

Appeal Decision

Site visit made on 23 November 2021

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2021

Appeal Ref: APP/J1535/W/21/3268846

Rundells Lodge, London Road, Hastingwood, Harlow CM17 9LH

- 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 TESA Developments (Mr Tom Plane) against the decision of Epping Forest District Council.
 - The application Ref EPF/1217/20, dated 9 June 2020, was refused by notice dated 15 September 2020.
 - The development proposed is the renovation and extension of existing property and erection of a new dwelling to create two, semi-detached four bedroomed homes.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The National Planning Policy Framework (the Framework) was updated after the appeal was submitted. The appellant was given the opportunity to comment on any consequences of the revised version for the appeal. I have taken into account the appellant's response on design paragraph 134. I have referred to paragraph numbers from the revised version of the Framework.

Main Issues

3. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the proposal would be likely to have a significant adverse effect, alone or in combination, on the integrity of the Epping Forest Special Area for Conservation or, if necessary, provide satisfactory mitigation;
 - other considerations;
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal?

Reasons

Whether inappropriate development?

4. The appeal site falls within the Green Belt (GB). Paragraphs 147 and 148 of the Framework state that inappropriate development is, by definition, harmful to the
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GB and that substantial weight should be given to any such harm. Paragraph 149 advises that new buildings in the GB should be regarded as inappropriate with specified exceptions. Policy GB2A of the Epping Forest Local Plan Alterations 2006 (LP) also presumes against new buildings in the GB with exceptions.

5. The parties have referred to Framework paragraph 149 exceptions c (extensions and alterations) and d (replacement buildings). There is no dispute that the total gross internal area (GIA) of the proposal would be 250sqm made up of an extended dwelling of 130sqm and a new dwelling of 120sqm. The Council puts the GIA of the existing building at 87sqm, whereas the appellant adds the outbuildings to arrive at a figure of 112.4sqm. The outbuildings, although detached from the main dwelling, are sited reasonably close to it. However, even taking them into account, and assuming that they were not added after the main dwelling was completed, the proposal would still more than double the GIA of built development at the site.
6. The appellant argues that the extension to the existing dwelling would not be disproportionate, but accepts that the new dwelling does not fall within the exceptions. However, the appeal is for a single scheme including both elements. Taking both elements together, I find that the proposal would result in disproportionate additions over and above the size of the original building. This finding does take into account the replacement of the outbuildings, but is required to exclude any permitted development rights to extend the original building. As such, the proposal would be inappropriate development in the GB. I return to the question of permitted development rights under 'Other considerations'.

Openness

7. Framework paragraph 137 advises that openness is an essential characteristic of the GB and LP Policy GB7A presumes against development which would have an excessive adverse impact on openness.
8. The appeal property sits at the end of an informal row of dwellings and the new dwelling would extend that row further west. I recognise that much of the site of the new dwelling is covered by hard surfacing. However, the new dwelling would significantly increase the volume, and extend the spread, of above ground built development across the site.
9. Although the proposal would be fairly well screened by established planting in views from the west, it would be clearly visible in close range views from the adjoining highway. The appellant argues that the proposal would be proportionate and fit in with the street scene and I note that the Council does not allege that the proposal would harm the character and appearance of the area. However, openness is also concerned with the spatial effect of built development. In this case the size of the proposed building and its spread into an area where there is currently no above ground built development would result in an adverse impact on the openness of the GB.

Special Area for Conservation

10. The Council has prepared an Appropriate Assessment for the Epping Forest Special Area for Conservation (SAC). It finds that, in the vicinity of the appeal site, additional residential development resulting in an increase in traffic movements would be likely, on its own or in combination with other plans or projects, to lead to impacts on the SAC in terms of air quality.

