2006 (LP) and emerging policy DM4 of the ELP which both seek to restrict inappropriate forms of development in the Green Belt, which is consistent with the Framework.

Epping Forest SAC

14. The appeal site lies within the 6.2 km zone of influence (ZOI) identified by Natural England as being likely to result in harm to the SAC due to increased leisure use and an increase in traffic impacting on air pollution. The area was designated due to the presence of three qualifying habitats and one species, namely Atlantic beech forest, European dry heaths, Northern Atlantic wet heaths and the Stag beetle. The conservation objectives are to achieve the favourable conservation status of these qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats, the population and distribution of the qualifying species and the supporting processes on which it relies.
15. Given that the proposal is for an additional house, and its proximity to the SAC there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a likely significant effect on the European site.
16. Whilst it has been put to me that the appellant already lives within the ZOI and therefore there would be no increase in recreational pressures, as an additional dwelling is proposed and the appellant's existing dwelling would still remain it is reasonable to conclude that there could be an increase if both properties were occupied.
17. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC. The likely significant effects arising from the proposal need to be considered in combination with other development in the area and adopting the precautionary principle.

18. Natural England (NE) is currently working with all the affected local authorities to develop a strategy to mitigate these potentially harmful effects, thereby allowing development to proceed. This large-scale strategic project, involving a number of local authorities, will address both recreational pressures and air quality impacts. The strategy, which is likely to be based on the provision of a series of Suitable Alternative Natural Green Spaces (SANGs) alongside Strategic Access Management and Monitoring (SAMMs), is still being prepared and the tariffs that are being developed may be changed as measures to address air quality impacts have yet to be agreed.
19. The emerging strategy has defined two recreational zones of influence around the SAC and the appeal site is within the 3-6.2Km zone. NE's initial advice (September 2018) was to require all small-scale development to make a financial contribution towards the emerging mitigation strategy. However, notwithstanding the uncertainties that remain about the emerging strategy and how it is to be implemented, in March 2019 NE amended its advice to the affected local authorities. It now suggests that where proposed developments in the outer zone are less than 99 dwellings, no mitigation is required.
20. However, NE's interim advice did not explain why developments of less than 99 dwellings no longer required mitigation. Neither did it provide any clear reason for withdrawing the requirement for contributions towards identified mitigation from small-scale developments. I am therefore unable to undertake an Appropriate Assessment in respect of this site.
21. In terms of air pollution, Natural England has advised that all new development in the district has the potential to increase air pollution unless appropriate mitigation is provided. The Council is working with Natural England and other neighbouring authorities towards establishing a mechanism for collecting contributions that would be used to offset any potential impact because of air pollution on the SAC, and a Mitigation Strategy which would identify specific measures or projects.
22. Whilst the appellant has set out a range of suggested conditions which could secure mitigation measures to offset the impact on air pollution, as these are not part of an agreed strategy with Natural England, I am unable to conclude that they would be sufficient.
23. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives. However, in the absence of an agreed mitigation strategy to overcome the in-combination effects that have been identified in respect of air quality and the lack of a mechanism to secure the contribution to mitigate the impacts of recreational pressure, I cannot be satisfied that the appeal proposal would not result in an adverse effect on the integrity of the SAC. Had such mitigation been in place, I would have sought clarification 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, this avenue is not available to me.

24. Based on the precautionary principle and the evidence before me, I conclude that the appeal scheme would be likely to have a significant adverse effect on the SAC due to the potential increased disturbance through recreational activity and increase in air pollution. The proposal would therefore 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. Moreover, it would also fail to comply with policy NC1 of the LP and policies DM2 and DM22 of the ELP which together seek to ensure that development does not adversely affect Special Areas of Conservation.

Other considerations

25. The ELP includes a review of all of its Green Belt Boundaries, and this review identified land that no longer fulfils the purposes of the Green Belt and these were recommended to be removed from the designation. The appeal site has been considered as part of this review and the ELP recommends that it should be removed from the Green Belt as it is previously developed land which visually forms part of Thornwood Village. The ELP is at an advanced stage and the available evidence indicates that there are no unresolved objections on Green Belt matters. The site's proposed removal from the Green Belt is a consideration to which I therefore attach significant weight and which would ordinarily provide a strong argument in favour of the proposed development.
26. The Council accepts that it is currently unable to demonstrate a five-year supply of deliverable housing sites (5 year HLS). This engages paragraph 11d) of the Framework as the policies most important for determining the application are out-of-date. However, given my findings in relation to the Epping Forest SAC, and having regard to paragraph 11 d) i) of the Framework, there is a clear reason for refusing the development proposed. This is regardless of the weight I attach to the Green Belt boundary review and to the very modest benefits from the provision of only one dwelling.

Conclusion

27. My findings in relation to the Green Belt Boundary Review and the contribution of a dwelling to the local housing stock in the absence of a 5 year HLS, weigh in favour of the development proposed. However, that does not overcome the harm I have identified on the second main issue. Accordingly, there are no other considerations that clearly outweigh the harm to the Epping Forest SAC and the very special circumstances necessary to justify the development proposed do not exist.
28. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist. Therefore, for the reasons set out above I conclude that the appeal should be dismissed.

G. Pannell

INSPECTOR