



Appeal Decision

Site visit made on 15 November 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2024

Appeal Ref: APP/J1535/W/22/3313957

Sunnyside pt OS 956, Kents Lane, North Weald Bassett, Epping, Essex CM16 6AX

- 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 Kevin Fletcher against the decision of Epping Forest District Council.
 - The application Ref EPF/0928/22, dated 21 April 2022, was refused by notice dated 12 December 2022.
 - The development proposed is rebuilding to form 2 bed dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for rebuilding to form 2 bed dwelling at Sunnyside pt OS 956, Kents Lane, North Weald Bassett, Epping, Essex CM16 6AX in accordance with the terms of the application, Ref EPF/0928/22, dated 21 April 2022, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The Epping Forest District Local Plan 2011-2033 Part One (the Local Plan) was adopted in March 2023. The Council has confirmed that the policies they refer to from the Epping Forest Local Plan (1998) and Alterations (2006) are now superseded by the adoption of the Local Plan. The Council has provided copies of those policies from the new Local Plan which they consider relevant. I am required to consider the appeal in the context of the development plan currently in place and so I have disregarded the superseded policies. Both parties have had an opportunity to comment on the adoption of the Local Plan and so are not prejudiced by this change.
3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. While paragraph numbers have changed, in so far as they relate to the main issues of the appeal, there have been no substantive changes to the objectives of the Framework referred to by either party. Both parties have nevertheless had an opportunity to comment on the revised Framework and so have not been prejudiced by this change. I have thus utilised the latest version of the Framework in determining this appeal.

Main Issues

4. The main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies including, where appropriate, its effect on openness; and

- The effect of the proposal on the integrity of the Epping Forest Special Area of Conservation (the SAC), with particular regard to atmospheric pollution.

Reasons

Whether the Proposal is Inappropriate Development

5. The site is located within the Metropolitan Green Belt. Policy DM4 of the Local Plan states that, within the Green Belt, planning permission will not be granted for inappropriate development, except in very special circumstances, in accordance with national planning policy.
6. 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.
7. Paragraph 154 of the Framework indicates 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. These exceptions include (g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
8. Annex 2 of the Framework sets out the definition of previously developed land, which it indicates is synonymous with brownfield land. This includes land which is occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. I am satisfied on the basis of the evidence before me and my own observations set out below that the land included within the boundary of the appeal site meets the definition of previously developed land in the Framework.
9. The appeal site sits within a larger field, which is enclosed on all sides by high timber fencing and / or vegetation. The field is within an existing small settlement, with neighbouring residential development in all directions. The corner of the field to which the appeal relates currently accommodates a single storey timber building. A Certificate of Lawful Development (CLD) was granted in October 2020, which indicates that, at that time, the building had been in use for a hobby workshop and storage of items for a continuous period of more than ten years.
10. I observed that the appeal site also features an area of hard standing for vehicle parking and open grassed areas. Various items were stored externally around the building, including a ride-on lawn mower and other equipment for maintenance of the land, bicycles, scattered building materials and tyres. There was also a trailer and several bins on site, and a small caravan parked adjacent to the site boundary. In view of this, and in the wider context described above, the contribution of the appeal site to the openness of the Green Belt in this location is somewhat limited.
11. The appeal proposal would replace the existing building with a single storey dwelling which the Council calculate would represent a 30% increase in volume over and above that of the existing building. The Council contend that, based on this calculation, it could be argued there would be no greater impact to the openness of the Green Belt. Accordingly, the first reason for refusal does not

reference the replacement of the building itself as harmful to the openness of the Green Belt. Likewise, on the basis of the evidence before me and my own observations, I am satisfied that the replacement of the building in the form proposed would not unduly harm openness.

12. The appeal proposal would however subdivide the wider field, creating a new residential planning unit and associated curtilage. This would likely be accompanied by residential paraphernalia and activity. However, the curtilage of the proposed dwelling would be relatively modest. The car parking and turning area would be sufficient for two cars, in the same location as the existing, and not significantly larger in area. The proposed garden would likewise be relatively modest and would occupy an existing grassed area.
13. The plans before me do not show any form of boundary treatment or enclosure around the appeal site but simply indicate that this could be agreed by the Council post permission. I am satisfied that a planning condition can be used to secure details of a suitable boundary treatment that would not unduly harm the openness of the Green Belt.
14. In view of the above and with regard to the existing site context, there is no compelling evidence before me to indicate that residential paraphernalia or activity associated with the proposal would be any more intensive or harmful to the Green Belt than the existing use. I have also not identified any conflict with the five purposes of including land within the Green Belt, set out in Paragraph 143 of the Framework, including no encroachment into the countryside.
15. The suitability of the existing building on site for conversion has no bearing on the acceptability of the proposal in the context of Paragraph 154(g) of the Framework.
16. I therefore find that the proposal would not have a greater impact on the openness of the Green Belt than the existing development. It would therefore fall under exception (g) of Paragraph 154 of the Framework and criterion C(vi) of Policy DM4 of the Local Plan. Accordingly, the proposal would not be inappropriate development in the Green Belt.

