



Appeal Decision

Site visit made on 21 August 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2023

Appeal Ref: APP/J1535/W/22/3303925

Land at Bentons Farm, off Middle Street, Bumbles Green, Nazeing EN9 2LN

- 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 Bray against the decision of Epping Forest District Council.
- The application Ref EPF/2893/21, dated 27 October 2021, was refused by notice dated 16 February 2022.
- The development proposed is described as the "erection of 2no single storey two bedroom detached residential dwellings together with single garages. Existing access will be utilised from Oak Tree Close".

Decision

1. The appeal is dismissed.

Procedural Matters

2. It has been brought to my attention that Epping Forest District Local Plan 2011-2033, Part One ('the LP') was adopted in March 2023. The LP replaces the Epping Forest District Local Plan, Submission Version 2017, adopted December 2017 and the Council have advised that Policies DM2, DM4, DM7, DM9 and DM22 have superseded Policies GB2A, HC6, HC7, DBE1, DBE2, DBE5, DBE9, CP1 and CP6 referred to in the decision notice. It is mandatory for me to take account of the most relevant and up-to-date information in reaching a decision and I have therefore dealt with the appeal on this basis. The main parties were given an opportunity to comment on the relevant policies contained in the LP and have therefore not been prejudiced.
3. The present appeal scheme follows two appeals at the site. The first was for two, four-bedroom dwellings which was dismissed on 14 October 2019¹ and the second was for a four-bedroom detached dwelling with a double garage which was dismissed on 25 February 2021². Whilst I have had regard to the previous appeal decisions, I have determined the current proposal on its own merits.
4. Following the determination of the planning application, the appellant has submitted a completed unilateral undertaking in respect of a financial contribution to mitigate against the adverse impact of the proposed development on the Epping Forest Special Area for Conservation ('the SAC') in terms of air pollution. Therefore, the Council has stated they do not wish to pursue the fourth reason for refusal. Nevertheless, it is incumbent upon me as the competent authority, to consider whether the proposal would be likely to

¹ Appeal Ref APP/J1535/W/19/3232917

² Appeal Ref APP/J1535/W/20/3262667

have a significant effect on the integrity of the SAC. It is therefore necessary for me to consider this as an *Other Matter*.

5. Following the determination of the planning application and the adoption of the LP, the Council can now demonstrate a five-year supply of deliverable housing sites. The appellant was afforded the opportunity to comment on this matter and therefore has not been prejudiced.

Main Issues

6. The main issues are:

- a) 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;
- b) the effect of the proposal on the openness of the Green Belt;
- c) whether the proposal would conserve or enhance the character and appearance of the Nazeing and South Roydon Conservation Area;
- d) the effect of the proposal on the living conditions of future occupiers, with particular reference to privacy and outlook; and
- e) if the development is inappropriate in the Green Belt, 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

7. The Framework identifies 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. Paragraph 149 of the Framework explains that other than in connection with a closed list of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. One such exception is (e) limited infilling in villages. Policy DM4 of the LP, amongst other things, reiterates the provisions of paragraph 149 of the Framework and therefore is entirely consistent with it.
8. It is common ground between the main parties that the appeal site is located within a village. Given the location of the site in relation to the surrounding development, I have no reason to disagree with that assessment. The proposal would therefore comply with this strand of paragraph 149(e). The question, therefore, is whether the proposal constitutes "limited infilling".
9. The terms "limited" and "infilling" are not defined in the Framework. However, the supporting text to LP Policy DM4 defines "limited infilling" as *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*. I consider this is a reasonable definition and therefore I have determined the proposal on this basis.

10. The appeal site does not form part of an otherwise continuous built-up frontage because it is located behind the buildings that front onto Middle Street. Therefore, consideration turns to whether the proposal would comprise the infilling of a small gap within built development. The appeal site comprises a rectangular plot of land that, according to the planning application form, extends to 1902sqm. Each dwelling would have a significant area of amenity space, and a gap of 11.4m would be maintained between the two dwellings. Furthermore, a recently dismissed appeal³ found that the appeal site could accommodate four detached dwellings. Consequently, it is clear that the appeal site does not comprise a small gap.
11. The appeal site is bounded by four recently constructed dwellings to the west, a telephone exchange and a commercial building to the south, and an open field to the north. To the east is the yard to the commercial premises known as Abbey Contracts. Single storey buildings and containers have been positioned within part of the yard closest to the appeal site. However, the Council state that these do not have the benefit of planning permission, and this has not been disputed by the appellant. Furthermore, there is a large gap between the buildings/containers and the adjacent boundary. Planning approval⁴ on the Abbey Contracts site for a detached storage building closest to the appeal site has since expired and has not been erected. Consequently, the appeal site is only bounded by development on two sides; more closely relates to the countryside to the north; and therefore, it is not viewed as a small gap within built development.
12. Accordingly, the proposal does not constitute limited infilling. In reference to the first main issue, the proposed development is inappropriate development in the Green Belt which is, by definition, harmful. It would therefore not comply with the exception detailed at paragraph 149(e) of the Framework, or Policy DM4 of the LP.

Openness

13. Openness has both spatial and visual qualities. The appeal site comprises an open field devoid of development. The proposal would comprise two detached, single storey dwellings, each with an attached garage. They would be set within substantial plots and would include hard surfaced parking and turning areas, a driveway accessed from Oak Tree Close, as well as associated garden paraphernalia. Therefore, in spatial terms, the proposal would reduce the openness of the Green Belt.
14. The overall height of the dwellings has been reduced from the previous appeal proposals. However, they would be visible from Oak Tree Close and a Public Right of Way ('PRoW'). While long-distant views from the PRoW would not be afforded due to the existing vegetation, the PRoW would allow users to traverse in close proximity of the appeal site along the southeastern boundary of the field which would provide a clear view of the proposed development. Therefore, the proposal would be visually prominent.
15. In respect of the second main issue, the development would have a detrimental effect on the openness of the Green Belt.

³ Appeal Ref APP/J1535/W/19/3232917

⁴ Planning Ref EPF/2939/18

Nazeing and South Roydon Conservation Area

16. The appeal site is within the Nazeing and South Roydon Conservation Area ('the CA'). Therefore, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
17. The previous Inspectors stated that the significance of this part of the CA largely derives from its open landscape and historic pattern of development. From what I saw during my site visit, I agree. The CA has an open and spacious character due to the loose knit nature of development and a verdant appearance provided by mature landscaping. The prevailing form of development consists of ribbon development fronting the road. The spaces between the buildings (including the appeal site) allow views to be gained of the surrounding countryside from the roads, which contributes to the area's open character.
18. The siting of the proposed dwellings behind the existing frontage development would be discordant and in stark contrast with the prevailing character of the area. Additionally, the construction of dwellings on an otherwise open field would result in suburbanisation that would erode the open and spacious character of the locality.
19. I acknowledge that the gap between the proposed dwellings would maintain views into the countryside from Middle Street and permitted development rights for extensions, alterations and outbuildings could be removed by condition to prevent the future erosion of the gap. However, the Planning Practice Guidance states that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. Therefore, it would not be appropriate to impose a condition to prevent domestic extensions, alterations or outbuildings from being erected within the gap. Furthermore, the gap between the proposed dwellings would be used for the parking of vehicles and the removal of permitted development rights would not prevent the siting of domestic paraphernalia within the gap, both of which could obstruct views.
20. The dwellings would be arranged so that their front elevations would directly face one-another across a gap of 11.4m that would be partially utilised for vehicle parking. In my opinion, this does not comprise a courtyard-style of development, rather two bungalows sited side-by-side. Furthermore, the garage doors, floor-to-ceiling windows, bi-fold doors and glazed front doors, would result in a domestic, rather than barn-style or industrial appearance. Even if the buildings were considered to have a barn-style appearance, I have not been directed to examples of agricultural/industrial buildings on the edge of the settlement to demonstrate that they are a feature of the surrounding area.
21. The orientation of the proposed dwellings perpendicular to the buildings along Middle Street would be incongruous to the predominant characteristic of the area. I have been directed to examples of recently constructed dwellings that the appellant considers have a similar orientation to the appeal proposal. However, in the Common View⁵ example, two of the dwellings front onto

⁵ Planning Ref EPF/1956/16

Nazeing Common and the other two dwellings front onto an existing access road. In the Brambles⁶ example, the character of Broadley Common differs from Bumbles Green as there are various dwellings that do not front a highway.

22. I have been directed to further examples of buildings that are said to have a non-traditional frontage relationship with, or are perpendicular to, Middle Street. I acknowledge that these buildings are mixed in character and appearance and in some instances extend away from the road. However, there is a door within the front elevation of the telephone exchange, and a door and windows within the adjacent commercial building that all front towards Middle Street; School House appears to be derived from the conversion of a former school building; and the outbuilding/annex to the School House has windows and a garage door fronting Middle Street. Furthermore, these buildings are all accessed directly from Middle Street. Consequently, they are not directly comparable to the proposed development.
23. I acknowledge that the four dwellings that comprise Oak Tree Close are separated from Middle Street by a landscaped buffer and are therefore set further back from the road than other dwellings in the surrounding area. However, the front elevations of these dwellings directly face towards the road and are not set behind intervening buildings. Therefore, they are also not directly comparable to the proposed development.
24. For the reasons outlined above, the proposed development would cause less than substantial harm to the character and appearance of the CA. In accordance with paragraph 202 of the Framework, I must weigh the harm against the public benefits of the proposal including, where appropriate, securing its optimum viable use. In doing so, paragraph 199 of the Framework explains that great weight should be given to the conservation of the designated heritage asset.
25. The proposal would deliver some public benefits. It would make a contribution, albeit small, to the Government's objective of significantly boosting the supply of new homes, and it would help the Council to meet the requirements of the Housing Delivery Test. However, due to the small number of dwellings proposed, I afford this moderate weight. Some further modest public benefits would arise from the additional support to the local community and its services from future occupiers. There would be some employment derived from the construction phase of the proposed development. However, this would be short-term and therefore I attach this limited weight.
26. The proposed dwellings would be single storey and would be designed to be compliant with Part M4(3) of Building Regulations. The Parish Council state there is a potential shortage of bungalows in Nazeing and that bungalows are required in Nazeing to meet the needs of older residents. However, this has not been substantiated with evidence specific to the locality. Furthermore, the proposal would be for open-market dwellings, and I do not have a mechanism before me that would ensure the proposed dwellings would be occupied by local or older people. Therefore, I attach limited weight to this public benefit.

⁶ Planning Ref EPF/2483/17

27. Accordingly, the harm I have found in respect of the effect of the proposal on the significance of the CA would not be outweighed by the modest public benefits I have identified.
28. In respect of the third main issue, the proposed development would not conserve or enhance the character and appearance of the Nazeing and South Roydon Conservation Area. It would conflict with Policy DM7 of the LP which, amongst other things, states that in considering the impact of proposed development on the significance of designated heritage assets, the Council will give great weight to the assets' conservation. Any harm or loss will require clear and convincing justification. It would also conflict with Chapter 16 of the Framework that seeks to conserve and enhance the historic environment.

Living Conditions of Future Occupiers – Privacy and Outlook

29. The proposed dwellings would be arranged so that their front elevations would have directly facing bedroom and kitchen/living room windows separated by a gap of 11.4m. The Essex Design Guide ('the EDG') discusses the 'rear privacy' of dwellings and states that a minimum spacing of 25m between the rear of properties is required. A note states that the provisions also apply to sides and flanks of houses containing habitable rooms with windows. Therefore, it does not apply to front elevations and consequently, the separation distance detailed within the EDG is not applicable to the proposed development. Notwithstanding this, a separation distance of 11.4m between directly facing habitable windows would not reflect the character of the surrounding area and, in my opinion, their proximity would adversely affect the privacy of future occupiers and result in a cramped form of development.
30. Bed 1 and Bed 2 on Plot A would have dual aspect windows. It is suggested that the eastern window to Bed 2 on Plot A could be obscure glazed to maintain the privacy of future occupiers. However, the submitted Landscape Proposals drawing indicates that a tree would be planted in proximity of the other window that would serve this room. The proposed species of tree could grow to 4m+ and therefore it could affect the outlook from this room, particularly before reaching maturity. The western window serving Bed 1 on Plot A would directly face in proximity the blank garage wall, while immediately adjacent to this window there would be a 1.8m brick wall. These walls would overly enclose this window. A tree (as previously discussed) would be planted in proximity to the other window that would serve this room and could adversely affect the outlook from this window.
31. The open-plan kitchen/living room windows within the front elevations of the dwellings could be conditioned to be obscure glazed to maintain the privacy of future occupiers without compromising on outlook, as these rooms would also have two sets of bi-fold doors.
32. In respect of the fourth main issue, the proposed development would adversely affect the living conditions of future occupiers, with particular reference to outlook and privacy. It would conflict with Policy DM9 of the LP which, amongst other things, states that development proposals must take account of the privacy and amenity of the development's occupiers and expect proposals to avoid overlooking and loss of privacy detrimental to the living conditions of the occupiers of the proposed development, and not result in an overbearing or overly enclosed form of development which materially impacts on the outlook of the occupiers of the proposed development. The proposal would also conflict

with the Framework that seeks to create places with a high standard of amenity for future users.

Other Considerations

33. I have been directed to the approval of two dwellings at land at Brambles⁷ and four dwellings on land at Common View⁸ as examples of infill development. However, these developments were approved against a different national and local planning policy regime; were within a continuous linear development or continuous built-up frontage; and in the case of Brambles, it is within a different village that has a different character. These examples are therefore not directly comparable to the appeal proposal. I have also been directed to a planning application for a further detached dwelling at land at Common View⁹. However, limited information has been provided to allow me to determine if it is directly comparable to the appeal proposal. In any event, I must determine the appeal proposal on its own merits.
34. The proposal may not conflict with the purposes of including land in the Green Belt, as detailed at paragraph 138 of the Framework. However, compliance with the purposes is not a requirement of paragraph 149(e) of the Framework.
35. The inclusion of a range of energy efficiency measures including air source heat pumps, solar panels and mechanical ventilation would likely go beyond Building Regulations requirements. Also, I recognise the Framework's acknowledgement that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out quickly. I therefore attach moderate weight to these benefits.
36. I acknowledge that the parish is covered by the Green Belt and therefore the provision of additional housing may be restricted. However, I am not persuaded from the evidence before me that there are no other sites that could meet the exceptions contained at paragraph 149 of the Framework. Furthermore, the Council can now demonstrate a five-year supply of deliverable housing sites. The proposal would utilise an agricultural field. However, there is no substantive evidence before me that the land is underutilised; that the proposal would make efficient use of the land; or that the land can no longer be used for agricultural purposes or another use that could be less harmful than the proposed development. I therefore attach limited weight to these matters.
37. Compliance with water efficiency standards, the provision of electric vehicle charging points, recycling bins, composting bins and cycle parking would help off-set the environmental impacts of the development; the provision of additional landscaping and the development meeting a biodiversity net gain would provide opportunities for ecological enhancement; and the existing PRoW would be protected. However, there is no substantive evidence before me that these matters would go above and beyond policy requirements and so these weigh neutrally.

⁷ Planning Ref EPF/2483/17

⁸ Planning Ref EPF/1956/16

⁹ Planning Ref EPF/1107/21

Other Matters

38. Having regard to paragraph 11(i) and footnote 7 of the Framework, I have already found that the proposed development would comprise inappropriate development in the Green Belt and would result in harm to a designated heritage asset, and therefore the policies in the Framework provide a clear reason to dismiss the appeal. Therefore, even if the delivery of housing is substantially below the Housing Delivery Test requirements over the previous three years, and the policies which are the most important for determining the appeal are out-of-date, paragraph 11(ii) of the Framework is not engaged.
39. The appeal site lies within the Zone of Influence of the SAC which is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The appeal proposal would result in a net increase of two dwellings. However, Regulation 63(1) of the Habitat Regulations indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As I am dismissing the appeal for the reasons detailed above, I do not need to consider this matter further as it could not lead me to a different conclusion.

Conclusion

40. The proposed development would be inappropriate development in the Green Belt and would harm openness. As such the Framework establishes that substantial weight should be given to any harm to the Green Belt. The proposal would also be harmful to the character and appearance of the CA and the living conditions of future occupiers with reference to outlook and privacy. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
41. Given the substantial weight to be given to Green Belt harm, combined with the other identified harm, relative to the limited/moderate benefits and public benefits of the proposed development, the harm is not clearly outweighed by other considerations. Therefore, the very special circumstances necessary to justify the proposal do not exist.
42. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal is dismissed.

A Berry

INSPECTOR