



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/21/3289669

Land Opposite Blackberry House, Toot Hill Road, Ongar, Essex CM5 9QP

- 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 and Mrs Didsbury against the decision of Epping Forest District Council.
 - The application Ref EPF/1623/21, dated 9 June 2021, was refused by notice dated 4 August 2021.
 - The development proposed is described as 'a net zero carbon house of exceptional quality and design, with landscape and ecological site enhancements within the Green Belt.'
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. The Council refused planning permission for two reasons. The first is reflected in my identification of the main issues as they have been set out below. The second concerned the potential for the proposed development to harm the integrity of 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 tests¹ and in so doing responds to the requirements of saved Policies CP1 and NC1 of the Local Plan², and the Habitat Regulations 2017.
4. Together, and amongst other things, these policies seek to minimise the effect of development on the environment and protect designated sites. The Council

¹ Paragraph 57 of the National Planning Policy Framework 2021

² Epping Forest District Local Plan 1998 and Alterations 2006

have also referred to saved Policy CP6 in regard to this matter but on my reading it seems to be more concerned with achieving sustainable patterns of urban development. My attention is also drawn to emerging Policies DM2 and DM22 of the LPSV³. Noting as I do the advanced stage of the LPSV, it remains in unadopted form. In any event I have not been passed copies of the cited policies in the evidence. That said, I have been able to consider the matter in light of the adopted development plan at the time which is the Local Plan which has primacy in any event.

5. With the above in mind, I am satisfied that the appellant has addressed the requirements of the Council's second reason for refusal. I have identified the main issues accordingly. Which are:
- 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

6. 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 Framework⁴ 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).
7. 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.
8. I have not been passed details of the extent of Toot Hill as a settlement, at least for development plan purposes but, the appeal site is on the outer edge of a small group of houses which otherwise appear to be distinct from a more defined settlement. Which itself seems to be concentrated a short distance to the west. Even if I were to consider this cluster of buildings to represent a village, the site is on the edge of the group and bounded otherwise by open fields.
9. There is some assistance in the supporting text of emerging Policy DM4 alluding to what might constitute limited infilling. Defining it as: *...the development of a small gap in an otherwise continuous built-up frontage, or*

³ Epping Forest District Local Plan Submission Version 2017

⁴ The National Planning Policy Framework 2021

the small-scale redevelopment of existing properties within such a frontage. It also includes infilling of small gaps within built development.

10. Being on the edge of the group of buildings, the proposed development would not specifically infill anything such as a gap or space between. It would be more akin to bolting on the outside of rather than being in amongst which, putting aside the above definition, would be a common sense understanding of infilling.
11. There is no doubt that, as a single dwelling, the appeal scheme would be a limited form and amount of development relative to its context. However, it seems sufficiently clear that it would not amount to limited infilling in a village. There is some mention in the evidence in whether the proposed development would be the limited infilling or the partial or complete redevelopment of previously developed land. This is not however supported by any sufficiently compelling evidence.
12. I have not been passed any further details, nor can I say with any sufficient certainty, that the appeal scheme would satisfy any of the other exceptions for the construction of new buildings in the Green Belt and therefore not be inappropriate development. The proposed development would therefore be so. It would accordingly conflict with the Framework in this regard and be harmful by definition to the Green Belt. As I have also set out above, the appeal scheme would fall out of, and thus conflict with, the exceptions set out by saved Policy GB2A of the Local Plan. Both approaches seek, amongst other things, to protect the Green Belt from harm.

Openness

13. 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.
14. The appeal site is devoid of buildings and although some of the design of the proposed dwelling would be sub terranean, there would be a significant amount both above ground and visibly so even given the relative degree of tree cover along the narrow rural lane that it would be accessed from. With this in mind, there would be an unavoidable reduction in both the spatial and visual aspects of the Green Belt's openness. This would give rise to harm to the Green Belt in addition to that caused by the appeal scheme's inappropriateness.
15. As well as conflicting with the aims of section 13 of the Framework in this regard, the appeal scheme would be contrary to saved Policy GB7A of the Local Plan which suggests, amongst other things, that planning permission will be refused for development which would have an adverse effect on openness.

Other Considerations

16. The appellant's arguments in favour of the appeal scheme rely heavily on its carbon neutrality and so called exceptional design. These points have been advanced in response to paragraph 80 of the Framework which concerns situations where the development of isolated homes in the countryside should be avoided and specifically to the appeal scheme, the design is suggested to be of exceptional quality, in that it is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more

- generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
17. The Courts have held that the word “isolated” in the phrase “isolated homes in the countryside” simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, “isolated” in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand”. It does not in this case mean remote or separated from supportive services. Applying a common sense understanding of whether something might be far away from other places, buildings or people therefore, and given the proximity of the appeal site to a cluster of a not insignificant number of other homes, I would find it difficult to reconcile an argument to suggest that the proposed development would be an isolated home and thus for the circumstances of paragraph 80 to apply.
 18. That said, the environmental sustainability credentials of the proposed development are noted. The scheme appears to incorporate a number of measures to harvest rainwater, develop onsite electricity and provide high environmental performance generally. There also appears to be measures in the scheme aimed at monitoring and learning for the benefit of future such schemes across the district. The Council’s evidence suggests they have declared a climate emergency and have a commitment to move towards net zero carbon new buildings by 2030. I would ascribe moderate weight to these matters when taken together, taking into account there being nothing compelling to suggest that such measures have to be delivered at the appeal site.
 19. The landscaping scheme seeks to achieve biodiversity net gain for the appeal site. This would be in the form of measures that would include habitat enhancement through both physical structures and planting as well as a green roof. Whilst there is yet to be a statutory duty for such set out nationally, this provision and the substance thereof would also be a positive aspect of the proposed development. I would thus afford it moderate weight, taking into account that some measures respond to the effects of a dwelling being on site.
 20. The design of the dwelling would be unique and informed to some extent by its ‘green’ approach. Whilst I do not consider the appeal scheme in light of paragraph 80 of the Framework, the merits of the building’s design, in context, is nonetheless a consideration.
 21. I do not specifically object to the design of the building and what within that it seeks to achieve. Given the variety of building type, scale and use of architecture in the immediate area I would not suggest that it would necessarily give rise to harm. It has been considered with its site firmly in mind and would, I have no doubt, be visually attractive in its own right. I can see from the evidence that it has been reviewed by the Design Panel and they have made some recommendations.
 22. That said, there is nothing significant beyond its environmentally sustainable approach that suggests to me that its design is of such high quality, outstanding or groundbreakingly excellent in architectural terms. Arguably it is more akin to not giving rise to harm and thus complying with the relevant development plan policies. The tests set out by paragraph 80 are a very high bar, were they to apply to the appeal scheme.

Other Matters

23. I note that the Council are currently unable to demonstrate the supply of housing sites as required by the Framework. However, I would not be taken to the circumstances of paragraph 11 d) ii) since, as I will set out below, there are policies in the Framework that protect areas or assets of particular importance⁵ that, when applied, would provide a clear reason for refusing the development proposed.
24. In regard to Green Belt matters, the Council have cited saved Policies U3B, DBE2, DBE4 and DBE9, as well as emerging Policies SP6, DM1, DM4, DM5, DM9, DM10 and DM16 of the LPSV. I have not been passed a copy of U3B so am unsure of its relevance to the main issue and have made comment earlier on the status of the emerging policies and their absence in the Council's evidence. Worthy of weight they may be, I have found sufficiently against the policies of the adopted development plan in accordance with my duties under Section 38(6) of the Planning and Compulsory Purchase Act 2004.
25. DBE2 appears to relate to assessing an impact on existing neighbouring or surrounding properties which does not seem to be a contentious matter in the appeal. DBE4 relates to buildings in the Green Belt and ensuring that their location respects the landscape setting and that their design is acceptable in such regards. I have stated above that the appeal scheme would not be harmful in this respect and thus there would be some compliance with this policy. DBE9 concerns itself with assessing living conditions effects and is thus not directly relevant to the main issues.
26. The appellant has drawn my attention to a planning permission granted for development described as infill at Longacre Cottage, Council reference EPF/2936/FUL. I have not been passed details of this planning permission and as such am unable to make any meaningful comparisons with the appeal scheme. I am also aware of a previous planning permission reference EPF/1143/17 for development on the appeal site comprising of a stable block. The Council's evidence however states that this planning permission has lapsed without works having commenced. The appellant does not appear to dispute this. These examples do not therefore lead me to allowing the appeal or changing the circumstances of my consideration thereof.

Conclusion

27. 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.
28. 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 capable of clearly outweighing the weight that I must ascribe to the harms to the Green Belt.

⁵ Un outweighed harm to the Green Belt

The VSC needed to justify the appeal scheme have not therefore been demonstrated. The appeal should therefore be dismissed.

John Morrison

INSPECTOR