Epping Forest Special Area of Conservation (SAC)

17. A significant proportion of the SAC lies within the Council's administrative area. I must therefore have regard to The Conservation of Habitats and Species Regulations 2017, as amended (the Habitats Regulations). These regulations require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives.
18. The Epping Forest District Local Plan Habitats Regulations Assessment (HRA) identified in combination impacts on the SAC through both air quality and recreational pressure. Development allocated within the plan or additional to plan led growth which is anticipated to contribute to these impacts must therefore be considered to have a likely significant effect.
19. The appeal site is located outside of the 'Zone of Influence' (ZOI) for recreational pressure for the Epping Forest SAC, and thus the development will not result in a likely significant effect on the integrity of the SAC through recreational pressure.

20. However, the development has the potential to result in a net increase in traffic using roads through the SAC. The proposal is therefore likely to have a significant effect on the SAC (both alone and in combination with other plans or projects), through atmospheric pollution. It is therefore necessary that I undertake an appropriate assessment in accordance with the requirements of the Habitat Regulations.
21. Epping Forest comprises wood-pasture with habitats of high nature conservation value including ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland. The woodland represents one of the largest continuous semi-natural blocks in the country, characterised by groves of over-mature pollards. The plains contain a variety of unimproved acid grasslands uncommon elsewhere in Essex and the London area. The Forest supports a nationally outstanding assemblage of invertebrates, major amphibian interest and an exceptional breeding bird community.
22. The SAC is designated for three Annex I habitats (Northern Atlantic wet heaths, European dry heaths, and Atlantic acidophilous beech forests), as well as one Annex II species (Stag Beetle). The evidence indicates that much of the SAC is in an unfavourable condition. The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features and Species.
23. The SAC is bisected by several roads which serve communities in Epping Forest District and beyond. The appellant's submitted Trip Generation Assessment found that that 23.3% of car or van trips associated with the site would route within 200m of the SAC. Air quality monitoring outputs referred to in the Council's Interim Air Pollution Mitigation Strategy (IAPMS) show that, up to 2033, if no mitigation measures are introduced, air pollution arising from vehicles will have further harmful effects on the health of the qualifying features within the Epping Forest SAC compared to a situation with no growth. With regard to the conservation objectives of the SAC, this would adversely affect its integrity.
24. The IAPMS includes implementation of various strategic measures. In addition, there is a cost associated with undertaking the monitoring and comparative assessments. These elements are to be funded through payment of financial contributions from all relevant development proposals. For residential development on smaller sites (including windfall sites), the contribution required is indicated to be £335 per dwelling.
25. While the omission of this contribution featured in the Council's second reason for refusal, the appellant has provided an executed Unilateral Undertaking (UU) to secure this as part of their appeal submission. The Council has confirmed this meets their requirements and overcomes the second reason for refusal.
26. Natural England, in their role as the Statutory Nature Conservation Body, has been consulted on the appeal and has confirmed they are content that payment of the financial contribution above, pursuant to the IAPMS, is sufficient to avoid an adverse impact to the integrity of the SAC.
27. On the basis of the evidence before me, I am satisfied that the UU is sufficient to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for development which could affect the SAC. I therefore find

that, with the provided mitigation, the proposal would not have an adverse effect on the integrity of the SAC.

Other Matters

28. The proposal would replace an existing single storey timber building on previously developed land. It would not significantly increase the amount of development on site and would be modest in height. Screening provided by vegetation and fencing along the field boundaries would limit its prominence in local views. Its residential use would also be in keeping with the predominantly residential nature of the immediate neighbouring development. The proposal would therefore not harm the character and appearance of the area.
29. My attention has been drawn to a Grade II listed building (LB) known as Dowsetts, located to the east of the appeal site. Sections 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the LB or its setting or any features of special architectural or historic interest which it possesses.
30. The significance of Dowsetts is derived from its historic fabric, including its timber frame, plastered walls, thatched roof, characterful dormer windows and chimney stack. As with the existing building, the proposed building would be located close to the LB, and thus sit within its setting. However, given the aforementioned boundary screening and the proposals modest scale and form, it would not feature prominently within the setting of the LB.
31. Notably, the Council's Conservation Officer did not raise any objections to the proposal, subject to various planning conditions, including to secure details of finishing materials, means of enclosure and hard surfaces, which would be reasonable in this context to protect the setting of the LB and the character and appearance of the area. However, I find that conditions to control the appearance of roof lights and rainwater goods are not necessary or reasonable in this instance, given the negligible effect these minor elements of the development would have due to their small size and aforementioned screening.
32. I have not identified any harm to the character and appearance of the area, the effect on which the Council also found acceptable. The proposal would therefore not cause harm to the significance of the LB or its setting, subject to the identified conditions.

Conditions

33. The Council has suggested conditions should the appeal be successful. I have considered these and amended where necessary to accord with the Planning Practice Guidance (PPG) and the tests for conditions set out in Paragraph 56 of the Framework.
34. In addition to the required conditions I refer to above, and the standard time limit condition, it is necessary to specify the approved plans as this provides certainty.
35. A condition to secure details of foul and surface water drainage is required as only limited information has been provided and in the interests of sustainable water management. A condition regarding contamination is also necessary to prevent harm to human health and the environment.

36. Tree protection measures and details of proposed soft landscaping and maintenance are required to be secured by condition in the interests the character and appearance of the area.
37. Conditions to secure the installation of electric vehicle charging and superfast broadband infrastructure are required in the interests of reducing car-led air pollution and carbon emissions, and improving digital connectivity, in accordance with Policies D5, T1 and DM22 of the Local Plan.
38. Details of ecological enhancement measures are required to be secured to demonstrate compliance with Policy DM1 of the Local Plan. Policy DM19 of the Local Plan requires a water efficiency standard of 110 litres or less per person per day in new homes, applying the optional requirement set out in Part G of Schedule 1 and regulation 36 to the Building Regulations 2010, as amended.
39. Given the proximity of the proposed dwelling to the site boundary and neighbouring dwellings, a condition is required to restrict construction working hours.
40. In order to protect the openness of the Green Belt and the character and appearance of the area, conditions are also required to remove permitted development rights that would otherwise allow further development and boundary enclosures pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
41. The Council suggested a condition to ensure any excavated material is removed from site to ensure levels are not altered across the site, however the levels of the site can be adequately controlled by the aforementioned landscaping condition.
42. Given the small size of the appeal site and limited scale of development, a condition to require wheel washing or other cleaning facilities for vehicles leaving the site during construction works is not considered necessary in this instance. Requiring the removal of mud or other material deposited on nearby roads would also be difficult to enforce and unreasonable in this instance.

Conclusion

43. The proposed development would adhere to the development plan as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal succeeds.

Ryan Cowley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Dwg 9887-01 (Location Plan)

Drawing no. 02 Revision G (Proposed drawings – Replacement dwelling)
Drawing no. SJK/SUN/01 Revision A1 (Tree Constraints and Protection Plan)

- 3) No development shall commence until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The approved foul and surface water drainage shall be implemented before any part of the development hereby permitted is brought into use.
- 4) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development is occupied.
- 5) No development above finished ground floor level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 6) No development above finished ground floor level shall take place until details and location of the parking spaces (including garages) equipped with active Electric Vehicle Charging Point(s) have been submitted to and approved in writing by the local planning authority. The installation of EVCP shall be completed in accordance with the approved details and made operational prior to first occupation. The details must include the following:
 - a) Location of active charging infrastructure; and
 - b) Specification of charging equipment to be used.
- 7) No development above finished ground floor level shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - a) Existing and proposed finished levels or contours;
 - b) Means of enclosure;
 - c) Car parking layouts;
 - d) Other minor artefacts and structures;
 - e) Plans for tree or shrub planting or establishment by any means;
 - f) Full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities; and
 - g) An implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme. Any new trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 8) Tree protection shall be installed as shown on approved plan Drawing no. SJK/SUN/01 Revision A1 (Tree Constraints and Protection Plan) prior to the commencement of development activities (including any demolition). The methodology for development shall be undertaken in accordance with the submitted Arboricultural Report and Arboricultural Implications Assessment REV A. If any retained tree, shrub or hedge is cut down, uprooted or destroyed or dies during development activities or within 3 years of the completion of the development, another tree, shrub or hedge shall be planted at the same place of such similar size and species, and at such time, as may be specified in writing by the local planning authority.
- 9) Prior to first occupation of the development, the dwelling hereby approved shall be provided with the necessary infrastructure to enable its connection to a superfast broadband network or alternative equivalent service.
- 10) Prior to first occupation of the development, a scheme to enhance the ecological value of the site shall be submitted to and agreed in writing by the local planning authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator (BIAC) where appropriate. The scheme shall be implemented in full prior to the occupation of the development hereby approved, and so retained.
- 11) Prior to first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 12) Demolition or construction works shall take place only between the hours of 08.00 to 18.30 Monday to Friday and 08.00 to 13.00 hours on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 13) Notwithstanding the provisions of Schedule 2 Part 1, Classes AA, A, B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no further development pursuant to Classes AA, A, B or C above shall be undertaken without planning permission from the local planning authority.
- 14) Notwithstanding the provisions of Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of the dwellinghouse forward of any wall of the dwellinghouse which fronts onto a road without planning permission from the local planning authority.

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