



Appeal Decision

Site visit made on 12 September 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/J1535/W/23/3316995

Land within the curtilage of Day's Farm Estate, Lippitts Hill, Waltham Abbey, Loughton.

- 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 Scott & Thuy-van Kyson of Studio Kyson against the decision of Epping Forest District Council.
 - The application Ref EPF/2845/22, dated 15 December 2022, was refused by notice dated 14 February 2023.
 - The development proposed is the erection of a new single-storey dwelling within the curtilage of the estate known as Days Farm.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name and company details of the appellants differs between the planning application and appeal forms. I have used the details as given on the planning application in the heading above as the right of appeal rests with the original applicants.
3. During the course of this appeal the Council has adopted the Epping Forest District Local Plan 2011-2033 (the Local Plan) in March 2023. It now forms part of the development plan and thus supersedes the earlier development plan documents referred to within the Council's decision notice. Both main parties have had the opportunity to comment on this matter. I have proceeded to determine this appeal on the basis of the adopted development plan.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt, with due regard to openness;
 - The effect of the proposal on the character and appearance of the area;
 - Whether suitable provision has been made in respect of the Epping Forest Special Area of Conservation; and
 - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether Inappropriate Development

5. The appeal site is located within the Green Belt. Paragraph 149 of the National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt would be inappropriate development, subject to a number of exceptions.
6. **Paragraph 149(e)** of the Framework sets out that one such exception is limited infilling in villages. The terms 'limited' and 'infilling' are not defined in the Framework, and these are essentially a question of fact and planning judgement. The boundary of a village defined in a local plan may not be determinative for this purpose, and it is important to have regard to the circumstances of the site as well as any relevant policies.
7. The appeal site consists of a paddock on the edge of the village of Lippitts Hill. At the time of my visit the site contained some elements of domestic paraphernalia, but there is no evidence that this is of a permanent or established nature.
8. There is residential development to the south of the site, and this development is contiguous with the village and appears to be part of it.
9. There is a farmhouse and stables of the former Day's Farm to the west of the site, but these are distinctly separate from the village. There is also a dwelling to the north, but the evidence suggests that this is converted from a previous agricultural use and is also distinctly separate from the built area of the village. There are stables to the east but these are representative of development in the countryside and are also separate from the body of the settlement as well as being separated from the appeal site by fields or paddocks.
10. Despite the extent of development around the appeal site, this existing development has the characteristics of sporadic development in the countryside, rather than being an integral part of the village. As an open paddock, the appeal site is also of a character and appearance that is more closely associated with the rural area around the village rather than being part of the settlement. Viewed objectively and in context, the appeal site is not within the village, and therefore the appeal proposal would not represent limited infilling within a village.
11. I have been referred to the wording of the Local Plan and its glossary, including the phrases 'infill development' and 'limited infilling'. However, this does not lead me to a different conclusion on this issue based on my own observations.
12. **Paragraph 149(g)** relates to the limited infilling or the partial or complete redevelopment of previously developed land (PDL), which would not have a greater impact on the openness of the Green Belt than the existing development. The Framework defines PDL as being land which is or was occupied by a permanent structure, including the curtilage of the developed land.

13. The appellants refer to examples and case law where paddocks and land for the keeping of horses have been considered to be PDL. However, the definition given in the Framework refers to land which was occupied by a permanent structure, including its curtilage.
14. The appellants contend that the appeal site falls within the curtilage of the Day's Farm estate, and that under planning legislation the entire curtilage of Days Farm is classified as 'previously developed land' and in Sui-Generis use. However, no substantive evidence has been provided to support this assertion, such as a lawful development certificate.
15. Based on the evidence before me and my observations on site, the area of the estate was made up of different plots of land with different uses. The appeal site is one such plot, consisting of a self-contained paddock. My attention has been drawn to stables near the appeal site, but these are separate from the site and are located within a distinct plot. The separate and distinct nature of the paddock and stables is emphasised by an access road to the dwelling to the north which runs between them. Although the paddock and the stables may have been used in association with each other, my overall impression was that the paddock was not part and parcel of the plot containing the stables and was distinctly separate.
16. I have had regard to the examples and case law referred to by the appellants, but it has not been demonstrated that the circumstances referred to are a direct parallel to this appeal. For example, whether a stable building is located in part of the site, which is not the case in the appeal before me.
17. I am mindful that the paddock may have been used in association with the stables, and that they may once have been part of a wider land ownership. However, whilst the use and ownership of land can be appropriate tests of curtilage, in this case they do not outweigh the distinctly separate nature of the paddock resulting from the physical layout of the site.
18. As a matter of fact and degree, I conclude that the paddock is not within the curtilage of the stable building or any other permanent structure, and is therefore not PDL.
19. However, even if I had concluded that the site was PDL, the relevant strand of paragraph 149(g) of the Framework sets out that development should not have a greater impact on the openness of the Green Belt than the existing development. The proposal would introduce built development onto a site where no such development currently exists, with commensurate harm to openness. The proposal would therefore fail to comply with the second strand of paragraph 149(g) in any event.

Character and Appearance

20. The Council's reason for refusal on this issue refers to the incongruous nature of the proposed development in a conspicuous rural location. Although the Council refers to the Green Belt location of the site, I consider that this issue relates to the wider consideration of character and appearance of the countryside and potential encroachment.
21. The appeal site consists of an open paddock and makes a positive contribution to the rural setting of the village. The site is readily visible from a footpath

which runs adjacent to the site, and which I saw was popular with recreational walkers as well as providing a connecting route to a nearby settlement.

22. Although of an attractive bespoke design in a landscaped setting, the appeal proposal would be apparent as the intrusion of built residential development into the countryside around the village. As well as the built development, the extent of parking and domestic paraphernalia would emphasise the protrusion of residential development beyond the village and into the rural landscape.
23. Due to its nature and location, I conclude that the proposal would lead to significant harm to the character and appearance of the rural setting of the village. The proposal would therefore be contrary to Policies DM4 and DM9 of the Local Plan with regard to the character of the local area and safeguarding the countryside from encroachment.

Epping Forest Special Area of Conservation (SAC)

24. As set out in the Council's officer report, the appeal proposal would have an adverse impact on the SAC in respect of air pollution and recreational/visitor impact. It may be that a planning obligation ensuring suitable mitigation measures could address this issue, and the appellants have provided a draft Unilateral Undertaking (UU) to that effect.
25. However, a signed and completed UU has not been provided to me, and I therefore cannot conclude that this matter has been satisfactorily addressed.
26. The appellants have referred to the timescales involved in this appeal, and that they are willing to collaborate with the Council in the preparation of the UU. However, as I have dismissed this appeal for other reasons, I have not gone back to the main parties on this issue to avoid wasted expense.
27. In the absence of a completed UU, I conclude that sufficient provision has not been made in respect of the harm from the proposal on the SAC. The proposal would therefore be contrary to Policies DM2 and DM22 in respect of potential harm to the SAC.

Other Considerations

28. The proposal would add to the mix and supply of housing in the area, although given the Council's housing land supply the benefits arising from a single dwelling would be limited. The potential to increase biodiversity is also of no more than moderate benefit given the scale of the appeal site.
29. The proposed dwelling and its landscaped setting are of an attractive design, but this is not sufficient to outweigh the harm to character and appearance arising from the projection of development into the countryside. The design of the proposal does not therefore weigh in favour of the appeal due to its unsympathetic location.

Other Matters

30. I have had regard to the various decisions and appeals referred to by the appellants. Of these examples, the most relevant is the Pepper Alley case due to factors including its proximity to the appeal site and the circumstances of the proposed guest house and lodge in relation to the host property. In this respect, I have some sympathy with the appellants' conclusions about the Council's consideration of the Pepper Alley proposal in respect of its scale and

'suburban' location. However, based on the evidence before me there are significant differences between the Pepper Alley scheme and the appeal proposal, including with regards to the potential fallback of permitted development rights. It has therefore not been demonstrated that the circumstances of the Pepper Alley case, as well as the other examples referred to, are a direct parallel to the appeal proposal. In any event I have determined this appeal on its own merits.

Conclusion

31. The proposal would represent inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt. The Framework requires that substantial weight should be given to any such harm. The harm by reason of inappropriateness, and the other harm I have identified, is not clearly outweighed by other considerations. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal would therefore be contrary to Policy DM4 of the Local Plan and the Framework with regards to protecting Green Belt land.
32. I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR