
Appeal Decision

Site visit made on 23 January 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 29th January 2024

Appeal Ref: APP/J1535/W/23/3325218

Land at Ivy Chimneys Road, Epping, Essex CM16 4DU

- 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 Phil Knowles against the decision of Epping Forest District Council.
 - The application Ref EPF/0875/23, dated 17 April 2023, was refused by notice dated 9 June 2023.
 - The development proposed is described as the construction of an L-shaped bungalow.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The Council's refusal reason No 3 (RR3) relates to the development's potential impact on the Epping Forest Special Area of Conservation (the SAC), due to air pollution. The need to provide for mitigation for this potential impact, through a legal agreement, is accepted by the appellant. Although no such agreement is currently before me, this appears to be a matter that could have been resolved between the parties, had this been a case where other considerations pointed towards the grant of permission. In the circumstances, it is not necessary for me to consider the impact on the SAC further.

Main issues

3. Having regard to all the submissions made, the main issues in the appeal appear to me to be as follows:
 - whether the proposed scheme would constitute 'inappropriate development' in terms of green belt policy;
 - whether the development would have any other effects on the green belt;
 - the development's effects on trees, and consequently on the character and appearance of the area;
 - the effects on the settings of nearby heritage assets;
 - and overall, whether any harm to the green belt, and any other harm, would be clearly outweighed by other considerations, so as to amount to the 'very special circumstances' needed to justify development in green belts.

Reasons for decision

'Inappropriateness'

4. it is not disputed that the appeal site lies within an area of green belt (GB), as defined on the policies map of the Epping Forest District Local Plan (the EFDLP), adopted in March 2023. EFDLP Policy DM4 states that within the GB, permission for inappropriate development will not be granted except in very special circumstances. 'Inappropriate development' is defined in the policy as including the construction of new buildings, except where various specified exceptions apply. One of these exceptions relates to previously developed land (PDL), subject to the proposed development having no greater impact, either on openness, or on the GB's stated purposes. In all these respects, Policy DM4 seems to me to be consistent with the terms of the relevant policies of the National Planning Policy Framework (the NPPF).
5. Additionally, in the NPPF itself, paragraph 152 states that inappropriate development is to be regarded as harmful to the GB by definition. Paragraph 153 requires that substantial weight is given to any harm to GBs, and that 'very special circumstances' will not exist unless the harm to the GB, and any other harm, is clearly outweighed by other considerations. The Glossary definition of PDL makes clear that this category excludes cases where the remains of any previous structure have blended into the landscape.
6. In the present case, it appears that the appeal site forms part of the site that was once associated with Burleigh House, a 19th century residence which is said to have been demolished in the 1960s or 70s. However, as I saw on my visit, all that now remains are some foundations and floor slabs, either from the house itself or its outbuildings. With a few minor exceptions, these surviving remnants are either at or below the present ground level, and since the demolition took place, vegetation has become re-established over much of the site. Recent excavations have exposed parts of the foundations, helping to clarify their location and extent, and I have no doubt that these works will have served a useful purpose in that regard. But nevertheless, it is clear to me, both from my own observations and the other evidence available, that the appeal site is one where the remains of the former buildings have largely blended back into the landscape. Accordingly, the site does not fall within the NPPF's definition of PDL.
7. In summary therefore, the present proposal for an L-shaped bungalow would involve a new building, within the green belt, on land which does not benefit from the exception afforded to PDL. Furthermore, none of the other exceptions specified in Policy DM4, or in NPPF paragraph 154, has been argued; and nor indeed do any appear to be arguable in any event.
8. It follows that the appeal proposal would be 'inappropriate development' within the terms of EFDLP Policy DM4 and the NPPF. As such, the development would be in conflict with the relevant GB policies, and should only be approved if very special circumstances can be demonstrated.

Any other effects on the green belt

9. The appeal site currently comprises an open paddock and woodland. In place of these, the proposed scheme would introduce a substantial new building, plus a driveway, parking area and domestic gardens. As a result, the site's present

openness would be lost, and the openness of this part of the GB permanently damaged.

10. In addition, this change from undeveloped land to a residential plot would mean that the site would become urbanised, and would appear as an extension of the existing settlement pattern in this part of Epping, around Bell Common and Ivy Chimneys. This change would be clearly visible from Ivy Chimneys Road. The development would thus represent an encroachment of built development into the countryside, contrary to one of the main purposes of GBs, as set out in Policy DM4 and NPPF paragraph 143.
11. I note that permission was previously granted, in 2012 or thereabouts, for a single-story stable block and tack room for two horses. However, no further details of that development are before me. In most cases a stables would be likely to be a smaller and less permanent type of building than a dwelling, and a less urbanising use than residential development; in the absence of any information to the contrary, it seems likely that the development now proposed is clearly distinguishable in these respects. And in any event, there is no suggestion that the permission remains extant. In the circumstances, the previous grant of permission for a stables does not change my view as to the impacts of the development now proposed, on the GB's openness and purposes.
12. I appreciate that the GB in this area is severed by the M25 motorway. But the GB designation washes over this, and indeed surrounds the appeal site on all sides. Although the land thus designated includes some small pockets of development, the majority is open countryside, as is the appeal site itself. I therefore see no reason to question the role that the appeal site plays in maintaining GB protection between the settlements in the area.
13. I conclude that both the loss of openness and the harm to GB purposes would amount to additional adverse impacts on the GB, in addition to the harm already identified by reason of inappropriateness. In accordance with NPPF paragraph 153, substantial weight attaches to each of these impacts on the GB.

Impact on trees, and consequent effects on the area's character and appearance

14. A large part of the appeal site is covered by trees, some of which are included in a woodland Tree Preservation Order (TPO). The area has a wooded, semi-rural character, to which the trees on the site contribute significantly. The proposed new dwelling, driveway and parking area would be set generally within a clearing between the existing trees, but close to some, including in particular T2 and T11 (both sycamores), and T8 (ash).
15. The appeal is accompanied by an arboricultural report, although this appears to relate to an earlier proposal, with a different layout and footprint, and therefore is of limited value. The report suggests that the trees on the site are individually unremarkable and of limited merit, but nevertheless acknowledges that as a group they contribute to the area's canopy cover, and thus have some general amenity value. I agree with the latter part of this assessment. I also note that T8 in particular is classed as category B2, and is therefore worthy of retention if possible.

16. Given the limitations of the report, it seems to me that it is not possible to draw firm conclusions as to the proposed development's impact on any of the affected trees. I appreciate that no-dig construction is proposed for the driveway, but it is not clear from the available evidence whether this would avoid risk to the health of the trees in that area. It is also unclear how the risks would be mitigated in those areas where trees would be close to the foundations of the building itself. To my mind the loss of T8, or indeed T2 or T11, would be clearly noticeable, and would erode the rural character of the site, and of the surrounding area. On the information before me, these are risks that cannot be ruled out, irrespective of any conditions that might be imposed.
17. I saw on my visit that the surrounding area includes various small commercial and industrial businesses, plus a sub-station, pylon and telecommunications mast, and I accept that the area has largely maintained its predominantly rural character and appearance despite these more urban intrusions. But this does not alter my view that the development now proposed would lead to a weakening of the area's rural qualities.
18. I conclude that, in the absence of evidence to the contrary, the proposed development would be likely to have an adverse impact on the existing trees on the site, detracting from the area's character and appearance. In this regard the scheme would conflict with EFDLP Policies DM3 and DM5, which seek amongst other things to protect the district's landscape character, and to retain trees and woodlands.

Effects on heritage assets and their settings

19. The appeal site lies close to the boundary of the Bell Common Conservation Area (the CA), and also to the curtilage of Nos 115-117 Bell Common, both Grade II listed buildings, which are just inside that boundary. However, the site is separated from these by the intervening belt of existing woodland, and by the track known as Fishers Lane, with little or no intervisibility. Because of these, it seems to me that the site plays no significant role in the settings of either the CA or the listed buildings.
20. I appreciate that NPPF paragraph 200 envisages that applicants should be required to provide an assessment of the impact of a proposed development on any heritage assets that would be affected. But the same paragraph acknowledges that the level of detail should be proportionate to the potential impact. In the present case, for the reasons stated above, I consider it reasonably evident that the settings of the CA and nearby listed buildings would be unaffected.
21. Consequently, I am satisfied that in this case the settings of the heritage assets identified would suffer no harm, and that their significance would thus be preserved.

Other matters

22. The appellant has drawn my attention to the relevant housing delivery test result for Epping Forest District, which is well below the threshold of 75% set out in NPPF footnote 8. In these circumstances, the provision of an additional dwelling, as now proposed, could potentially help towards making up part of the District's unmet housing need, and this carries some weight in favour of the

appeal. But even so, with regard to NPPF paragraph 11(d), footnote 7 also makes it clear that in green belts it is the provisions of sub-paragraph (d)(i), rather than (d)(ii), that are to be applied.

23. The appeal site is located reasonably close to local facilities, including Epping town centre, a Central Line tube station, and several local bus services. The development would make use of under-used land, and could incorporate a range of modern energy efficiency measures, as well as providing for full disabled access. However, these advantages seem to me to be somewhat offset by the site's exposure to noise from the M25. At the time of my visit, despite the existing acoustic fencing on the highway verge, the noise level at the site boundary was clearly intrusive. Whilst it might be possible to mitigate this internally through high-performance glazing, there is no information as to what level could be achieved, or whether this would depend on windows remaining shut. Nor is there any information as to whether the external space could be further protected. In this regard, the residential environment for a new dwelling at the appeal site would to my mind be highly compromised.
24. It is stated that another green belt site nearby has been allocated for large-scale development, but I have no further information on this. I have considered the appeal proposal on its own planning merits, in the light of the submissions put before me by all parties.

Planning balance and conclusion

25. For the reasons explained above, I find that the proposed scheme would be inappropriate development in terms of GB policy, and would also cause further harm to the GB due to the loss of openness and the conflict with GB purposes. In accordance with NPPF paragraph 153, these impacts on the GB must be given substantial weight. In addition, the potential harm to the area's character and appearance, due to the likely loss of trees, carries further moderate weight against the proposal.
26. Given the shortfall in housing delivery, the benefit of providing one new dwelling weighs moderately in favour of the scheme. But all the other considerations identified, including the lack of harm to heritage assets, are neutral, weighing neither for nor against the development.
27. In the light of the above, the harm arising from the development is not clearly outweighed by the benefit to the housing stock; indeed, in my view, the reverse would apply. Consequently, having regard to the terms of NPPF paragraph 153, the very special circumstances needed to justify development in a GB have not been demonstrated in this case.
28. I conclude that the proposed development would conflict with EFDLP Policies DM3, DM4 and DM5, and thus would fail to accord with the development plan as a whole. This conflict is not outweighed by other considerations. I have taken account of all the other matters raised but none changes this conclusion. The appeal is therefore dismissed.

J Felgate

INSPECTOR