



Appeal Decision

Site visit made on 1 June 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/J1535/W/20/3257679

Land between Ashdene and The Heve, Theydon Park Road, Theydon Bois, Epping CM16 7LS

- 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 P Clare against the decision of Epping Forest District Council.
 - The application Ref EPF/2871/19, dated 26 November 2019, was refused by notice dated 17 February 2020.
 - The development proposed is the erection of a detached five-bedroom dwelling and double spaced open cart lodge.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity and precision, I have taken the address in the banner heading above from the appeal form as it is more accurate than that given on the application form.
3. The emerging Local Plan (the emerging LP) was examined up to June 2019. The Inspector who conducted this examination wrote to the Council on 2 August 2019 advising of main modifications and additional work to be carried out. Policies DM2, DM4, DM7 and DM22 of the emerging LP are cited in the reasons for refusal on the Council's decision notice. Whilst, the emerging LP has not yet been found sound or adopted, given the stage of preparation, the fact that there are no longer any unresolved objections and the degree of consistency with the Framework, I attach significant weight to the emerging policies. Notwithstanding this, the starting point for determining this appeal remains the saved policies within the Epping Forest Local Plan, which was adopted in January 1998, with Alterations in 2006 (LP).

Main Issues

4. The main issues of this appeal are:
 - i. whether the proposed development would be inappropriate development in the Green Belt;
 - ii. the effect of the proposed development on the character and appearance of the appeal site and surrounding area; and,
 - iii. the effect of the proposed development on the integrity of Epping Forest Special Area for Conservation.

Reasons

Inappropriate development

5. The appeal site is located within the Green Belt where LP Policy GB2A states that planning permission will not be granted for the construction of new buildings in the Green Belt unless it is for certain exceptions, none of which the proposed development would meet. LP Policy GB7A states that the Council will refuse permission for development conspicuous from within the Green Belt which would have an excessive adverse impact upon the openness, rural character, or visual amenities of the Green Belt.
6. Whilst acknowledging that the LP has been in place for a considerable period of time, when compared to the latest version of the Framework, LP Policy GB2A does not contain as an extensive list of exceptions as that contained under paragraph 145 of the Framework, and also does not refer to very special circumstances within the policy. This reduces the weight that I attach to this policy. Additionally, LP Policy GB7A does not align with a policy in the Framework, which results in a very limited amount of weight that I can attribute to it.
7. Policy DM4 of the emerging LP indicates that development proposals within the Green Belt will be assessed against national policy, confirming that the construction of new buildings should be regarded as inappropriate, subject to exceptions. The exceptions listed on Policy DM4 of the emerging LP are similar to those listed at Paragraph 145 of the Framework. Policy DM4C(iv) of the emerging LP and paragraph 145 e) of the Framework list an exception for limited infilling in villages. The terms "limited" and "infilling" are not defined in the Framework. Additionally, in respect of limited infilling in villages as an exception, the definition of village is a matter of judgement as it is not defined within the Framework. The appellant has drawn my attention to a judgment¹, which I have noted.
8. It is common ground between the main parties that the site lies outside the settlement boundary, which appears to be demarked by the start of the private section of the Theydon Park Road, and thus, is located in the open countryside. However, in this case I consider the location of the site and its juxtaposition with existing development to be more relevant. The site comprises a parcel of land which lies between existing residential development on a private section of Theydon Park Road. Whilst these properties, along with the other properties on the private section of Theydon Park Road adjoin open land to the front and rear, albeit separated by a train line to the rear, the proposed development would not extend beyond the residential envelope of development on either side.
9. I consider that having regard to the position and nature of the site, the proposal can be considered to be physically and visually related to the existing settlement and to comprise limited infilling. Therefore, I find no conflict with LP Policies GB2A, GB7A or Policy DM4 of the emerging LP. The construction of an infill dwelling in this location should not be considered to constitute inappropriate development in the Green Belt and the proposal would not conflict with the requirements of the Framework.

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610

10. As I have not found that Green Belt harm would arise in this case, it is not necessary to consider the effect of the proposed development on Green Belt openness. Additionally, the demonstration of very special circumstances is not required to make the proposed development acceptable.

Character and appearance

11. The private section of Theydon Park Road, on which the site is located off, appears less dense than the adopted section of Theydon Park Road. This positively contributes to the semi-rural appearance of this part of the road. The surrounding properties are all situated within an established residential area, which is primarily defined by detached properties set within proportionately sized plots.
12. The proposed development would be sited within a generous plot, much larger in width than majority of the neighbouring properties. However, by reason of its excessive footprint, it would appear disproportionate to the neighbouring dwellings. The siting of the proposed development within proximity of the 2no. shared boundaries to the side would further compound the identified visual harm, accentuating its overall size within the street scene. Consequently, it would not sit comfortably within its plot or its wider context and would fail to positively relate to the surrounding pattern of development.
13. I acknowledge that the appellant has sought to reduce the height of the development by proposing a 1.5 storey dwelling with first floor accommodation in its roof. Additionally, I recognise that the cart lodge would have an open front and a lower ridge height than the main dwelling. However, these features would not provide sufficient mitigation to counteract the identified harm. Additionally, I find that a suitably worded condition could not be imposed in this instance, to ensure that otherwise unacceptable development could be made acceptable.
14. For all of the reasons given above, I conclude that the proposed development would significantly harm the character and appearance of the appeal site and surrounding area. Consequently, this would not accord with the design, character and appearance aims of LP Policies CP3, CP7, DBE1, DBE4, Policy DM9 of the emerging LP and the requirements of the Framework.

Epping Forest Special Area for Conservation (SAC)

15. The appeal site lies within the 3.2km buffer zone around the SAC, where the SAC is vulnerable to impacts arising from visitors to the Forest as well as air pollution impacts. 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.
16. 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 significant effect on the SAC. The Council

has agreed with Natural England that developments should contribute £325.00 per dwelling to mitigate against the harm the proposal will bring to recreational receptors within the SAC, and the appellant has provided a planning obligation that would secure this financial requirement. 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.

17. In terms of air pollution, I cannot be certain that the proposed development would not result in an increase in motor vehicle use by future occupiers and thus, an impact on air quality would arise, albeit modest. Nonetheless, the impacts of additional motor vehicle usage on air quality would be adverse, and the cumulative effect with other similar scale developments would be significant. 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.
18. In exercising my duty to protect the European Site, I must adopt a precautionary approach. Currently there is no agreed strategy to mitigate air quality impacts of development. Thus, whilst the appellant has provided a completed planning obligation for a financial contribution to mitigate the recreational impact of the development, I have little before me, to demonstrate an effective means of mitigating the effect of the development on the SAC by reason of air quality impacts. Accordingly, the development would conflict with the requirements of the Regulations, as well as objectives within the requirements of the Framework for the protection of biodiversity. There would also be conflict with the environmental aims of LP Policies CP1(i), NC1 and Policy DM2 and DM22 of the emerging LP.
19. However, given my findings on the second main issue, the circumstances that could have led to the granting of planning permission are not present. Therefore, as the appeal is to be dismissed on other grounds, an Appropriate Assessment does not need to be undertaken. Accordingly, further consideration of the Habitats Regulations is not required.

Other Matter

20. The appellant argues that the Council is not able to demonstrate a 5-year supply of deliverable housing sites. This represents a housing shortfall. In these circumstances, paragraph 11 d) of the Framework indicates that housing policies should be regarded as out of date, in favour of granting permission. However, my findings in this case are that harm to character and appearance to the appeal site and surrounding area is sufficient to significantly and demonstrably outweigh the benefits in favour of granting permission. Furthermore, I have found that policies within the Framework relating to habitat sites indicate clearly that development should be restricted.

Planning Balance and Conclusion

21. In this case, there is evidence before me to suggest that the development plan is out of date and that the presumption in favour of sustainable development outlined at paragraph 11 d) of the Framework should be engaged. Additionally, I have found the scheme does not amount to inappropriate development in the Green Belt and an absence of other harm arising from the proposed

development. Additionally, there would be social and economic benefits through the provision of an additional dwelling to the Council's housing stock, the economic activity generated by its construction and expenditure in the local area from its future occupants.

22. However, these and the other benefits that would arise do not significantly and demonstrably outweigh the harmful effect to the character and appearance of the appeal site or surrounding area. The proposed development would conflict with the development plan when taken as a whole, and there are no other material considerations to indicate otherwise. It would also be at odds with the requirements of the Framework, conflicting with the environmental objective set out in paragraph 8. Thus, the proposal does not constitute sustainable development.

23. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR