



Appeal Decision

Site visit made on 6 November 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2023

Appeal Ref: APP/J1535/W/23/3314077

The Barn, Bury Road, Waltham Abbey, Essex E4 7QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ranu Miah against Epping Forest District Council.
 - The application Ref EPF/1052/22, is dated 6 May 2022.
 - The development proposed is the 'erection of two three-bedroom properties to be used on an ancillary basis to the principal dwelling'.
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Decision

1. The appeal is dismissed and planning permission refused.

Preliminary Matters

2. Since the submission of the appeal, the Council has adopted The Epping Forest District Local Plan 2011 to 2033 (the 'Local Plan'). This superseded the earlier local plan adopted in 1998 and altered in 2006. It is incumbent upon me to base my decision on the most up to date planning policy and this is what I have done. The appellant had an opportunity to address the change in policy through his appeal submissions.
3. Similarly, the Government recently published a revised National Planning Policy Framework (the 'Framework'). The revisions relate to national planning policy for onshore wind development rather than anything relevant to the main issues in this appeal. Consequently, I have not invited further comments.
4. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit the appeal. The Council has confirmed through its submissions that, were it still able to do so, it would refuse the proposal due to concerns relating to its effect on the Green Belt, the setting of The Barn and the Epping Forest Special Area of Conservation (SAC). For the reasons given below, I am not minded to permit the project and therefore it is unnecessary to consider whether the proposal would have a significant effect on the integrity of the SAC.
5. There is dispute between the Council and the appellant as to whether the proposal would be tantamount to the erection of two dwellings or additional accommodation that would be occupied ancillary to The Barn. I can certainly see why the Council has arrived at the view it has, but I have nevertheless considered the appeal on the basis of what the appellant has applied for.

Main Issues

6. The main issues in this appeal are:

- Whether the proposal would be inappropriate development in the Green Belt, including its effect on the openness of the Green Belt;
- The effect of the proposed development on the significance of The Barn, a Grade II listed building; and
- If the proposal would be inappropriate development in the Green Belt, whether the 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 necessary to justify it.

Reasons

Whether or not the proposal would be inappropriate development

7. Policy SP5 of the Local Plan states that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy (in the Framework) and Policy DM4 (of the Local Plan). Policy DM4 explains that the construction of new buildings in the Green Belt is inappropriate development unless it is a stated exception.
8. With these exceptions in mind, the appeal scheme could be regarded as the replacement of a building because 'building' in this context can also mean buildings. However, in this instance the proposal would be materially larger than the existing buildings it is seeking to replace. Moreover, the existing cluster of buildings to the north of The Barn incorporate a stable, large chicken shed and general-purpose store associated with the large paddock to the northeast of The Barn. The Council suggests they are agricultural buildings, and this seems plausible¹. As such, they are not in the same use as the proposal would be and therefore the appeal scheme would not meet the exception in Policy DM4(iv).
9. Policy DM4(v) permits limited infilling in rural communities. 'Rural communities' are defined in the glossary of the Local Plan as *existing localities in the District that are not defined as 'Settlements' in Table 5.1*. Neither the Council nor the appellant has provided further guidance on the interpretation of this vague definition. It is also inconsistent with the Framework, which only permits limited infilling in villages.
10. Nevertheless, 'limited infilling' is helpfully defined in the supporting text to Policy DM4 as *the development of a small gap in an otherwise continuous built-up frontage*. The Barn and Carrolls Farmhouse do not create a continuous built-up frontage due to their disposition and, in any event, two properties do not amount to a frontage in this context. Moreover, the gap between the existing garage at The Barn and the outbuildings at Carrolls Farm is also quite extensive and consequently it is not 'small'. It therefore follows that the proposal would not meet the exception in Policy DM4(v).
11. Policy DM4(vi) permits as an exception the partial or complete redevelopment of previously developed land (PDL) which would not have a greater impact on the openness of the Green Belt. The Local Plan defines PDL as including land, which is occupied by a permanent structure, including the curtilage of the developed land. The appeal scheme would be located on an existing driveway,

¹ The buildings are also described as a stable/agricultural buildings in the Design and Access Statement

- positioned in line with a garage and set within an apparently large garden fenced off from the adjoining paddock.
12. Consequently, the indications are that the proposal would be situated within the curtilage of The Barn, which is a dwelling, and thus on PDL. In this instance, garden land in the appeal site is not excluded from the definition of PDL as it is not in a built-up area. The key question, therefore, is whether the proposal would have a greater impact on the openness of the Green Belt.
 13. To this end, the appellant is providing a 'trade-off' whereby an approved extension to The Barn would not be implemented. In addition, the cluster of buildings in the paddock to the north of the appeal site (the 'Green Buildings' as shown in the volume study calculations) and the domestic outbuilding to the front and eastern side of The Barn (the 'Pink Buildings') would be demolished. The appellant submits that this would result in a net reduction in the volume of development in the appeal site once the appeal scheme was constructed.
 14. In respect of the extension, the appellant suggests the permission is still extant due to a material commencement and could therefore be implemented at any time. On the assumption this is correct, it would be necessary to ensure the permission is not implemented for it to factor into the proposed trade-off. This is because both the appeal scheme and the approved extension would not occupy the same area, and if both were constructed then there would be a cumulative impact on the openness of the Green Belt.
 15. However, no mechanism has been advanced to secure non implementation of the approved extension. It would be unreasonable to impose a condition nullifying a lawful planning permission. Instead, the appellant would need to voluntarily covenant through a planning obligation not to implement the approved extension. No such planning obligation is before me and therefore this aspect of the trade-off carries very limited weight.
 16. Notwithstanding the above, the appeal site is currently an open parcel of land, and this allows views from Bury Road up towards a line of trees. This view enhances the sense of ruralness and, correspondingly, the openness of the Green Belt. The approved extension would be a proportionate single storey addition to The Barn. Alternatively, the appeal scheme would have the appearance of a pair of suburban dwellings. They would be larger than the approved extension on account of the two-storey scale and therefore the sprawling visual impact of the appeal scheme on the ruralness of the area would be significantly more marked than the approved extension.
 17. A similar point can be made in respect of the Green Buildings. They are a modest cluster of single storey rural buildings located in a tucked away position behind The Barn. They are not especially visible from the adjoining lane due to their low height and the dense belt of intervening landscaping. The appeal scheme on the other hand would be more prominent and imposing.
 18. Moreover, it is unclear how the large parcel of land owned by the appellant would be managed without outbuildings in which to store equipment. Accordingly, there would be a strong possibility that a future application would be made for an outbuilding, and this would prove difficult to resist given the scale of the appellant's land. It is also relevant that the Green Buildings are not within the curtilage of The Barn and appear agricultural. If that is the case,

then their demolition could not form part of the redevelopment of PDL, as agricultural buildings fall outside the definition of PDL.

19. There is no substantive evidence before me that all of the Pink Buildings were granted planning permission, which would likely have been necessary given their position within the curtilage of a listed building. However, and setting this point aside, these structures are again modest single storey buildings that are clearly related, and subservient to, The Barn. The garage in particular, is a pleasant, hipped roof structure with a recessive appearance. Again, the appeal scheme would be significantly more prominent than these buildings due to the scale and appearance as two independent semidetached dwellings.
20. Therefore, with the exclusion of the approved extension from the trade off, the appeal scheme would have a larger volume than the existing buildings proposed for demolition and therefore a greater spatial impact on the openness of the Green Belt. Notwithstanding this, the existing buildings and unimplemented extension have, or would have, a cumulatively more modest and discrete impact on the openness of the Green Belt than the appeal scheme would. This is because the proposed building would be two storeys in height, more prominently sited and designed to appear as two separate dwellings. The consolidation of built form would, in this instance, have a greater impact on the openness of the Green Belt when considered spatially or visually. As a result, the exception in Policy DM4(vi) would not be relevant on this occasion.
21. In conclusion, the appeal scheme would encompass the erection of a new building and this building would not meet any of the exceptions identified in Policy DM4 or Paragraph 149 of the National Planning Policy Framework. It would therefore be inappropriate development in the Green Belt which would, by definition, harm the Green Belt.

The effect of the proposed development on the significance of The Barn

22. The Barn is a timber framed structure probably dating from the mid-16th Century albeit with later alterations. It is therefore a remarkable survivor of the early modern period. Thus, the building has architectural, historic and evidential value as a repository of bygone construction techniques, lifestyles and agricultural practices. The building also has a rustic charm that affords it aesthetic value. The rural origins and appearance of the building are inherent to its significance.
23. The barn was part of an agricultural complex that included Carrolls Farmhouse and several other agricultural buildings that have since been demolished. It sits in rural landscape with a pond in the foreground and a paddock and tree lined hedge to the rear. This composition and setting adds to how the rural evidential and aesthetic value of the building is experienced.
24. The appeal scheme would result in the construction of a building with the appearance of two semidetached dwellings. The two-storey form would be reminiscent of conventional suburban houses, as would the fenestration and scale. The building would therefore appear out of place and strident next to the rural agricultural character of The Barn. It would also be a prominent addition by virtue of the siting, height and overall scale. This would harm the setting and significance of The Barn by disrupting and diluting the historic layout of the historic farmstead and its rural aesthetic. As such, the setting of the listed building would not be preserved.

25. The appeal scheme would not be without merit as some attempt has been made to soften its impact on the setting of the listed building. For example, the black weatherboarding and tiled roof would replicate that of The Barn. The proposal would also be smaller than The Barn and have lower eaves and ridge heights. The layout would also be reminiscent of a courtyard. However, the overall impression would nevertheless be an unconvincing agrarian aesthetic and therefore the appeal scheme would appear as an incongruous suburban incursion into the rural setting of The Barn.
26. The harm that would occur would not be severe and can therefore be categorised as 'less than substantial'. Policy DM7 of the Local Plan requires the public benefits of the proposal to be weighed against the less than substantial harm. In so doing it is important to note that the Framework confirms designated heritage assets are an irreplaceable resource that should be conserved for existing and future generations. Any harm to their significance is therefore an important matter. Indeed, the Framework states that great weight should be given to an asset's conservation². This chimes with the considerable importance and weight that must be given to the desirability of preserving the setting of a listed building³. This is not an instruction to dismiss a proposal that would harm the setting of a listed building, but it nevertheless provides a strong presumption in favour of preservation.
27. For reasons I go into, the benefits of the proposal would carry only moderate weight in its favour. Consequently, they are not of sufficient force to outweigh the great weight I afford the less than substantial harm that would occur. In conclusion, the proposal would harm the setting of the listed building, and this is not outweighed by public benefits. Accordingly, the harm to a designated heritage asset would not have clear and convincing justification. The proposal would therefore be at odds with Policy DM7 of the Local Plan.

Other Considerations

28. The construction of the appeal scheme would result in some modest and time limited economic benefits. The future occupants already live on site and therefore there would be very limited additional economic benefits from the occupation of the proposed accommodation.
29. The proposed accommodation is intended to be occupied by two of the appellant's adult sons. I understand that they have struggled to find their own accommodation in the area and there is a family preference for multi-generational living. However, such personal circumstances will seldom be determinative given that they may not endure. Moreover, in this instance The Barn is already a very large home with permission to be extended further. Other opportunities to establish ancillary accommodation may also present themselves at the existing garage or the large pool house.
30. That said, the provision of annex accommodation can reduce the demand for housing elsewhere and this can be considered a limited benefit. The proposal may also provide some benefits to wildlife through the installation of new bat and bird boxes and additional planting.
31. The appellant submits that the appeal scheme would be preferable to extending The Barn, as no physical works to the listed building would be required. There

² Conservation in this context means sustaining, and thus not harming, an assets significance.

³ Section 66 of The Planning (Listed Buildings and Conservation Areas) Act 1990

is some merit to this argument, but I have already explained that there is no planning obligation before me preventing the implementation of the extant planning permission. Notwithstanding this, I understand that the Council did not identify any harmful impacts from extending The Barn in the way proposed. Alternatively, I have identified that the proposal would harm the setting of the listed building.

32. Historically the appeal site included a higher number of buildings than is currently evident. However, these were removed some time ago and are therefore of little relevance to my assessment.
33. The removal of existing buildings would not be sufficient to render the proposal as 'not inappropriate' development in the Green Belt. Instead, the demolition of existing buildings would only mitigate some of the harm to openness that the appeal scheme would cause. This would reduce the extent of harm rather than amount to a benefit. Indeed, given the suburban character of the proposal and the two-storey scale, the net adverse impact on openness would still be notable.
34. As the proposal is purported to be for ancillary accommodation to The Barn, no new dwellings would be created and therefore a boost in housing supply would not occur. Even new homes were being proposed, the benefit would not be extensive given that only two homes would materialise and the Inspector that examined the Local Plan found there to be a five-year housing land supply.
35. The appellant has referred to other approved developments in the area including some at the Sewardstonebury enclave and others at the grouping of housing where Bury Road meets Hornbeam Lane. In these locations infilling and replacement dwellings have been permitted, but that is often on account of them being 'not inappropriate' development in the Green Belt. The appeal site on the other hand does not sit in a discernible group of houses, instead being part of a historic farmstead that is located within open countryside. The other permissions referred to are therefore of limited relevance. They also predate the current local plan.
36. Overall, the other considerations are matters of moderate weight in favour of the scheme.

Whether there would be Very Special Circumstances

37. Policy DM4 of the Local Plan states that inappropriate development will not be permitted unless very special circumstances can be demonstrated. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
38. The appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt. In addition, great weight must be afforded to the harm to the setting of the listed building.
39. Alternatively, the other considerations identified are collectively of only moderate weight in favour of the proposal. This would not be sufficient to outweigh the harm to the setting of the listed building let alone the totality of harm I have identified. Accordingly, the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very

special circumstances necessary to justify the development do not exist. A conflict with Policy DM4 would therefore ensue.

Conclusion

40. The proposal would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Graham Chamberlain
INSPECTOR