
Appeal Decision

Site visit made on 29 September 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2020

Appeal Ref: APP/J1535/W/20/3255054

Bowlands Meadow, Theydon Road, Epping CM16 4EE

- 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 Octagon Developments Limited against the decision of Epping Forest District Council.
 - The application Ref EPF/2319/19, dated 25 September 2019, was refused by notice dated 21 April 2020.
 - The development proposed is erection of 2 no. 2-storey dwellinghouses, together with the provision of associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. 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.
3. As part of the appeal the appellant has submitted revised plans to address the Council's third and fourth reasons for refusal. I have considered the revised drawings under the principles established by the Courts in *Wheatcroft*¹ and in this instance the drawings would change the development to such a degree that to consider it would deprive those who should have been consulted on the change, the opportunity of such consultation. I consider that this change would materially alter the nature of the application and would prejudice the interests of interested parties². I have therefore determined the appeal on the basis of the drawings submitted to the Council.

¹ *Bernard Wheatcroft Ltd v SSE & Harborough DC* [1982] P&CR 233

² Annex M of the Procedural Guide Appeals – England advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

Main Issues

4. 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 proposal on highway safety;
- the effect of the development on the Epping Forest Special Area of Conservation; 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

5. The appeal site is situated in the Metropolitan Green Belt. The National Planning Policy Framework ('the Framework') indicates (para 145) 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.
6. It has been put to me that the development would meet the exception set out within paragraph 145 (e) of the Framework which permits limited infilling in a village. The characteristics of the area which would receive development are a material factor in considering whether the proposal would constitute such limited infilling. Emerging policy DM4 defines limited infilling as development of a small gap in an otherwise continuous built-up frontage. I understand that no modifications have been sought to policy DM4, which is relevant to the consideration of applications within the Green Belt and therefore I have attached moderate weight to this policy.
7. The appeal site is located between Mickleham and Bowlands Meadow, however even if developed, there would be a considerable gap between the proposed dwellings and Bowlands Meadow. The existing gap between the built development and the degree of set back of Bowlands Meadow within the site, does not contribute to a continuous built frontage. Therefore, the wider built context of the site with the level of spacing between the existing dwellings, 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.
8. 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 either (i) not have a greater impact on the openness of the Green Belt than the existing development or (ii) 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.

9. Both parties accept that the site comprises previously developed land and from the evidence before me I have no reason to disagree with this assessment. In addition, the appellant has indicated that they are willing to provide an off site contribution towards the provision of affordable housing.
10. However, there is no mechanism before me to secure the contribution and even if a unilateral undertaking had been submitted, I would still need to consider such an obligation against Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and be satisfied that an affordable housing contribution was reasonable and necessary and was directly related to the development proposed. Therefore, the development would not contribute to meeting an identified affordable housing need which the Framework considers to be not inappropriate development
11. The built form and footprint of development would increase significantly above that which currently exists on the site. The proposed dwellings would be positioned across the frontage of the site, resulting in a greater coverage of the site than currently exists. These would be substantial structures where currently no building exists and would result in a significant increase in built form within the site. The development would in both spatial and visual terms have a greater and harmful impact upon the openness of the Green Belt. Therefore, it would result in significant harm to the openness of the Green Belt.
12. In not complying with any of the listed exceptions, the scheme would be inappropriate development in the Green Belt, which paragraph 145 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 of the Framework states that in considering a planning application substantial weight should be given to any harm to the Green Belt. The proposal would not comply with Saved Policy GB2A of the Epping Forest District Local Plan Alterations adopted July 2006 (LP) or policy DM4 of the ELP which seek to restrict inappropriate forms of development in the Green Belt, which is consistent with the Framework.

Highway Safety

13. Theydon Road is designated as a County Road, forming part of the strategic highway network and is a Secondary Distributor route which provides a link between Epping and Theydon Bois. The road is subject to a 40 mph speed limit and unlit.
14. The road has houses on both sides, which are set well back from the road behind front boundary walls, with a footway on its east side. Just beyond the proposed access is the Great Gregories Lane junction, which is positioned in a bend in the road which results in limited visibility for vehicles travelling north and would be in close proximity to the proposed access.
15. The Council consider that for the 40 mph speed limit a visibility splay of 2.4m x 120m should be provided. The appellant has provided ACE Drawing no 19780-001 which demonstrates a visibility splay of 2.4m x 53m to the south and 2.4m x 65m to the north.

16. The appellant has commented that the visibility splay requested by the Council would normally apply to trunk roads and is based on a design speed of some 43.5mph. Consequently, it has carried out an Automatic Traffic Count (ATC) survey which established 85 percentile speeds of 37.3mph southbound and 32.6mph which is below the speed limit for the road. I note that the guidance within Manual for Streets 2 (MFS2) advises that unless there is local evidence to the contrary, a reduction in visibility below the recommended levels will not necessarily be a problem.
17. However, the highway authority has objected to the scheme and the Council's concerns are borne out in third party representations. Based on the evidence before me and from what I saw on my site visit, I also have concerns about the highway safety implications of a reduction in the required visibility splays. In addition, it has not been demonstrated that cars approaching the site and turning right would be visible to cars travelling along Theydon Road.
18. Whilst I appreciate that the 85th percentile speeds are lower than the speed limit and that the highway is a Class C road rather than a trunk road, a much shorter Y distance would not be acceptable as the road has poor visibility around the access point due to the nearby bend. The proposed visibility splays would not be adequate when passing traffic is at the speed limit or going over it. The local evidence adds to my concern and as a result I do not consider it would be appropriate to lower the standards set out within MFS2.
19. The shortfall in visibility would be compounded by the proposed access width, indicated on ACE Drawing no 19780-001 as it would not meet the Council's suggested standard of 5m to allow for two cars to pass. This is to avoid any need for cars to wait on the highway to enter the site if another car was exiting the access at the same time. As a result the proposed access could result in conditions that would be detrimental to highway safety.
20. I conclude that the proposed development would harm highway safety, contrary to policies ST4 of the LP and T1 of the ELP which seek to ensure development will not be detrimental to highway safety. The emerging policy is not materially different to the adopted policy and does not alter my findings on this main issue.

Epping Forest Special Area of Conservation

21. The appeal site lies within the 3 km zone identified by Natural England as being likely to result in harm to the Epping Forest Special Area of Conservation (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.
22. Given that the proposal is for 2 additional houses, 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 significant effect on the habitats site.

23. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that 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. The effects arising from the proposal need to be considered in combination with other development in the area and on a precautionary approach. Based on such an approach and the evidence that is before me, I conclude that the appeal scheme would be likely to have a significant adverse effect on the integrity of the SAC due to the potential increased disturbance through recreational activity and increase in air pollution.
24. The Council has agreed with Natural England that developments should contribute £352 per dwelling to mitigate against the harm the proposal will bring to recreational receptors within the SAC and the parties have agreed a financial sum. Natural England has identified that there is an agreed project that would address the effects associated with the proposed development and relieve pressure on the SAC. I have been provided with a signed and dated Unilateral Undertaking making provision for the required contribution.
25. 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.
26. 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 to air quality, I cannot be satisfied that the appeal proposal would not result in significant adverse effect to the integrity of the SAC.
27. 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.
28. 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 CP1 and CP6 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. The emerging policies are not materially different to the adopted policy and do not alter my findings on this main issue.

Other considerations

29. The Council accepts that it cannot demonstrate a five-year housing land supply at present. Paragraph 11 of the Framework states that where the policies that are most important for determining the application are out of date, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out that these policies include those relating to land designated as Green Belt and habitats sites. Given my findings in relation to the Epping Forest SAC and the Green Belt there is a clear reason for refusing the development proposed, I am not required to apply the tilted balance in this respect.

Green Belt Balance and Conclusion

30. In conclusion I have identified that the scheme would be inappropriate development in the Green Belt as defined by the Framework and result in harm to the openness of the area. It would, by definition, be harmful to the Green Belt, harm which the Framework indicates should be given substantial weight. I have also found harm to the Epping Forest SAC and this should be given considerable importance and weight. In addition, the development would result in an adverse impact on highway safety, to which I attribute significant weight.
31. The Council cannot currently demonstrate a five-year housing land supply and the proposed development would offer the benefit of delivering two additional homes in a sustainable location and other benefits such as the contribution that its construction would make to the local economy. I consider that any such benefits would be modest given the scale of the development. As a result of the lack of mechanism to secure the suggested benefit of an affordable housing contribution, I have given this limited weight.
32. I conclude these circumstances do not clearly outweigh the substantial weight I must give to the overall harm the scheme would cause. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.
33. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G. Pannell

INSPECTOR