



Appeal Decision

Site visit made on 18 May 2020

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2020

Appeal Ref: APP/J1535/W/20/3246008

Black Swan, Common Road, Waltham Abbey EN9 2DF

- 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 Stuart Stuchfield against the decision of Epping Forest District Council.
 - The application Ref EPF/0969/19, dated 10 April 2019, was refused by notice dated 29 November 2019.
 - The development proposed is described as "erection of x 2No. new semi-detached dwellings including associated landscaping served by new access onto Common Road."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal was amended following submission, reducing the number of houses proposed from 3 to 2. I have accordingly taken the description of development from the appeal form.
3. Both parties have referred to the emerging Epping Forest District Local Plan, which has been subject to initial examination. The examining Inspector has identified modifications considered necessary before the emerging Plan can be adopted. I therefore consider that the Plan is some way from adoption, and have only given its policies limited weight in determining this appeal.

Main Issues

4. The main issues with regard to the development proposed are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework and any relevant development plan policies,
 - The effect on the openness of the Green Belt and the purposes of including land within it,
 - The effect on the setting and significance of the Black Swan, a Grade II listed building, and on the character or appearance of the Nazeing and South Roydon Conservation Area, and;
 - The effect on the integrity of the Epping Forest Special Area for Conservation.

Reasons

Whether Inappropriate Development

5. The appeal site lies within the Green Belt. The National Planning Policy Framework (the Framework) directs that the construction of new buildings shall be regarded as inappropriate in the Green Belt, save for certain exceptions.
6. Paragraph 145 e) of the Framework identifies one of the exceptions as limited infilling in villages. Paragraph 145 g) further identifies as an exception the limited infilling or the partial or complete redevelopment of previously developed land that, amongst other considerations, would not have a greater impact on the openness of the Green Belt than the existing development. The appellant suggests that the exception at 145 e) is relevant in the determination of this appeal. I am directed by the Council's appeal statement to consider 145 g) is the relevant exception. Both main parties consider that the appeal site is part of the village for planning purposes, and I see no reason to disagree with this.
7. The appeal site contained no permanent structures at the time of my visit, although there was a shipping container and a static caravan on site. I do not have any evidence before me regarding the planning status of these structures. However, they are relatively small structures of an appearance that suggests that they are temporary in nature. There is no evidence before me to suggest any permanent structure having been historically present on the appeal site. While it has been used as part of the Black Swan's beer garden, I do not consider that this would make the appeal site previously developed land for the purposes of Paragraph 145 g).
8. I am therefore satisfied that the development amounts to limited infilling in the Green Belt, and it is therefore not inappropriate development. The development therefore accords with Policy GB2A of the Epping Forest District Local Plan July 2006. This policy states, amongst other criteria, that planning permission will not be granted for the construction of new buildings in the Green Belt unless it is appropriate.

Green Belt openness and purposes of inclusion

9. The fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open. The appeal proposal would result in built development on land that presently has no permanent built structures on it. However, the appeal site is within an established settlement, and the development would assist in urban regeneration by recycling urban land. I therefore consider that the impact on the purposes of including land within the Green Belt would be no greater than is presently the case.
10. Paragraph 144 of the Framework states that any harm to the Green Belt should be given substantial weight. However, the appeal proposal would not cause harm to the Green Belt by loss of openness, or otherwise offend the purposes of including land within the Green Belt. It would therefore accord with Policy GB2A of the LP. This policy states, amongst other things, that development will not be inappropriate where it will preserve the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt.

Effect on the Black Swan and the Conservation Area

11. The site is adjacent to the Grade II Listed Black Swan public house. I have paid special attention to the desirability of preserving or enhancing the building or its setting or any features of special architectural or historic interest which it possesses, in accordance with the statutory duty set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
12. The site also falls within the Nazeing and South Roydon Conservation Area (the CA). I have therefore also paid special attention to the desirability of preserving or enhancing the character or appearance of the CA, in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
13. Paragraph 194 of the Framework states that any harm to the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. Given the historic association between the appeal site and the Black Swan, I consider that it forms part of the Black Swan's setting. I consider that the significance of the Black Swan derives primarily from its established and historic role as a public house within the village and from its architectural interest.
14. The proposed houses would occupy much of the width of the appeal site. The larger of the two houses would be adjacent to the shared boundary with Tudor Lodge, and the smaller house would be adjacent to the shared boundary with the Black Swan. The ridgeline of the smaller house would be set down from that of the larger house, but only by a small amount. The smaller house would include two dormers to both the front and rear roof slopes. The larger house would have a wide gable both to its front and rear elevations. The houses would sit closer on the site to Common Road than the Black Swan does on its site and would be a much taller and more prominent feature in the street scene.
15. The appeal proposal would be set off the boundary with the Black Swan's beer garden to allow parking to the side of the smaller house. However, I consider that the scale of the houses, the proximity to the shared boundary and their siting closer to Common Road would result in the appeal development being seen as a dominant feature in the setting of the listed building from the road and from the neighbouring property, Tudor Lodge.
16. The appellant has referred to the extant permission¹ on the site and states that the Council failed to give it weight in determining the application. However, that permission is for a smaller structure than the pair of houses that are the subject of this appeal, and this would be a less prominent feature within the setting of the listed building. The approved house was set further away from the shared boundary than the proposed pair of houses would be. While there was a separate cart shed adjacent to the shared boundary approved as part of the extant permission, that would be a single-storey structure of modest proportions with a ridge height lower than that of the Black Swan. The differences between the approved scheme and the appeal proposal are therefore significant, and I am therefore only able to give limited weight to the existing permission in determining this appeal.

¹ Council ref: EPF/0109/18

17. My attention has been drawn by the appellant to an approval granted by the Council for a new dwelling within the Green Belt and in the setting of both a listed building and a locally listed building within the District. While I do not have the full circumstances and details of that proposal before me, I do note that the new building for which permission was granted is not set significantly forward of the listed building, relative to the road, and the approved and listed building were of a similar height. There are therefore significant differences between the approved development and the appeal proposal. I can only therefore give limited weight to this approved development in considering the scheme before me.
18. During my site visit I saw from the highway that most houses in the village are detached. However, there are examples of semi-detached houses on both Common Road and Epping Road, including a pair of semi-detached houses on the other side of Tudor Lodge from the appeal site, as well as a pair of houses opposite the Black Swan which are attached via their garages. I do not therefore find that the appeal proposal would be harmful to the character of the CA solely by virtue of being a pair of semi-detached houses. However, the wide gable to the larger house, small set down to the roof over the smaller house and inclusion of dormer windows to the roofscape would result in the proposed houses appearing prominent on the site and dominant within the street scene. I note that both the link-detached pair of houses opposite the Black Swan, and the semi-detached houses on the other side of Tudor Lodge, feature spacing above ground floor level. The absence of any such separation between the proposed houses would be uncharacteristic in the Common Road street scene within the vicinity of the site, and harmful to the character and appearance of the CA.
19. As the development proposed would not preserve the setting of the Black Swan or preserve or enhance the character or appearance of the CA, it is necessary to determine whether this amounts to substantial or less than substantial harm. Having regard to paragraph 194 of the Framework, the harm to the character and appearance of the CA would be limited to the immediate vicinity of the site, with the proposal being for two houses at the end of an existing row of houses. The harm to the CA would therefore be less than substantial, when weighed against the significance of the CA as a whole.
20. With regard to the harm to the setting and significance of the listed building, there would be separation between the appeal site and the building itself, which includes a number of residential properties within its vicinity. These factors would result in the harm being less than substantial in this context.
21. The development proposed would deliver an additional family dwelling in addition to that already approved on the site, which the appellant argues would be a more efficient use of the site. This additional dwelling would make a modest ongoing contribution to supporting the village's services and facilities, and those of neighbouring settlements. Temporary economic benefits would also arise from the construction of the development proposed. I have afforded these benefits some weight in my determination of the appeal. However, I am required to give great weight to the conservation of heritage assets in accordance with paragraph 193 of the Framework, and I do not consider that the benefits of the appeal proposal would outweigh the harm.
22. Having regard to all the above considerations I accordingly conclude that the development proposed would cause unacceptable harm to both the setting and

significance of the listed building and to the character and appearance of the CA. The development therefore would conflict with the requirements of Policies HC6 and HC7 of the LP, which amongst other things requires development within a CA to be of a particularly high standard to reflect the quality of the environment. It would also conflict with the requirements of the Framework as it pertains to the conservation of designated heritage assets.

Epping Forest Special Area for Conservation

23. I note the reason for refusal regarding the Epping Forest Special Area for Conservation (the EFSAC). The EFSAC is designated under the Conservation of Habitats and Species Regulations 2017 (as amended) due to the presence of heaths and heathlands, amongst other qualifying features. It is potentially vulnerable to increased traffic and visitor numbers, which may result from new residential development.
24. A development of two houses would be a more intensive use of the site than the one house for which permission already exists. No substantive evidence or appropriate assessment (AA) has been submitted to demonstrate that the proposal would not adversely affect the integrity of the EFSAC. Had I been minded to allow the appeal, the responsibility for undertaking the AA would have fallen to me. However, as I am dismissing the appeal for other reasons it has not been necessary for me to consider this matter further.

Other Matters

25. I have noted the Council's reference to Policy DBE10 of the LP in its first reason for refusal. However, I consider that Policies HC6 and HC7 are most relevant to this issue.
26. The appellant has stated that the approved house did not have its rights under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) removed. The approved house could therefore be extended without requiring planning permission. However, I have no evidence before me to show how the approved house could be extended, and to what extent that might compare with the appeal proposal. In any case, the property would only benefit from those Permitted Development rights once substantially completed. I must also consider that certain Permitted Development rights for dwellinghouses are restricted when a property lies within a Conservation Area, as the appeal site does. Accordingly, I have only given limited weight to the potential of the approved house to be extended without needing planning permission.

Conclusion

27. I have found that the appeal proposal would not be inappropriate development, and there would be no harm to the openness of the Green Belt or the purposes of including land within it. However, this absence of harm is outweighed by the harm to designated heritage assets that would result from the development proposed. Therefore, the appeal does not succeed.

M Chalk

INSPECTOR