

Appeal Decision

Site visit made on 11 July 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2022

Appeal Ref: APP/J1535/W/21/3289565

Green Oaks, Threshers Bush, Matching, Harlow CM17 0NS

- 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 Jason Costi against the decision of Epping Forest District Council.
 - The application Ref EPF/1472/21, dated 5 May 2021, was refused by notice dated 19 July 2021.
 - The development proposed is demolition of existing glasshouse and outbuilding, and erection of new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision notice refers to policies DM2, DM4, DM22 and SP7 of the Epping Forest District Local Plan Submission Version 2017 (LPSV). The LPSV has not yet been adopted by the Council as part of their development plan. However, the LPSV has been through the examination process and has reached a very advanced stage. I am not aware of any unresolved objections to these policies so far as they relate to this appeal. Therefore, I have attached significant weight to these emerging policies.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework);
 - The effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
 - The effect of the proposal on the Epping Forest Special Area of Conservation (SAC); and,
 - If it is inappropriate development, 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 inappropriate development

4. The appeal site comprises a detached dwelling, its curtilage and a number of outbuildings within a rural location to the south of Threshers Bush. The site includes a large glasshouse which consists of a steel frame with glazed walls and roof. This structure is situated to the south-east of the dwelling and is set back from the road with a large area of hardstanding to the front. It is proposed that both the glasshouse and an outbuilding to the rear of the dwelling be removed and replaced with a new detached dwelling which would occupy the same position as the glasshouse. The site is within the Green Belt.
5. The Framework explains that the construction of new buildings should be regarded as inappropriate development in the Green Belt, subject to certain exceptions. One of those exceptions is contained at paragraph 149 g) of the Framework, which relates to limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, excluding temporary buildings, which would not have a greater impact on the openness of the Green Belt than the existing development.
6. Saved Policy GB2A of the Epping Forest District Local Plan Alterations (2006) (LP Alterations) does not contain as an extensive list of exceptions as that contained under Framework paragraph 149, nor does it refer to very special circumstances. Saved Policy GB7A of the LP Alterations explains that permission will be refused for development conspicuous within or beyond the Green Belt which would have an excessive adverse impact upon the openness, rural character or visual amenities of the Green Belt. It is also inconsistent to some degree with the Framework though it does require consideration of a proposal's effect on openness. Saved Policy CP2 of the LP Alterations seeks, amongst other things, to enhance and manage Green Belt land by appropriate use. It does not reflect Framework paragraph 147, which states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Saved LP Alterations Policies CP2, GB2A and GB7A carry limited weight. Policy DM4 of the LPSV is also relevant. It includes an exception to inappropriate development that is similar to the one at paragraph 149 g) of the Framework which is the basis on which I have assessed the proposal.
7. The appellant says that the development accords with Framework paragraph 149 g) on the basis that the existing buildings to be replaced are in domestic use, including for the purposes of storage and car parking, rather than agricultural use and that the site therefore comprises previously developed land.
8. A lawful development certificate was granted in 2018 for the existing occupation of the dwelling in non-compliance with an agricultural occupancy condition¹. The officer report for that application stated that the production of fruit and vegetables ceased in November 2007 and the greenhouse is no longer in use for purposes. However, the greenhouse and rear outbuilding were not within the red line boundary for that application and there is no substantive evidence before me to demonstrate that the greenhouse has been in domestic use since that date. There is no indication that a planning permission or lawful

¹ Council ref EPF/3323/17

development certificate has been granted for a change of use of the existing glasshouse and rear outbuilding to residential or to establish their lawful use for those purposes.

9. The Council recently refused planning permission for the change of use of the land on which both the glasshouse and rear outbuilding are situated to garden/residential curtilage². An 'existing site and location plan' submitted with that application showed the glasshouse and rear outbuilding within a blue line denoting 'Existing Agricultural Curtilage', whilst the dwelling itself was within the red line 'Existing Residential Curtilage'. Whilst that does not confirm the lawful use of the buildings, it does not suggest that the buildings were in residential use at the time of the application in 2021. Irrespective, it is open to the appellant to apply for a determination under sections 191/192 of the Act and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.
10. Thus, based on the evidence before me I am unable to conclude that the existing buildings fall within the definition of previously developed land in the Framework notwithstanding that an element of domestic storage and parking may have taken place in the buildings. Consequently, the proposal would not fall within the exception at 149 g) of the Framework. None of the other exceptions in the Framework are applicable to the development proposed.
11. For the above reasons, I conclude that the proposed development would not fall within any of the exceptions and would therefore be inappropriate development in the Green Belt. Such development is, by definition, harmful and is contrary to saved Policies CP2, GB2A and GB7A of the LP Alterations, albeit the weight attributable to these policies is limited. The proposal would also conflict with Policy DM4 of the LPSV, and Framework paragraph 149 g), which seek, amongst other things, to protect the Green Belt. I attach this harm substantial weight.
12. The Council also refer to Policy SP7 of the LPSV. However, this policy appears to relate to the natural environment, landscape character and green and blue infrastructure which is not directly relevant to this main issue.

Openness

13. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness has both spatial and visual aspects.
14. The appellant's calculations indicate that the proposal would represent a reduction in both footprint and volume compared to the existing buildings. However, consideration of openness is also influenced by other factors such as the relationship in terms of scale, massing, height and form. The existing glasshouse has a lightweight appearance and both it and the rear outbuilding are of relatively modest height. In contrast, the proposed dwelling would have a more solid, bulky appearance and would be notably higher than the existing buildings. Consequently, the proposal would be more visually prominent than the existing buildings. The provision of an additional domestic curtilage with

² Council ref EPF/2396/21

associated domestic paraphernalia, new access off the highway and new boundary treatments would emphasise the prominence of the development.

15. The proposed development would result in a loss of spatial and visual openness contrary to saved Policy GB7A of the LP Alterations, which seeks to ensure that development would not have an excessive adverse impact upon the openness of the Green Belt. The proposal would conflict with the fundamental aim of keeping land permanently open. It would not assist in safeguarding the countryside from encroachment and would result in moderate harm to the openness of the Green Belt. However, as directed by Framework paragraph 148 I attach substantial weight to this harm. I find no conflict with respect to the other Green Belt purposes referred to in paragraph 138 of the Framework.

Epping Forest SAC

16. The appeal site is outside the 6.2km zone of influence as identified in the Council's adopted Interim Approach to Managing Recreational Pressure on the Epping Forest SAC. The SAC 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.
17. The Conservation of Habitat and Species Regulations 2017 (the Habitat 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 terms of recreational pressure, due to the distance of the site from the SAC there is no pathway to affect the designated features and no significant effects are likely. However, there is potential harm arising from increased traffic associated with the development using roads through the SAC which has the potential to adversely affect the integrity of the SAC with respect to air pollution in terms of the health of habitats and flora species.
19. Applying the precautionary principle and based upon the evidence before me, I cannot be certain that the appeal scheme would not have significant adverse effects on the integrity of the SAC due to increased air pollution either alone or in combination with other plans and projects.
20. The Council has indicated that a financial contribution towards air pollution mitigation monitoring and conditions regarding electric vehicle charging provision and high-speed broadband could be sufficient to mitigate any likely harm. The appellant has submitted a draft unilateral undertaking which indicates that they would be willing to make financial contributions towards mitigating the effects on air pollution and recreational impacts with appropriate monitoring. However, the undertaking is undated and unsigned. Therefore, even if I were to consider the financial contributions appropriate, there is no mechanism before me to secure them. The Planning Practice Guidance (PPG) makes it clear that no payment of money or other consideration can be positively required when granting planning permission. It may be possible to use a negatively worded condition to prohibit development until a specified

action has been taken, such as the entering into of a planning obligation, but the PPG states that this is unlikely to be appropriate in the majority of cases and ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. Having regard to the PPG, the evidence before me does not indicate any exceptional circumstances which would justify use of a negatively worded condition. Electric vehicle charging provision and high-speed broadband could be addressed by way of the imposition of planning conditions, but this would not fully mitigate the harm that would arise.

21. For this reason, I cannot be certain the appeal proposal would not have significant adverse effects on the integrity of the SAC due to increased pollutant emissions from vehicles associated with the development. The appeal scheme would fail to adhere to the conservation objectives. There are no alternative solutions before me which would have a lesser effect or avoid an adverse effect on the integrity of the SAC. Moreover, imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SAC.
22. The proposal would conflict with the aims of saved Policies CP1 and CP6 of the LP Alterations, and saved Policy NC1 of the Epping Forest District Local Plan (1998), which seek to protect Special Areas of Conservation, minimise impacts upon the environment, provide compensatory measures to off-set such impacts, and to accommodate development and economic growth in a sustainable manner. It would also conflict with Policies DM2 and DM22 of the LPSV which require development to conserve and enhance the biodiversity of the SAC including having regard to impacts upon air quality, which should be adequately mitigated. It would also fail to accord with the Habitat Regulations because there would be an adverse effect on the integrity of the SAC.

Other considerations

23. The Framework is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
24. The development would offer social and economic benefits in terms of providing a new dwelling to the Council's housing stock which weighs positively in favour of the proposal. The development would also result in the creation of employment opportunities during the construction phase and spending in the local area by future residents. Given the scale of the development, the weight attributable to these matters is limited.
25. The appellant asserts that the Framework should be afforded considerable weight given that the development plan is out of date. The Framework is clear that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. I have found that the proposal would be inappropriate development in the Green Belt and harmful to the integrity of the SAC. Consequently, the Framework provides a clear reason for refusing the development.

26. The development at Ericas Nursery related to the conversion of existing buildings to self-contained dwellings. The Council took the view that it was not inappropriate development in the Green Belt. Whilst the appellant says that the new dwellings are not conversions, that matter is not within the scope of this appeal, and it would be a matter for the Council in the first instance. The Council found that the development at Tilegate Barn constituted the redevelopment of a previously developed site and that it improved Green Belt openness. At Copped Hall Nursery, the Council concluded that the proposed conversion of a glasshouse into a dwelling was not inappropriate as it involved the re-use of a building of permanent and substantial construction. The appeal scheme does not involve the re-use of a building but a new build dwelling, which I have found would be inappropriate development in the Green Belt and be both spatially and visually harmful to Green Belt openness. Consequently, the developments referred to by the appellant do not represent a direct parallel to the appeal proposal or provide a compelling precedent for allowing the appeal.
27. The Council does not raise an objection to the design of the new dwelling and based upon the evidence before me, I see no reason to disagree. However, this is a neutral matter. Compliance with policies in respect of matters such as the living conditions of neighbours and future occupiers of the development, highway safety, and access to services and facilities, would also be neutral matters in the planning balance.

Conclusion

28. In conclusion, I have found that the proposal would be inappropriate development in the Green Belt and would harm Green Belt openness. I have also found harm to the integrity of the Epping Forest SAC. I have given only limited weight to the other considerations in favour of the proposal, and conclude that, taken together, they do not clearly outweigh the harm that the proposal would cause. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt.
29. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR