



Appeal Decision

Site visit made on 30 September 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1st March 2023

Appeal Ref: APP/J1535/W/22/3296231

Land adjacent to Esperanza Nursery, Stapleford Road, Stapleford Abbots

- 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 Mark Blackshaw (MJB Build Ltd) against the decision of Epping Forest District Council.
 - The application Ref EPF/1133/21, dated 21 April 2021, was refused by notice dated 17 December 2021.
 - The development proposed is the erection of two detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant obtained permission for the erection of 8 dwellings on land adjacent to the site. An application for the proposal was then made to erect 2 dwellings on the site as an extension to the approved scheme. The parties agreed to change the proposal description to "application for 10 dwellings, 8 of which are as previously approved and currently under construction". However, no amended drawings were provided to include the adjacent plot within the red line of the site. As such, the plans before me are for the erection of 2 dwellings on a distinct and separate site. I have made my assessment on this basis and have taken the development description from the application form.
3. The Council's reasons for refusal refer to Emerging Policies 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 but has been through the examination process and reached an advanced stage. I am not aware of any unresolved objections to the quoted policies so far as they relate to this appeal. I have therefore applied significant weight to these policies.

Main Issue

4. The main issues are:
 - 1) whether 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; and
 - 2) the effect of the proposal on the Epping Forest Special Area of Conservation (SAC).

Reasons

Whether the proposal constitutes inappropriate development

5. The site comprises land on Stapleford Road within the Green Belt. It is set back from the street, behind the dwelling at Rowan House, for which it formed part of the rear gardens. The surrounds are residential, with dwellings fronting Stapleford Road largely set within spacious plots. Permission has been granted immediately to the east of the site for the erection of 8 dwellings on land formerly occupied by a nursery. Construction of this scheme has commenced and residential development is also approved to the south. To the west the site is bounded by an access to the dwelling at The Haven.
6. The Framework states at paragraph 149 that construction of new buildings in the Green Belt should be regarded as inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is subject to a number of exceptions, including at paragraph 149(e) – limited infilling in villages.
7. In deeming the proposed 8 dwellings on adjacent land to be ‘limited infilling’, the Council accepted that the immediate area formed part of the village of Stapleford Abbots. This remains the case for the site. It sits among built form and land parcels that are visually and functionally connected to Stapleford Abbots such that it is in the village for the purposes of paragraph 149(e).
8. ‘Limited’ and ‘infilling’ are not defined in the Framework and are matters of planning judgment. However, supporting text to Emerging Policy DM4 of the LPSV defines ‘limited infilling’ as the development of a small gap in an otherwise continuous built-up frontage. It continues that limited infilling also includes the infilling of small gaps within built development.
9. As the proposal is for only two dwellings on a contained site of limited size surrounded on three sides by existing or approved development, I am satisfied the proposal would be limited development. Its main built form would be behind the rear garden of Rowan House such that it would not fill a small gap in the frontage along Stapleford Road. However, it would make use of the access road for the immediately adjacent site, which is in a gap between the properties of Maple Leaf and Cobbs Cottage. While the proposed dwellings would not themselves contribute to this frontage, on the circumstances of this case this alone would not prevent them from being limited infill.
10. Even acknowledging the neighbouring garden of Baylands as free from built form, when taking account of the surrounding approved schemes the site would be bounded on three sides by development. It would be in a section of the street that, although behind the main frontage, would read as built-up and within which the site would be experienced as a small gap in built form.
11. The proposal would continue the building line of immediately adjacent semi-detached properties currently under construction and be largely enclosed by other dwellings such that it would read as part of a wider cluster of development. Due to the location of the site and its relationship to existing and approved adjoining and adjacent properties, it would infill a small gap in built development, such that it would represent limited infilling.
12. The proposal would therefore meet the exception set out in paragraph 149(e) of the Framework, and would not be inappropriate development in the Green

Belt. While the Officer Report refers to harm to openness, given my finding that the proposal would not be inappropriate development it is not necessary for me to consider its effect on openness. Furthermore, there is no need to consider whether there are other considerations which would amount to very special circumstances.

13. For the reasons given, the proposal would comply with the Framework, Policy GB2A of the Epping Forest District Local Plan and Emerging Policy DM4 of the LPSV insofar as they seek to avoid inappropriate development in the Green Belt.

Epping Forest Special Area of Conservation

14. The SAC has been identified for its value in respect of beech forests, wet and dry heaths and the presence of stag beetles. The main parties agree that the site is outside the zone of influence for recreational pressure on the SAC. Nevertheless, from the information before me the SAC is vulnerable to impacts arising from air pollution, being noted as one of the current pressures and threats. The proposal, by introducing two residential dwellings, would generate traffic movements, with trips to and from the site by future occupiers as well as trips associated with visitors and likely deliveries. This, in turn, would have implications for air quality.
15. The appellant has submitted a Trip Generation Assessment. It acknowledges that the site is undeveloped former garden land but states that the proposal is linked to, and would not have been possible without, the redevelopment of the adjacent site of a former nursery to create 8 dwellings. The assessment looks at each scenario, assuming both: (i) an undeveloped garden land use; and (ii) that the proposal is part of a development for a total of ten houses, with proposed trips offset by 20% of the nursery trips that formed part of the adjacent site.
16. While the proposal would share the access of the approved scheme, it is a separate development. As the part of the site on which the proposed dwellings would sit did not form part of the adjacent nursery, an offset of trips associated with this former use is not appropriate. The proposal would introduce vehicle movements to and from a parcel of land where, due to its nature, no such trips have previously arisen.
17. The proposal would not generate significant traffic movement and that alone would not result in significant effects on the air quality of the SAC. However, in exercising my duty to protect the SAC I must adopt a precautionary approach. I therefore find that, in combination with other plans or projects throughout the wider zone of influence, the proposal has the potential to result in likely significant effects in this regard.
18. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires the competent authority to undertake an appropriate assessment and consider possible mitigation measures. However, I have no information before me relating to any such mitigation, nor a mechanism to secure their delivery. In this absence of this information, I must find that the proposal, in combination with other plans and projects, would adversely affect the integrity of the SAC.
19. For the reasons given, I find that the proposal would conflict with the provisions of Policies CP1 and CP6 of the Epping Forest District Local Plan and Emerging Policies DM2 and DM22 of the LPSV insofar as they relate to air quality and the SAC. It would also fail to meet the requirements of the Habitats Regulations.

Housing Supply

20. The appellant has stated that the Council has a significant shortfall in housing delivery. In circumstances where the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years, paragraph 11 d) of the Framework is engaged. Based on the submitted information, this is applicable to the current case. However, paragraph 11 d) i) indicates that where the application of policies that protect areas of particular importance provides a clear reason for refusing the development, the presumption in favour of sustainable development does not apply.
21. In this case I have found harm to the SAC, an irreplaceable habitat, one of the areas specified in Footnote 7 to paragraph 11 d) i). Consequently, the Council's housing land supply shortfall is not a justification for applying the test set out in paragraph 11 d) ii).

Planning Balance and Conclusion

22. Given the shortfall of housing supply, the provision of two homes in a suitable location that would incorporate good and efficient design features would be a benefit of the proposal. However, in the absence of mitigation measures which have been identified and secured in order to protect the integrity of the SAC, this benefit would not outweigh the harm to the irreplaceable habitat.
23. Consequently, the proposal would conflict with the development plan as a whole and there are no other considerations, including the shortfall of housing supply that outweigh this finding. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR