



## Appeal Decision

Site visit made on 30 January 2024

by **A J Sutton BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19<sup>th</sup> February 2024

---

**Appeal Ref: APP/J1535/W/23/3322174**

**Land at the rear of Avenue House, London Road, Harlow CM17 9NJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Edit Residential against the decision of Epping Forest District Council.
  - The application Ref EPF/0025/23, dated 6 January 2023, was refused by notice dated 3 March 2023.
  - The development proposed is 'Outline planning permission for the erection of 4 no. dwellings with access, parking and associated works.'
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The proposal is submitted in outline, with all matters reserved other than scale, layout and access. The submitted plans are therefore illustrative only and have been considered on this basis.
3. The Council's reasons for refusing planning permission in this case are substantiated, amongst other things, by policies of an emerging plan. Following the Council's decision, the Epping Forest District Local Plan 2011 – 2033 Part 1 (Local Plan) has been adopted. This Local Plan replaces the Epping Forest District Local Plan (1998) and the Epping Forest District Local Plan Alterations (2006), and policies of those plans, cited on the decision notice, are no longer part of the development plan. However, through this appeal, the Council has identified the Local Plan Policies it considers are now relevant. The appellant has also commented on this matter in their submission.
4. Attention has been drawn to North Weald Bassett Neighbourhood Plan. However, this emerging plan was delayed, and the extent of unresolved matters remain unclear. Only very limited weight can be attached to this emerging plan for this reason.

### Main Issues

5. The main issues in this case are:
  - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;

- The effect of the proposal on the openness and purposes of the Green Belt;
- The effect of the proposal on the character and appearance of the area, including the setting of listed buildings;
- Whether the proposed dwellings would provide satisfactory living conditions for future occupants, with regard to privacy and outlook; and
- Whether any 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 required to justify the proposal.

## **Reasons**

### *Whether Inappropriate Development*

6. 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. Construction of new buildings is inappropriate development in the Green Belt, and Policy DM4 sets out exceptions to this. The Policy is generally consistent with provisions of the National Planning Policy Framework – December 2023 (the Framework) in this respect.
7. The exceptions, set out in Policy DM4, include limited infilling in rural communities and limited affordable homes, in locations that are in accordance with Policy H3; and limited infilling or the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
8. The supporting text of Policy DM4 clarifies 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.
9. Latton Common, although near Harlow and the busy A414 road, comprises a limited number of properties at the fringe of the Common. The built forms that edge the Common include a church and cottages. With these features, the settlement appears as a small semi-rural community which is distinct from the nearby large urban area. The proposal would result in four additional dwellings in this community and would be limited in this respect.
10. The dwellings and premises opposite the appeal site provide a fairly continuous ribbon of development fronting that side of London Road. However, the appeal site is a sizeable plot that is largely undeveloped and appears rough grazing land. It is asserted that the plot of land to the south of the appeal site is used for storage and other accommodation uses. However, limited information has been provided to allow consideration of this. In any event, that neighbouring plot of land appears relatively undeveloped, and cumulatively with the appeal site, there is a sizeable undeveloped space along this part of the road. Also, built forms on this side of London Road are largely limited to a couple of dwellings, set back from the road, and in sizeable plots, and a restaurant with its associated car park. The pattern of development in the immediate vicinity of the appeal site is therefore sparse and intermittent.

11. The appeal site, along with neighbouring land, amounts to a considerable break in built form in this area. As such the site is not a small gap between an otherwise existing continuous built-up frontage. In turn, development in this existing space would not constitute infilling in this rural community.
12. Attention has been drawn to recent appeal decisions where Inspectors found the developments to be infill. However, the developments in those appeals are a considerable distance from the appeal site. They are also in other districts where the local planning context differs. Accordingly, the findings in those appeals have limited weight.
13. For the reasons outlined above, I find in this case that the development would not be infilling in a village. Also, this proposal has not been advanced as a rural exceptions site, and affordable housing is not being proposed on the site. The proposal would not therefore qualify as an exception under Policy DM4 (v) and Paragraph 154 e) and f) of the Framework.
14. My attention is drawn to the Langley and Mile appeal decision. The site in that case was previously developed land, but unlike this proposal, it is major development with affordable housing provision. That development was found not to be inappropriate in the Green Belt when assessed against Paragraph 154 g) [previously Paragraph 149 g)] of the Framework. As such, it was not necessary to demonstrate very special circumstances in that case .
15. The appellant has offered a substantial contribution to affordable housing provision off-site. However, Paragraph 65 of the Framework states affordable housing should not be sought for residential development that are not major developments, and this is reflected in Policy H2 of the Local Plan. As a proposal for less than 10 dwellings, even if the appellant offers to contribute to meeting identified affordable housing need elsewhere in the district, this would be contrary to local and national housing policy. On this basis, a planning obligation dealing with this matter would not satisfy the statutory test. Therefore, the requirement of Paragraph 154 g) relating to affordable housing could not be met in this case.
16. Also, I find conflicting evidence as to whether the appeal site is previously developed land. However, even if I accept that it is, an assessment of the proposal's impact on openness and purposes of including land in the Green Belt are necessary to qualify as an exception under Policy DM4 (vi) of the Local Plan.

#### *Openness and Purposes*

17. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.
18. The appeal site is well screened by mature vegetation. However, even with this screening, it is evident from the surrounding area that the appeal site is largely devoid of built forms. In this regard, the site is important to the sense of space and openness in this part of the Green Belt.
19. The indicative layout shows that some space could be retained at the appeal site. However, four proposed detached, family sized dwellings would cover a considerable portion of the site. These two-storey built forms would fill a significant amount of the existing space in this plot, and complete with a new access and associated driveways, this would be a considerable visual change at this relatively

undeveloped site. In turn this would result in a significant erosion of the existing openness in this part of the Green Belt. The harmful effect would be localised, nevertheless, for the reasons outlined the loss of existing openness at the site would be significant, and this would be harmful to this part of the Green Belt.

20. As previously stated, the amount of development proposed is limited. While openness would be lost at the site, as a small development, the existing sparse pattern of development in this semi-rural area would be largely retained such that the countryside would be safeguarded from encroachment. Also, located at the edge of a semi-rural settlement, the development would not harmfully contribute to either unrestricted sprawl of a large built-up area or the merger of neighbouring towns.
21. However, the proposal would result in a limited but nevertheless significant loss of openness in this area. As such the development would have a significantly greater impact on the openness of the Green Belt than the existing development at the site. Consequently, even if I accepted the site is previously developed land and that the proposal would not harm the purposes of including land within the Green Belt, the development, in respect of impact on openness, would fail to qualify as an exception under Policy DM4 (vi) and Paragraph 154 g) of the Framework.

#### *Conclusion as to Whether Inappropriate Development*

22. The proposal is for new buildings in the Green Belt, and would result in a significant, albeit limited loss of openness in this part of the Green Belt. The proposal does not qualify as an exception set out in Policy DM4 of the Local Plan and the Framework. Consequently, I find that the development in this case would be inappropriate, which by definition, would be harmful to the Green Belt. I attach substantial weight to the harms identified in respect of this matter.

#### *Character and Appearance*

23. As already described, the appeal site has a semi-rural setting. Although the undeveloped quality of the site positively contributes to this character, the hedge at the roadside boundary is overgrown and this slightly diminishes the site's contribution to the appearance of this area. That aside, the plot is part of a broad swathe of sparsely developed land that not only contributes to the prevailing rural character of the wider area, but also provides an important verdant buffer to the nearby busy main road. Dwellings, opposite the site are of differing ages and styles such that development appears incremental in this part of the settlement.
24. The Common, which includes a Memorial Ground, is located just north of the appeal site, and with the parochial style of buildings edging the Common, this open space appears an attractive focal point of the settlement. The dwellings close to the Common and northeast of the appeal site, include Hill House, Hill House Cottage, Hill Cottage, Rose Cottage and Baytree Cottage.
25. These Grade II listed buildings are on the opposite side of the road to the appeal site and originate from the 18<sup>th</sup> Century. While these listed buildings have been altered, their traditional forms, which include timber and plaster frames, are largely retained. The cottages have a traditional rural aesthetic, and the historic interest and significance of these listed buildings is readily appreciated in this distinctly semi-rural setting. In turn this prevailing character is important to the setting of these designated heritage assets.

26. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard shall be had to the desirability of preserving a listed building or its setting.
27. The indicative plans show that four good sized dwellings with reasonable sized gardens could be accommodated in the site. While some of the existing vegetation would be lost to form the new access, a significant section of this roadside boundary would remain relatively undeveloped. There would also be space at the other three boundaries of the site for soft landscaping.
28. With this space the development would not appear cramped, and the site would still appear spacious with a good proportion of natural features. Moreover, the proposal would be surrounded by relatively open land such that the semi-rural character on this side of the road would not be harmfully altered.
29. This proposed scale and grain of development would not be at odds with the existing incremental pattern of development on the opposite side of London Road. Moreover, two-storey dwellings would be in keeping with the existing built form nearby. Also, subject to the appearance of the new dwellings being sensitive to the surrounding traditional architectural style, and natural features being maintained at the site, the existing positive setting of the nearby listed buildings would be preserved.
30. An Inspector found harm to character in respect of a previous proposal at the appeal site. However, that proposal was for six dwellings such that minimal space would have been retained around the sides of the site. That scheme was distinctly different from this proposal in this regard. As such the findings in that recent appeal decision do not alter my findings in respect of this matter.
31. In light of the above, I find that the setting of the listed buildings would be preserved. The proposal would not have a harmful effect on the character and appearance of the area, including the setting of listed buildings. In this regard, the proposal would be consistent with Policies DM7, DM9 and DM10 of the Local Plan. These Policies collectively require, amongst other matters, that all new development must achieve a high quality of design.
32. The proposal would also be consistent with provisions of the Framework which seek well-designed places and to conserve the historic environment.

#### *Living Conditions*

33. The Council is concerned that there would be insufficient space between the dwellings. However, the indicative plans show that the front and side elevations of the dwellings would be divided by a driveway and parking areas which would provide a reasonable degree of separation between these aspects of the dwellings. With this perpendicular arrangement, the rear outlook from the dwellings would be over their private rear gardens, and this would ensure that future occupants of the dwellings would have a reasonable outlook. Also, as there is limited existing development around the appeal site, future occupants would have a good sense of privacy at the rear of their properties with this proposed configuration.
34. Moreover, the proposal is in outline. Given the space within the site and that surrounds it, I am content that the dwellings could be designed to ensure a reasonable outlook and level of privacy for future occupants at all aspects of the property, and that this could be addressed as reserved matters.

35. I therefore find that the proposed dwellings would provide satisfactory living conditions for future occupants, with regard to privacy and outlook. In this respect the proposal would accord with Policy DM9 of the Local Plan. This Policy states, amongst other matters, that proposals must take account of the privacy and amenity of the development's occupiers.
36. The proposal would also be consistent with advice set out in the Essex Design Guide and provisions of the Framework which require a high standard of amenity for existing and future users.

### **Other Considerations**

37. I have not found harm in respect of character, heritage or living conditions. The Council has also not raised concerns about highway and flood risk matters, subject to conditions. However, development is expected to be well designed and should not give rise to harm, and these are neutral factors in this case.
38. It is asserted that the proposed allocation of the appeal site at the advanced stages of the emerging Local Plan provides the very special circumstances necessary for this proposal. However, the Council's approach to the site allocation was found to be unsound through the Local Plan Examination process. The appeal site is not allocated for this use in the recently adopted Local Plan. Moreover, while the appellant may have views about the site's contribution to the purposes of including land in the Green Belt, the site remains in the Green Belt. These matters attract limited weight accordingly.
39. It is also asserted that the principle of this use at the site was accepted at the pre-application stage. Be this as it may, these discussions were prior to the adoption of the Local Plan and in any event the Council is not bound by comments made at the pre-application stage.
40. The Housing Position Statement 2019 showed a housing land supply of 4.2 years, and this had substantially decreased to just over 2 years supply by 2021 as highlighted in the Epping Forest College appeal decision. However, this evidence predates the adoption of the Local Plan.
41. While the Council was unable to demonstrate a five-year housing land supply at the time of its decision on the proposal before me, this is now not the case. That said, I am mindful of the chronic national need for housing and the Government's objective to significantly boost the supply of homes. Moreover, the five-year supply should not be considered a cap and a key component of housing land supply is windfall sites.
42. This proposal would not contribute to social housing, but it would provide four, open market, family sized dwellings. This would be a significant and moderate contribution to the supply of much needed homes and to the housing mix in this area given the scale of the development.
43. As a windfall site the homes could be delivered relatively quickly. The development would be an efficient use of land in a built-up area with some local services. Future occupants would contribute to the vibrancy of the local community. Also, the site is close to a large urban area which offers a wide range of services.
44. There would be economic benefits through the construction of the dwellings and energy efficiency and sustainable measures could be incorporated into the

development. There is space in the site such that landscaping could be improved, and a biodiversity net gain could be achieved, and the environmental benefits could be secured by condition. However, even if I accepted that the site was previously developed, the social, economic and environmental benefits identified in this case would be moderate given the size of the development.

45. Attention is drawn to the Roundhouse appeal decision, where very substantial weight was attached to the contribution which the development made to the housing supply in that different district. However, the Roundhouse development was for 100 dwellings, 45% of which was affordable housing. As such, the substantial benefits that were achieved in the Roundhouse development are not directly comparable with the moderate benefits identified in this case. This has not altered my findings for this reason.

### **Other Matters**

46. The appeal property is within the zone of influence of the Epping Forest Special Area of Conservation (SAC). The qualifying features of this SAC include the Beech Forest, heathland and populations of stag beetles. Evidence shows that the protected habitat is sensitive to, amongst other things, atmospheric pollution. Emissions from vehicles are having a harmful effect on the qualifying features of the SAC and proposals that result in a net gain of residential units in the area, in combination with other plans and projects, are likely to have a significant adverse effect on the integrity of the SAC. The appellant has offered to enter into a legal agreement in relation to this matter, but as other grounds for dismissing the appeal have been identified, it is not necessary to consider this further in this case.

### **Balance**

47. The Council's performance against the most recently published Housing Delivery Test is understood to demonstrate that only 35% of the required number of dwellings was delivered over a three-year period; this is a substantial shortfall in delivery. The provisions set out in Paragraph 11 of the Framework are therefore relevant.
48. Paragraph 11 states that decisions should apply a presumption in favour of sustainable development. This means, where the policies which are most important for determining the application are out of date, granting planning permission unless, amongst other matters, the application of policies of the Framework that protect areas or assets of particular importance provide clear reason for refusing the development proposed.
49. The proposal would be inappropriate development in the Green Belt. The benefits identified above would be moderate such that they do not amount to the very special circumstances that are necessary in this case. Therefore, the harm and the resultant conflict with the policies of the Framework that seek to protect the Green Belt provide clear reason for refusing the development proposed.
50. Attention has been drawn to Local Plan policies and guidance that are not in dispute. However, for the reason stated, there would be harm to the Green Belt and conflict with the development plan when read as a whole.

## **Conclusion**

51. I have found that this proposal would be inappropriate development in the Green Belt and would lead to a loss of openness to the Green Belt. These are matters that I attach substantial weight to. The other considerations identified in this case at most carry moderate weight. Even when considered together, these considerations do not clearly outweigh the harms to the Green Belt. As a result, the very special circumstances that are necessary to justify the proposal do not exist. The proposal would conflict with Policy DM4 of the Local Plan and the Framework in respect of protecting Green Belt land. There are no other considerations which outweigh this finding.
52. Having regard to the development plan and other material considerations, including the Framework, the appeal should be dismissed.

*A J Sutton*

INSPECTOR