



Appeal Decision

Site visit made on 28 September 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/J1535/W/21/3283663

Garden Centre, Crown Hill, Waltham Abbey EN9 3TF

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- 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 Paul Bundy against the decision of Epping Forest District Council.
 - The application Ref EPF/1255/20, dated 12 June 2020, was refused by notice dated 26 March 2021.
 - The development proposed is described as 'Replacement of Planning Consent EPF/2030/17 to replace 4no semi-detached cottages with 8no two bedroom apartments using the same building envelope, footprint and elevations'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations 2017. It has been concluded that the development would not be of a scale and nature likely to result in a significant environmental impact and EIA is therefore not required.
3. The policies referred to in the Council's decision notice include, amongst others, Policies SP2, DM2, DM4 and DM22 of the Epping Forest Local Plan (Submission Version) 2017 (LPSV). The LPSV has not yet been adopted by the Council as part of its development plan. However, the LPSV has been through the examination process and has reached an advanced stage. I am not aware of any unresolved objections to these policies so far as they relate to this appeal. Therefore, I have applied significant weight to those policies relating to the Green Belt and habitats matters given their level of consistency with the Framework. I have considered the weight to be applied to Policy SP2 of the LPSV within my planning balance and conclusion.

Main Issues

4. The main issues are:
 - (i) whether or not the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - (ii) the effect of the proposal on the openness of the Green Belt;

- (iii) the effect of the proposal on the Epping Forest Special Area of Conservation (SAC); and
- (iv) whether any 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 required to justify the proposal.

Reasons

Whether or not inappropriate development in the Green Belt

5. Paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt other than in a number of exceptions. One exception at Paragraph 149 e) is limited infilling in villages. Policy DM 4 (Green Belt) C (v) of the LPSV which includes an exception for 'limited infilling in smaller settlements' is consistent with this approach. In contrast, Policy GB2A (Development in the Green Belt) of the Epping Forest District Local Plan Alterations (2006) does not include 'limited infilling' amongst its exceptions. In that regard Policy GB2A is inconsistent with the Framework and I afford it limited weight.
6. What constitutes limited infilling is not defined within the Framework. However, the supporting text to Policy DM 4 of the LPSV confirms that for the purposes of this policy 'limited infilling' means 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. In the absence of any other definition, I find the supporting text to Policy DM 4 pertinent to my considerations.
7. The evidence before me indicates that the planning consent referred to in the description¹ was subject of a previous appeal. I have not been provided with a copy of that decision, however the Council has confirmed that the Inspector in that instance found that the four semi-detached dwellings under consideration at the time would constitute infill development within a village. Since then, a new planning permission has been granted for the same development². On my site visit, I saw that construction works had commenced and that the walls and roofs for these previously approved dwellings were substantively complete. This is a fallback position to which I attach significant weight in my considerations.
8. Reference has been made within the appeal submissions and the comments of third parties to a 'green buffer' between the appeal site and the M25 bridge which sits in close proximity to the site. However, planning permission has also been granted for the erection of two semi-detached houses on this adjacent parcel of land³. At the time of my visit, works had also commenced on these dwellings with foundations in place. This changing context means the appeal site now evidently sits within a continuous built-up frontage of ribbon development along this part of Crown Hill.

¹ LPA Ref EPF/2030/17

² LPA Ref EPF/0249/21

³ LPA Ref EPF/1709/19

9. From the details provided, the scale and external appearance, alignment and footprint of the proposed apartments is the same or nearly identical to the previously approved dwellings on the appeal site.
10. Drawing no SCP/190816/SK10 Rev C provided by the appellant indicates that there would be an increase in hardstanding when compared with the previous permission on the site. This would be to accommodate additional parking spaces. The appellant contends that another drawing (ref ELA/2/B) shows an alternative layout, although I have not been provided with a copy of this drawing. Given my overall conclusion, it has not been necessary to seek further clarity on this matter. However, even if I base my assessment on the first of these drawings, the access points are the same as previously approved and there would be scope for some soft planting to frontages including hedgerows where these could be provided outside visibility splays, for example on plots 2 and 4. Such planting could be secured by condition.
11. Any increases in levels of activity associated with 8 two-bedroomed apartments when compared with the extant permission for dwellings on the site would be unlikely on its own to result in any material conflict with the five purposes of the Green Belt set out at paragraph 138 of the Framework and Policy DM 4 of the LPSV.
12. Overall, taking all the above factors into account, I am satisfied that the development would be appreciated as being limited infilling in a village when considered against the LPSV and the Framework. Accordingly, the development would not be inappropriate development in the Green Belt as it would meet the exceptions at Policy DM 4 C (v) of the LPSV and Paragraph 149 e) of the Framework.
13. Given my conclusion in respect of this main issue, no material harm would be caused to the openness of the Green Belt and there is also no need for me to assess whether there are any other considerations which would amount to very special circumstances.

Epping Forest SAC

14. The site is located within the zone of influence for the Epping Forest SAC which is a European designated site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected site, either alone or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). This responsibility falls to me in the context of this appeal. In this respect, I am mindful of the advice within the Planning Practice Guidance (PPG) including that an AA must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project.
15. The designation of Epping Forest SAC reflects the presence of 3 qualifying habitats (Atlantic Beech forests on acids soils, Northern Atlantic wet heaths with cross-leaved heath and European dry heaths) as well as one qualifying species (Stag beetle). The conservation objectives identified for the SAC include ensuring that the integrity of the site is maintained or restored. The site should also contribute to achieving the favourable conservation status of its qualifying features by maintaining or restoring the extent, distribution,

structure and function of the qualifying habitats and the habitats of qualifying species; the supporting processes on which these rely; and the population and distribution of the qualifying species.

16. The appeal site is located within 3km of the SAC and is therefore within its zone of influence. From the information before me, the SAC is vulnerable to impacts arising from visitors to the Forest as well as air pollution impacts.
17. While development is already underway in respect of 4 semi-detached dwellings, the site has not yet been occupied for residential purposes. The proposed development would result in 8 separate households living on the site. This means that there would be an increase in residential occupation whether I consider this against the 4 dwellings currently being implemented or the previous use of the site as a garden centre. With higher levels of residential occupation, there is the potential that demand for recreation and traffic generation to and from the site would increase.
18. Given the site's close proximity to Epping Forest, this would be likely to encourage the use of this space for recreation. With regards to air quality, the appellant has provided an Epping Forest SAC technical note (TN) which compares the vehicular movements of the previous garden centre use with modelled data relating to residential development. However, the data provided is based on 4 dwellings and not the 8 apartments proposed. Furthermore, in order to be able to effectively screen the proposal, any modelled traffic data would also need to factor in all potential visitors, both in a social context and other vehicular movements including, but not limited to, deliveries that would be associated with 8 households.
19. Whether or not a Transport Assessment is required within the Council's Habitats Regulations Assessment guidance, in the absence of objective evidence in relation to potential traffic generation, I cannot reach complete, precise and definitive findings on the likely effects of the development on air quality.
20. I accept that in all probability, the harm arising from the proposal itself in comparison to the previous use of the site or the extant planning permission for 4 dwellings would be small. Nevertheless, the impacts of the increased recreation use of the SAC would be adverse, and traffic generation resulting from the development has the potential to have an adverse effect on air quality within the SAC. Taken cumulatively with other similar scale developments has the effects on the SAC have the potential to be significant. In exercising my duty to protect the European site, I must adopt a precautionary approach, and overall, I am unable to conclude beyond reasonable scientific doubt that the proposal would not have a significant effect on the integrity of the SAC.
21. The Council's strategies towards mitigating recreational and air quality impacts on the SAC include, where appropriate, financial contributions towards measures to mitigate these impacts. The appellant has indicated that they would be willing to make mitigation payments in accordance with these strategies.
22. However, even if I were in a position to carry out an AA, and this were to indicate that any likely significant adverse effects to the SAC could be addressed through such mitigation payments, the appropriate way to secure such payments would be by way of a planning obligation. The planning

obligation provided by the appellant is in draft form. It is not dated or signed, does not refer to the specific proposal before me and does not indicate the specific sums that would be paid. Consequently, I am not in a position to secure any mitigation contributions.

23. It would typically be necessary for me to consult Natural England to enable me to undertake the AA and to assess the effectiveness of such mitigation for recreational and air quality impacts. However, in view of the fact I cannot reach a definitive conclusion in respect of the effect on air quality, I can only conclude that the proposed development, alone and in combination with other plans and projects, would likely have a significant adverse effect on the integrity of the SAC. In any event, even if I did have enough information and I were able to determine whether adequate mitigation was in place, I don't have a completed obligation.
24. Accordingly, the development would conflict with the requirements of the Regulations, as well as the nature conservation and mitigation requirements of Policies CP1 (Achieving Sustainable Development Objectives) of the LP and Policies DM 2 (Epping Forest SAC and the Lee Valley SPA) and DM 22 (Air Quality) of the LPSV and the Framework.

Other Matters

25. The appellant has referred me to several appeal decisions⁴. However, the considerations under each of these are not identical to the circumstances of the case before me. I have therefore, considered the appeal on its own merits.
26. The appeal site sits close to the boundaries of the Upshire Conservation Area and the Copped Hall Conservation Area. Even accounting for the additional hard landscaping proposed to the site frontages, I am satisfied that in views towards and out of these CAs, the primary characteristics of the development would be the scale, design and linear form of the buildings all of which would be very similar to the development already consented and substantively constructed on the appeal site. For these reasons, I find that there would be no material harm to the settings of these CAs.

Planning Balance and Conclusion

27. The appellant suggests that the Council can only demonstrate 2.43 years of deliverable housing land and this has not been contested. Moreover, the number of homes delivered in the area over the last 3 years is below the number of homes required resulting in a 2021 Housing Delivery Test (HDT) measurement of 35%. As a consequence, this triggers the presumption in favour of sustainable development under Paragraph 11d of the National Planning Policy Framework (the Framework).
28. Paragraph 11d of the Framework states that the policies which are most important for determining the application are to be considered out-of-date and planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. The

⁴ Appeal refs APP/B1930/W/20/3265925, APP/C1950/W/20/3265926, APP/C1570/W/21/3270615, APP/A1720/W/21/3275237, APP/A2280/W/21/3280915, APP/W3005/W/21/3274818, APP/R3650/W/21/3278196, APP/X1925/W/21/3273701 and APP/P11/W/21/3273012

Framework is specific that the policies referred to include those relating to land designated as Green Belt and habitats sites.

29. The Council suggests that the site went through the site selection process as part of the preparation for the LPSV but was discounted and that it sits outside the settlement boundary for Waltham Abbey and would not meet the criteria for a windfall site under Policy SP 2 (Spatial Development Strategy) of the LPSV. However, in this particular instance, I attach limited weight to any conflict with this emerging policy in light of, the fallback position of the extant and substantially complete permission for dwellings on the site, the acute need for housing in the area and given that I have found that the proposal would accord with the Green Belt requirements of the Framework and the LPSV.
30. The 8 two-bedroomed apartments would make a modest but important contribution to housing numbers in the area. There would also be economic and social benefits resulting from the development of the site and through the use of local services and facilities by future occupiers of the development.
31. However, in the absence of sufficient evidence to demonstrate otherwise, the development alone and in combination with other plans and projects, would likely have a significant adverse effect on the integrity of the Epping Forest SAC. Even drawing the benefits of the proposal together, this is a matter of overriding concern and which, in the context of the policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development.
32. I therefore conclude that the appeal should be dismissed.

M Russell

INSPECTOR