



Appeal Decision

Site visit made on 6 October 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Appeal Ref: APP/J1535/W/22/3310820

Land to rear of 115-123 North Street, Nazeing EN9 2NW

- 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 J Rubino of Woodhouse Property Consultants Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/1605/18, dated 8 June 2018, was refused by notice dated 14 July 2022.
 - The development proposed is erection of 5 detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal the Council have adopted the Epping Forest District Local Plan 2011 to 2033 (the LP). The Epping Forest District Local Plan 1998 and Epping Forest District Local Plan Alterations 2006 have effectively been revoked, and the Council states that they should not be used in decision making. Accordingly, this appeal is determined in accordance with the current development plan. The main parties have been invited to make comments on the implications of this change.
3. A Unilateral Undertaking has been submitted with the appeal, dated 25 April 2023. This has been taken into account in determining the appeal.
4. The appellant has submitted plans with the appeal which amend the position of the western site boundary. While this change is intended to correct an identified error, it would nonetheless fundamentally change the extent of the appeal site and interested parties could be prejudiced if I were to take those drawings into account. For these reasons I have not taken them into account in determining the appeal.

Main Issues

5. The main issues are:
 - 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,
 - the effect of the proposal on the openness of the Green Belt, and

- whether any harm by reason of inappropriateness would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate

6. The Framework at paragraph 137 identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions set out in paragraph 149. One such exception is limited infilling in villages.
7. Policy DM4 of the LP relates to the Green Belt and reiterates parts of the Framework. It similarly gives exceptions to inappropriate development in the Green Belt, which includes 'limited infilling in rural communities and limited affordable homes, in locations that are in accordance with Policy H3'. I have not been provided with a definition of a rural community for the purposes of policy DM4, however I note the appellant's comments that these are areas which the plan neither designates nor recognises as villages, and which would therefore exclude Nazeing.
8. The appellant accepts that the appeal site is outside the defined boundaries of Nazeing, which can be considered a village. However, case law tells us that the boundary of a village defined in a local plan may not be determinative for this purpose, and it is necessary to consider the situation on the ground. The appeal site is open land, but adjoins a number of other uses and does not adjoin open countryside. To the east are the properties of North Street and Pecks Hill, which form part of the long linear development through the middle of the village. These comprise typical housing typologies with long rear gardens which extend to the west and which abut the appeal site. The properties on North Street and Pecks Hill are very close to one another and share a broadly consistent building line, creating a consistent frontage which clearly reads as part of the village.
9. The appeal site is accessed via an unmade track which sits between two properties on the western side of North Street and Pecks Hill. In stark contrast, the buildings and structures surrounding this track are varied in their scale and appearance and are irregular in their spacing. There is a pair of semi-detached properties immediately opposite the appeal site, which are similar in character to those on North Street and a low level detached property behind a substantial boundary wall. Also on the opposite side of the track is a plant nursery, comprising low level structures set back from the track and with areas of hard surfacing, surrounded in part by conifer hedging. To the west the site adjoins a commercial yard including the compound of a scaffolding company, bound by substantial metal fencing. Within the yard there are a number of tall structures with some open sides and part enclosed by tarpaulin, irregularly spaced across the site. To the south the appeal site adjoins a series of low-level green houses as well as residential properties on Lake Road.

10. While the site is clearly surrounded by other structures, their irregular spacing, varied relationship to the track and mixed scale are notably different from the physical characteristics of the village to the east. Functionally, the uses which exist in the vicinity of the track are not those necessarily associated with the village, serving commercial and horticultural purposes. Taken together these features give a more rural character in the vicinity of the appeal site, which is distinct from that of the village. The exception to this is the pair of semi-detached properties opposite the appeal site. However these appear as outliers, detached from the village. As such the presence of those residential properties opposite does not result in the track and the appeal site forming part of the village. For the above reasons, the appeal site is not in a village.
11. Physical changes to the access from North Street have been approved as part of a separate planning permission¹. These include creation of a 5.8m wide carriageway with a footpath to its southern side and would create a road of similar character to those within the village. I also note the planning permission for the redevelopment of the existing lower level detached house opposite, to provide a two storey detached dwelling with further dwelling behind². If implemented, these changes may alter the perception of the track to some degree and give it an appearance more akin to the village setting. However, based on the evidence before me, including the findings of my site visit, I cannot assume that those developments would be carried out in full and, even if they were, that they would necessarily result in the appeal site forming a part of the village.
12. The appellant has appended an appeal decision relating to a housing development in the Green Belt in Cheshire³. I do not have full details of the circumstances of that site or the local policies under which it was considered. However, the Inspector describes that the proposal would be surrounded by houses that are within the village on three sides and that it would not extend beyond the defined built extent of the settlement. Therefore the circumstances of that appeal are different to the scheme before me.
13. In the absence of evidence relating to what constitutes a rural community for the purposes of the LP, I shall consider whether the proposal would constitute limited infilling. The supporting text to Policy DM4 states that '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. It also includes infilling of small gaps within built development.
14. Given the characteristics of the surrounding development described above, the site is not one within an otherwise continuous built-up frontage. This is particularly as it sits between long rear gardens and adhoc structures of the commercial yard, which do not create a continuous frontage onto the track. Neither is the size of the appeal site one which could be considered a small gap, given it comprises a sizable open field.
15. For these reasons, even if I were to consider the site to fall within a rural community for the purposes of policy DM4, the proposal would not constitute limited infilling. Overall, the proposal would be inappropriate development in the Green Belt.

¹ Council reference EPF/1604/18

² Council reference EPF/0617/19

³ Appeal reference APP/R0660/W/17/3170279

Openness

16. The Framework states that the essential characteristics of Green Belts are their openness and their permanence. The courts have established that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The openness of the area is lessened by the nearby structures described above, but there is nonetheless a sense of openness along the track which is derived from the more sporadic nature of development and longer views of the countryside beyond. The appeal site is predominately free from development, other than a central telegraph pole, low level bund to its northern edge and surrounding boundary treatments. The appeal site therefore contributes strongly to the qualities of openness.
17. The appeal scheme would see the introduction of five two storey houses with pitched roofs and front gable features above. These would be evenly spaced across much of the width of the appeal site. Together with the vast parking areas, dividing boundary treatments and other residential paraphernalia as may be required by future occupants, the proposal would result in a very substantial decrease in the spatial aspect of the Green Belt's openness.
18. In terms of visibility, views of the development would be possible from the track and also in glimpses from North Street and Pecks Hill at oblique angles. While the visual effects on openness would be limited to these localised views, the effects would nonetheless be significant. In combination, the proposal would cause a substantial reduction in both the spatial and visual aspects of the Green Belt's openness.

Other Considerations

19. The Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
20. The Council's housing delivery is substantially below the housing requirement over the previous three years at just 35%, and the proposal would help to alleviate this significant shortfall. The new homes would be on a windfall site close to an existing village and on a medium sized site, which is one which the Framework acknowledges can make an important contribution to meeting the housing requirement of an area and which are often built out relatively quickly. There would also be some economic benefit, arising from the construction process and ongoing local expenditure by new residents. I also note the comments of third parties made in support of the appeal, relating to potential improvements which would be delivered, including security to surrounding properties.
21. Even if, in addition to a poor housing delivery, the Council were unable to demonstrate a 5 year land supply for housing, the contribution of the proposal to the shortfall would be limited. Taken together, the above considerations attract moderate weight, given the scale of the proposal.
22. Alterations are intended to the track which have been subject to a separate planning permission. Based on the evidence, it is not apparent that they rely on the appeal scheme to be implemented. Where the proposal may be acceptable

in other respects, for example, in its effects on the character and appearance of the area, these are neutral matters and do not weigh in favour of the development.

23. The appellant states that one of the proposed allocated sites for Nazeing reduced the number of units from 29 to 25, and outline permission has since been granted for 25 homes on that site. As such, the proposal would assist in replacing those lost. However there is not substantive evidence before me relating to the final allocations or level of need in Nazeing following the adoption of the LP. As such I am unable to give this more than little weight. Neither is there substantive evidence to demonstrate that the District lacks those sites described in paragraph 69 of the Framework.
24. Overall, the weight of the other considerations in this instance would not be sufficient to clearly outweigh the harm to the Green Belt, which the Framework requires is given substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist.

Other Matters

25. As the Housing Delivery Test was substantially below the housing requirement over the last three years, paragraph 11d) of the Framework is relevant to the appeal. As the above assessment of 'other considerations' has found that very special circumstances do not exist, the Green Belt policies in the Framework provide a clear reason for refusing the development proposed, as set out in paragraph 11d)i). Therefore the proposal would not benefit from the presumption in favour of sustainable development.
26. The proposal has the potential to have effects on the Epping Forest Special Area of Conservation (EFSAC), arising from a potential increase in visitors to the EFSAC and increased motor vehicles driving through it. I note the inclusion of the UU intended to address this matter. However, Regulation 63(1) of the Habitats Regulations⁴ indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is dismissed on other grounds it is not therefore necessary to address this in any further detail and it would not change the outcome of the appeal.
27. I note the appellant's experiences with the application process, including conflicting advice from officers regarding the outcome of the application and significant delays in the application's determination. The circumstances described are far removed from the spirit of the Framework, which states that local planning authorities should approach decisions in a positive and creative way. As a consequence, the appellant has relied, in part, on extracts from a report which appears to recommend approval of the application. However, this did not form the Council's final position. While these circumstances would have been deeply frustrating for the appellant, these matters do not change the outcome of the appeal, which statute requires to be determined in accordance with the development plan unless material considerations indicate otherwise.

Conclusion

28. With the above in mind, there are no material considerations, including the approach of the Framework, that are worthy of sufficient weight that would

⁴ The Conservation of Habitats and Species Regulations 2017

indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

C Shearing

INSPECTOR