



Appeal Decision

Site visit made on 9 November 2022

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/J1535/W/21/3284756

Land at Common View, Nazeing Common, Nazeing EN9 2SQ

- 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 G Sutton against Epping Forest District Council.
 - The application Ref EPF/1107/21, is dated 8 April 2021.
 - The development proposed is the erection of a detached dwelling, vehicular parking, and associated works.
-

Decision

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

Preliminary Matters

2. The appeal site is in within the zone of influence for the Epping Forest Special Area for Conservation (SAC). So designated for its flora and fauna and specifically qualifying habitats of beech forest, dry and wet heaths and for Stag Beetles. There is concern that future occupiers of the proposed development could, in isolation and in conjunction with other plans and projects, place additional recreational pressure on qualifying habitats due to its proximity to the SAC, as well as give rise to additional air pollution in an area sensitive to such.
3. In order to mitigate any recreational harm, the Council requires monetary contributions towards the maintenance, improvement, management, access management and monitoring of the SAC. Their adopted strategy also requires contributions towards air pollution mitigation. The amounts therefore set out in the Council's evidence have been presented in a completed planning obligation that is before me in the form of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990. Whilst the Council have not commented on the obligation, I am satisfied that it meets the Framework's tests and in so doing responds to the requirements of saved Policy CP1 of the Local Plan¹, and the Habitat Regulations 2017. Together, and amongst other things, these seek to minimise the effect of development on the environment and protect designated sites.

Main Issues

4. The Council would have refused planning permission had they issued a decision. Their evidence has informed the main issues in the appeal which, taking into account the above, are:

¹ Epping Forest District Local Plan 1998 and Alterations 2006

- Whether the appeal scheme would be inappropriate development in the Green Belt;
- The effect of the appeal scheme on the openness of the Green Belt; and
- If the appeal scheme would be inappropriate development in the Green Belt, 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 it.

Reasons

Inappropriate Development

5. The Government attaches great importance to Green Belts. 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. The Framework² sets out, amongst other things, that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in Very Special Circumstances (VSC).
6. The construction of new buildings should be regarded as inappropriate development in the Green Belt. The Framework however identifies a number of exceptions as part of a closed list. There is a similar list in saved Policy GB2A of the Local Plan. There is no debate in the evidence about whether any of GB2A's exceptions apply to the proposed development. I am inclined to agree. Paragraph 149 e) of the Framework suggests that limiting infilling in villages might not be inappropriate development.
7. It is not contested between the main parties that the appeal site is within the village, and I am content that as a single dwelling scheme, the proposed development would be limited. Emerging Policy DM4 of the LPSV³ alludes to what might constitute limited infilling. Defining it as: *...the development of a small gap in an otherwise continuous built up frontage, or the small-scale redevelopment of existing properties within such a frontage. It also includes infilling of small gaps within built development.* There is no definition of limited infilling for the purposes of the Framework.
8. I note the LPSV is at an advanced stage but remains unadopted. That said, it is logical and reasonable that for something to be filled in, it must exist as a gap of some sort. That gap, to be filled in, need not necessarily be on a frontage for the purposes of the appeal scheme if I were to put aside the as yet unadopted definition set out by the LPSV. I am also mindful that there is existing development to three of the four sides of the appeal site.
9. However, the site abuts open fields to the north and was intended to be the extended rear gardens of dwellings previously approved as limited infill plots themselves. There is therefore an element of stretching the definition at play here in that the appeal site would only become an infill plot (if I were to agree it were) by virtue of development considered infill in itself. The open and undeveloped nature of the appeal site, despite its enclosure, relates positively and closely to the same characteristics in the fields to the north. It is, for all intents and purpose therefore, sat on the edge of the settlement at this point

² The National Planning Policy Framework 2021

³ Epping Forest District Local Plan Submission Version 2017

and despite being closely related to the village and arguably in it for identification purposes, the development thereof would be more akin to being bolted on to the settlement than infilling a gap within it.

10. I would also be concerned that, should the appeal site be considered as an infill plot, the argument could be repeated too often with similar such sites elsewhere in this or other villages. The release of such for development could have a cumulatively harmful effect on the Green Belt, undermining the deliberately restrictive nature of protective policies therefore.
11. Paragraph 149 g) of the Framework sets out that limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) might not be inappropriate development provided it does not have a greater impact on the openness of the Green Belt than the existing development. This is a binary test.
12. The Framework's glossary identifies previously developed land as excluding, amongst other things, land in built-up areas such as residential gardens. The Council agree that the appeal site, being a residential garden not in a built up area, it would be previously developed land for the purposes of the Framework. If I were to consider the appeal site previously developed land, it is an open parcel currently devoid of development. Inevitably therefore, the erection of a substantial building thereon would have an unavoidably greater impact on the openness of the Green Belt than the existing development. Reducing its openness accordingly.
13. With the above in mind, the appeal scheme would be inappropriate development in the Green Belt and thus harmful thereto by definition. This would be contrary to the approach and Green Belt protection aims of the Framework and saved Policy GB2A.

Openness

14. Openness is an essential characteristic of the Green Belt and to which there are two aspects. Spatial and visual. The former can be taken to mean the absence of built form.
15. As I have set out above, but specific this time to the exception under paragraph 149 e) of the Framework, the appeal site is devoid of built form and the resulting dwelling would be of a not insignificant size that would be visible above ground. Its location to the rear of existing development would limit its effect on the visual aspect of the Green Belt's openness but the reduction in its spatial aspect would be substantial and unavoidable.
16. This would give rise to harm to the Green Belt in addition to that caused by the appeal scheme's inappropriateness. This would conflict with the aims of section 13 of the Framework in this regard and how it seeks to ensure that Green Belts are kept permanently open.

Other Considerations

17. The appeal scheme would provide a well-designed dwelling which would reflect the modern architectural style of its immediate neighbours and include measures to support sustainable energy. It would also be sufficiently well separated from neighbouring buildings to reduce its effect on their living conditions. The appeal site is not within a flood zone and according to the

appellant benefits from public transport links and opportunities to use sustainable transport modes.

18. Be these considerations as they may, the majority of them would either have to be the case for the principle of the proposed development to be acceptable or amount to a lack of harm which, by definition, cannot be used to weigh against harm. The use of sustainable home energy production is laudable but the scale thereof, relating as they would to a single dwelling and limited in their overall scope, would be worthy of only limited weight.

Other Matters

19. The appeal site is within the Nazeing and South Roydon Conservation Area (CA). The significance of which is derived from areas of historic countryside between Harlow and Lowe Nazeing and include Bumble's Green and the medieval closed field system to the north. The field patterns contribute positively to the character and appearance of the CA. The appeal site is set to the southern point of the CA, within an area of transformational change and a cluster of detached dwellings of a variety of styles and sizes.
20. The appeal site itself was intended to be the extended gardens of other recently built houses, the relative 'development' of the land has therefore been considered appropriate if solely in land use terms. Given the general layout, mix and style of other buildings close by, I am satisfied that the integrity and significance of the CA would not be harmed by what would, in wider CA terms, be a contextually small building closely related to others.
21. With the above in mind, the character and appearance of the CA would be preserved. In so doing, the proposed development would accord with the aims of emerging Policy DM7 of the LPSV. There are two other listed buildings in the wider area but, due to their separation from the appeal site and the scale and location of the proposed development, there would be no impingement on their respective settings.
22. There is allusion in the Council's evidence to the application of the presumption in favour of sustainable development being applicable to the appeal scheme. I have not seen any indication in the Council's case to indicate the reason for this being a lack of a supply of housing sites required by the Framework. That said I would not, if this were to be the case, be taken to the circumstances of paragraph 11 d) ii) since there are, as I have confirmed below and in regard to the appeal scheme, policies in the Framework which protect areas or assets of particular importance that, when applied, provide a clear reason for refusing the development proposed.

Conclusion

23. The Framework indicates that substantial weight should be given to any harm to the Green Belt. This is a high bar. In the case of the appeal scheme, this would be two fold. One in regard to the inappropriateness of the proposed development and the other in respect of the unavoidable reduction in the Green Belt's openness.
24. I have identified a number of other considerations and apportioned them weight which is, in each case, a matter for the decision maker. A lack of harm and any compliance with the development plan would not weigh in favour of the appeal scheme. They would be neutral matters. When taken together, the

other considerations would not be so significant as to be capable of clearly outweighing the weight that I must ascribe to the harms to the Green Belt. The VSC needed to justify the appeal scheme have not therefore been demonstrated. The appeal should thus be dismissed.

John Morrison

INSPECTOR