11. The Council's Interim Air Pollution Mitigation Strategy (IAPMS) has been adopted since the application was determined. The appellant had the opportunity to respond to the IAPMS in its appeal submissions. It provides a strategic approach to mitigating air quality impacts on the SAC by imposing planning conditions and securing financial contributions. Policy DM22 of the Epping Forest District Local Plan Submission Version 2017 (LPSV) requires mitigation measures where new development adversely affects the air quality of receptors including the SAC.
12. The appellant does not dispute these matters, but suggests that conditions could be used to secure an Appropriate Assessment and any necessary mitigation measures. The appellant has not provided details of the suggested conditions or potential mitigation measures. However, it would not be reasonable to impose a condition requiring the submission of an Appropriate Assessment since, depending on the outcome, it may negate the effect of the permission. Nor should conditions be used to secure financial contributions or planning obligations¹.
13. Based on the available information, therefore, the proposal would be likely to have an adverse effect on the integrity of the SAC. As such, it would conflict with Policies NC1 and CP1 of the LP. Together, these policies seek to minimise the effect of development on the environment and ensure compliance with international obligations for the protection of the SAC. Nor would it accord with LPSV Policy DM22 or Framework paragraph 180 which have similar aims. The second reason for refusal also refers to LP Policy CP6. However, this is concerned with the pattern of urban development and is of limited relevance to my consideration of this issue.

Other considerations

14. The proposal would make a modest contribution to the supply of new housing and is, therefore, supported by Framework paragraph 59 which seeks to boost the supply of housing. However, there is nothing to show that the Council cannot demonstrate a five year supply of housing. The appellant also seeks support from Framework paragraphs 78 and 79 which deal with housing in rural areas and support for local communities and services. However, the appeal site is part of a small cluster of dwellings, rather than a village or hamlet and the facilities in the vicinity of the appeal site comprise roadside services which are unlikely to derive significant support from a single new dwelling.
15. The appellant argues that the proposal would complement the existing row of dwellings, maintaining its spatial density, matching the scale and form of the existing house and providing new landscaping. It would also allow the restoration of the existing dilapidated house and, therefore, make a positive contribution to the character and appearance of the area.
16. The existing house is in a poor condition and detracts from its surroundings. However, there is no substantive evidence to demonstrate that new building on the scale proposed would be necessary to make its restoration viable. While the new dwelling would not harm the character and appearance of the area, there is no firm evidence that there are shortcomings in the appearance, scale, form or density of the row of properties that would be remedied by its addition.
17. Nor has it been adequately demonstrated that the new dwelling would be an outstanding or innovative design for the purposes of Framework paragraph 134 or

¹ Planning Practice Guidance Paragraph reference IDs: 21a-005-20190723 and 21a-010-20190723

that it would promote high levels of sustainability. Indeed, there are few local facilities within walking distance of the site which suggests that future occupiers would be reliant on the use of the private car for day to day trips. Overall therefore, I can give limited weight to the benefits of the proposal in improving the character and appearance of the area or promoting sustainability.

18. The appellant argues that permitted development rights could be used to extend the existing house in a way which would be less in keeping or in scale with the original property. No details have been provided. Nevertheless, the scale of the proposed extension to the existing property and the new dwelling significantly exceeds the maximum size of extensions that could be erected using permitted development rights. It is therefore reasonable to conclude that the effect of the appeal proposal on the GB would be greater than that of extensions erected under permitted development rights.
19. The appellant has also referred to a previous proposal for the extension of the existing dwelling and the erection of two semi-detached dwellings on the site which was refused planning permission under reference EPF/3036/19. While the current proposal is smaller and has overcome some of the previous reasons for refusal, I have considered it on its merits and found that it would still cause harm to the GB and the SAC.
20. There is nothing to suggest that the proposal would not have satisfactory highway access and parking arrangements, provide satisfactory living conditions for future occupiers or adversely affect the living conditions of neighbouring occupiers. Nor are there objections with regard to flood risk or land contamination. Nevertheless, the absence of further harms is not a positive benefit in favour of the proposal.

Green Belt balance

21. Framework paragraph 148 advises that inappropriate development should not be approved except in very special circumstances. I have also found that the proposal would result in an adverse impact on the openness of the GB and would be likely to adversely affect the integrity of the SAC.
22. Overall, I find that the other considerations in this case do not clearly outweigh the GB and other harm. Looking at the case as a whole therefore, I consider that the very special circumstances necessary to overcome the GB harm have not been demonstrated. The proposal, therefore, would conflict with LP Policies GB2A, NC1 and CP1, LPSV Policy DM22 and Framework paragraphs, 137, 147, 148 and 149. There would also be a minor conflict with LP Policy GB7A. As such, the proposal would not amount to sustainable development for the purposes of Framework paragraph 11.

Conclusion

23. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR