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# Appeal Decision

Site visit made on 25 August 2022

**by Luke Simpson BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31<sup>st</sup> August 2022**

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**Appeal Ref: APP/J1535/W/21/3285309**

**Shoeluck Cottages, Church Lane, Lambourne, Romford RM4 1AB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Simon Wells (TORPC) against Epping Forest District Council.
  - The application Ref EPF/0627/21, is dated 27 February 2021.
  - The development proposed is Demolition of existing cottages and erection of replacement dwelling.
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## Decision

1. The appeal is dismissed and planning permission is refused.

## Application for costs

2. An application for costs was made by Mr Simon Wells against Epping Forest District Council. This is the subject of a separate Decision.

## Preliminary Matters

3. Since this is an appeal against non-determination, there is no decision notice. That said, the Council has provided a paragraph outlining why they would have refused the planning application. This has partly formed the basis of the main issues in relation to this appeal. However, I have also had regard to the Preliminary Ecological Appraisal submitted by the appellant as part of the planning application and the implications of this for the effect of the development on protected species. The appellant has been provided with an opportunity to make representations in this regard and I have taken these into account.
4. Since the planning application was submitted to the Council the Government has published a revised version of the National Planning Policy Framework (the Framework). However, the changes made have no significant effect with regard to the main issues relevant to this appeal. I have had regard to the revised Framework in considering this appeal.

## Main Issues

5. The main issues are:
  - Whether the proposed development would be inappropriate development in the Green Belt, including the effect of the proposed development on the openness of the Green Belt.
  - The effect of the proposed development on protected species (bats)

- If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## Reasons

### *Whether the development would be inappropriate development*

6. The appeal site comprises two existing semi-detached dwellings which are located on the corner of the junction of Church Lane and Ongar Road. The site includes a fairly significant number of outbuildings which are predominantly single storey. The appeal site is located within the countryside and within the Green Belt. Whilst there is boundary planting, the buildings on the appeal site are fairly prominent when viewed from the adjacent highway. The appeal site is surrounded by agricultural land which is relatively open, albeit there are other residential properties in reasonably close proximity and there is a garden centre nearby.
7. The proposed development is for the demolition of the existing dwellings and all outbuildings on the appeal site and the erection of a large two storey dwelling. The proposed dwelling would be located centrally within the appeal site.
8. Saved Epping Forest District Local Plan (2006) Policy GB2A states in part that planning permission will not be granted for new buildings in the Green Belt unless certain exceptions are met. One such exception is 'for other uses which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in the Green Belt'. The policy also refers to the replacement of an existing dwelling (singular). However, the list of exceptions provided is not consistent with the exceptions to inappropriate development set out under Framework Paragraph 149. Furthermore, there is no provision within the policy for Very Special Circumstances, as set out under Framework Paragraph 147. The most important policies for determining the appeal are therefore out-of-date. I return to this matter later in relation to the 'Planning Balance'.
9. Framework Paragraph 149 states that the construction of new buildings in the Green Belt should be regarded as inappropriate development except in certain circumstances. Exception 'e)' relates to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. This exception refers to the terms 'building' and in describing that building, further refers to it numerically as comprising 'one'. Whilst these terms are singular, whether or not the exception applies to multiple buildings will depend on the case specific circumstances. In this case, there are two separate dwellings as well as a large number of outbuildings. Given that there are two clearly distinct buildings, as well as a large number of outbuildings, I do not consider that this exception applies in this instance.
10. However, Framework Paragraph 149 exception 'g)' refers 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. The Framework Glossary partly defines previously developed land as 'land which is or was occupied by a permanent structure, including the

curtilage of the developed land'. The Glossary definition excludes residential gardens in built-up areas. However, the appeal site is clearly not within a built-up area. The definition clarifies that not all land within a curtilage is necessarily to be considered as previously developed. However, in this case, the proposed dwelling would be sited in the approximate location of the existing buildings on the appeal site and in the area immediately surrounding them. As such, the proposal comprises the complete redevelopment of previously developed land.

11. In order for the development to be considered as 'not inappropriate' within the terms of the Framework, it must not have a greater impact on the openness of the Green Belt than the existing development. The appellant has provided floorspace, footprint and volume figures. The Council has not provided any substantive evidence to indicate that these figures are in any way incorrect and I have no reason to believe that they are inaccurate.
12. The existing dwellings and outbuildings on the appeal site have a total footprint of approximately 165 square metres. In contrast, the proposed dwelling has a footprint of approximately 155 square metres. Indeed, given the large number of buildings and their relatively wide dispersal within the appeal site, their overall footprint is a factor which significantly reduces the openness of the Green Belt in this location in spatial terms. This is further compounded by the fact that the appeal site is clearly visible from the adjacent highway despite the visual screening provided by boundary planting.
13. In terms of the maximum height of the development, this would be similar to the maximum height of the existing dwellings. Whilst the two-storey bulk and mass of the proposed dwelling would extend over a wider area than the existing dwellings, this is more than offset by the reduction in the overall footprint and plot coverage when compared to the existing buildings on the appeal site.
14. In summary, the proposed dwelling would have a marginally higher volume and total floor space than the existing buildings on the appeal site. However, the reduced footprint and the consolidation of the built mass within a more central location within the appeal site would mean that it would result in a marginally lower spatial and visual impact upon the openness of the Green Belt than the existing buildings. The proposed development therefore complies with Framework Paragraph 149 exception 'g)' and it would not be inappropriate development within the Green Belt.
15. The proposed development would also comply with saved Local Plan (2006) Policies GB2A and GB7A insofar as they require that new development of the type proposed does not have a harmful impact on the openness of the Green Belt. Policy GB2A also requires that the development does not conflict with the purposes of including land in the Green Belt. There is no substantive evidence before me to indicate that there would be any conflict with the purposes set out at Framework Paragraph 138. In any case, the necessity for such consideration is not consistent with Framework Paragraph 149 exception 'g)', given that this exception does not refer to the need to consider the impact of such development on the purpose of including land within the green belt. Indeed, Policy GB2A and GB7A are out-of-date, as discussed further in relation to the 'Planning Balance'.
16. Both parties refer to the policies contained within the emerging Local Plan and the Council has provided a copy of Emerging Local Plan (Submission version

2017) Policy DM4. This policy is similar to the aforementioned provisions of the Framework in relation to the Green Belt. As such, there would be no conflict with it. That said, the weight to be afforded to the policies of the emerging Local Plan is very limited, given the lack of detail provided in relation to the current status of the plan, whether there are any objections to the relevant policies and whether any such objections have been resolved.

### *Protected Species*

17. The appellant submitted a Preliminary Ecological Appraisal (PEA) to the Council as part of the planning application. The PEA identifies that building B1 (comprising the existing dwellings) 'has high habitat value for roosting bats and may host a roost' it also states that 'crevice dwelling bats could roost in gaps under roof tiles and flashing and void dwelling bats could access the voids via gaps between the eaves panels and walls, where in places possible bat droppings and urine were seen on the rendering below gaps in chicken wire.' As such, and given that the proposal involves the demolition of the buildings, the PEA recommends that 'three bat emergence/re-entry surveys are required during the active bat season (May – September) to confirm presence/likely absence of a bat roost in B1.'
18. There is no evidence before me to indicate that these surveys have been undertaken. Indeed, the appellant has suggested that these surveys could be required by planning condition and that the Council agreed to this approach. The Circular 06/2005 advises that, where there is a reasonable likelihood of protected species being present, it is essential that the presence of protected species, and the extent to which they would be affected by the development, is established prior to planning permission being granted. Whilst ecological surveys can be carried out under conditions attached to a planning permission, this should only be done in exceptional circumstances. Regardless of whether or not the Council agreed to the approach of controlling the surveys by condition, there is no evidence before me to suggest that there are any exceptional circumstances to justify such an approach.
19. Therefore, in line with the precautionary approach set out in paragraph 99 of Circular 06/2005, without this evidence it has not been demonstrated that the proposed development would not have an adverse impact on a protected species. The proposed development would therefore conflict with Framework Paragraph 180(a), which states that planning permission should be refused where significant harm to biodiversity cannot be avoided.
20. I have not been provided with a copy of a relevant development plan policy in relation to this main issue and as such I have not identified any conflict with the development plan in this regard.

### **Planning Balance**

21. Given that the most important policies for determining this appeal (saved Local Plan Policies GB2a and GB7a) are out-of-date, Framework Paragraph 11d applies.
22. Noting my conclusions on the effect of the proposed development on the Green Belt, there are no relevant Framework policies which provide a 'clear reason for refusal' within the terms of Framework Paragraph 11d(i). Therefore, Framework Paragraph 11d(ii) is engaged and planning permission should be

granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

23. I have concluded that insufficient evidence has been provided to enable a proper assessment of the effect of the proposed development on bats. Therefore, it has not been demonstrated that the proposed development would not have an adverse impact on a protected species. The proposed development would therefore conflict with Framework Paragraph 180(a), which states that planning permission should be refused where significant harm to biodiversity cannot be avoided. This is an adverse impact to which I afford substantial weight given the high level of legal protection afforded to protected species<sup>1</sup>.
24. There would be some social and economic benefits associated with the proposed development, through the provision of a new dwelling to replace two existing dwellings which are in a relatively poor state of repair. There would however be a net reduction of one dwelling from the housing stock. There would also be some minor temporary benefits associated with support for local construction jobs. As such, and given the relatively small scale of the development, the social and economic benefits are of limited weight.
25. There would be a marginal environmental benefit through a reduction in the impact of the existing buildings on the openness of the Green Belt. However, given the marginal nature of this reduction this benefit also only carries limited weight.
26. In summary, there would be economic, environmental and social benefits associated with the proposed development. However, these benefits can only be afforded limited weight. They would therefore be significantly and demonstrably outweighed by the adverse impacts of the development, given that it cannot be ascertained whether there would be harm to bats, which are a protected species.

## **Conclusion**

27. The proposed development would not be inappropriate development in the Green Belt and it complies with the development plan in this regard as well as the policies contained within the Framework.
28. However, there is insufficient evidence before me to conclude that the proposed development would not result in adverse impacts on protected species. As such, the proposed development would conflict Framework Paragraph 180(a). I have also taken into account Framework paragraph 11d(ii), which in this case weighs further against granting planning permission. These are material considerations which indicate that a decision should be made other than in accordance with the development plan.<sup>2</sup>
29. The appeal is therefore dismissed.

*Luke Simpson*

INSPECTOR

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<sup>1</sup> The Conservation of Habitats and Species Regulations 2017 (as amended)

<sup>2</sup> Notwithstanding that there may be a relevant development plan policy relating to protected species, which I have not been provided with.