



Appeal Decision

Site visit made on 5 March 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 April 2024

Appeal Ref: APP/J1535/W/23/3319971

Mickleham, Theydon Road, Theydon Bois, Epping, Essex CM16 4EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Bond against the decision of Epping Forest District Council.
 - The application Ref is EPF/1602/22.
 - The development proposed is the change of use of an existing annex building to a separate dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of an existing annex building to a separate dwelling at Mickleham, Theydon Road, Epping, Essex CM16 4EE in accordance with the terms of the application, Ref EPF/1602/22, subject to the conditions in the attached schedule.

Preliminary Matters

2. Following the Council's decision, the Epping Forest District Local Plan 2011-2033 Part One (the Local Plan) has been adopted and therefore the Local Plan and Alterations policies cited in the decision notice are superseded. Additionally, the Government has published a revised National Planning Policy Framework (the Framework). I am required to consider the appeal in the context of such current local and national policy, and I am satisfied that no parties would be prejudiced by me doing so.
3. Where reference is made in this decision to the Framework, paragraph numbers are taken from the latest version.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; and
 - The effect of the proposal on the integrity of the Epping Forest Special Area of Conservation.

Reasons

Inappropriate development

5. The appeal site is located within the Metropolitan Green Belt (Green Belt). The Framework establishes that development in the Green Belt is inappropriate

other than for specified exceptions that are set out in paragraphs 154 and 155. This is reflected in Local Plan Policy DM4.

6. At paragraph 155, certain forms of development are identified as not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The Council refers to the exception at paragraph 155 (e) which relates to material changes of use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). However, the appeal scheme involves the change of use of a building not land. Therefore, the exception at 155 (d), the re-use of buildings provided that the buildings are of permanent and substantial construction, is the most relevant.
7. The proposal would involve reuse of an existing building, which is of permanent and substantial construction, to create a separate and independent dwelling. This would inevitably result in additional comings and goings, increased parking, and the presence of further domestic paraphernalia. Nonetheless, given the existing residential use of the site and the modest scale of the proposed dwelling, any increase in movements and paraphernalia would be limited. In addition, the proposed parking spaces would utilise an existing surfaced area and independent access. Furthermore, the proposed bin and cycle store would be small scale and located in the limited gap between the building and the hedge that bounds Great Gregories Lane. Accordingly, I find that the proposal would preserve openness both from a visual and spatial perspective.
8. In addition, for the same reasons, the minimal changes would not result in an encroachment into the countryside. Consequently, there would be no conflict with any of the purposes of the Green Belt, as identified under paragraph 143 of the Framework.
9. I therefore conclude that the proposal would not be inappropriate development in the Green Belt and would accord with Local Plan DM4 and the Framework.

Epping Forest Special Area of Conservation

10. The appeal site lies within a defined Zone of Influence for the Epping Forest Special Area of Conservation (SAC). The SAC is designated for the Atlantic acidophilous beech forest, Northern Atlantic wet heaths, and European dry heaths habitats within it. It is also designated due to the presence of Stag Beetles. The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the Favourable Conservation Status of its qualifying features.
11. The SAC has been identified as being vulnerable to harm arising from recreational activities and due to atmospheric pollution. Such disturbance would be exacerbated by an increase in the local population, and an associated increase in traffic travelling through it.
12. The appeal proposal would result in a net gain of a dwelling, with an associated increase in residents living within the Zone of Influence. This would be likely, in turn, to increase recreational pressure and atmospheric pollution. It is therefore likely that the proposal, alone and in combination with other development, would adversely affect the integrity of the SAC. As such, it is

necessary for me, as the competent authority, to conduct an appropriate assessment in relation to the effect of granting permission on its integrity.

13. The Council has developed an approach to mitigate the effects of new residential development on the SAC by securing financial contributions. In response, the appellant has provided a completed Unilateral Undertaking (UU) dated 6 September 2023, which undertakes to make appropriate contributions to mitigate the recreational pressure and air quality effects of the proposal on the SAC. The UU also provides a contribution towards monitoring to ensure compliance with the obligations it contains. The Council has also suggested that electric charging points and high-speed broadband are required as further mitigation. This could be secured through planning condition.
14. Having regard to the views of Natural England, which were received during the appeal, and taking into account the planning obligations set out in the UU and the imposition of conditions to secure further mitigation, on which I place weight, I am satisfied that the development would not cause harm to the ecological value of the SAC.
15. In conclusion, the proposal would not harm the integrity of the SAC and would, therefore, accord with Local Plan Policy DM2 and DM22 which require development to conserve and enhance the biodiversity of the SAC. In addition, there would be no conflict with paragraph 186 of the Framework which states that planning permission should be refused where significant harm to biodiversity resulting from a development cannot be avoided or adequately mitigated.

Other Matters

16. It has been suggested that further subdivision and infill development could take place within the site, at a later date. However, such matters are not before me and, consequently, fall outside of the remit of this decision.
17. It is the role of the Inspector to consider the planning merits of the appeal proposal which, for the reasons set out above, I find to be acceptable. As such, the absence of an explanation as to why the building could not remain as an annex does not weigh against it.

Conditions

18. The Council has suggested several conditions which I have considered against the Framework and Planning Practice Guidance (PPG). As a result, I have made some amendments to the wording for clarity and consistency.
19. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
20. I have been presented with no compelling evidence to suggest that landscaping works are required to make the development acceptable in its appearance. I have not, therefore, included the Council's suggested landscaping condition. However, to protect the character and appearance of the area, it is reasonable and necessary to attach conditions relating to the proposed native boundary hedgerow and to require the retention of the frontage hedgerow. I have amended the wording of the condition relating to the roadside hedgerow to reflect that partial removal is not proposed.

21. It is reasonable and necessary to include a condition for a scheme for ecological enhancement in line with the objectives of the Framework to seek opportunities to improve biodiversity in and around the development.
22. In the interests of sustainability, I have included the suggested condition requiring water efficiency measures to be incorporated. I have also included the conditions requiring provision of a superfast broadband network or alternative and electric vehicle charging points for the same reason and to protect the integrity of the SAC.
23. There is no convincing evidence before me that demonstrates, in the interests of highway safety, it is necessary to impose a restriction on the height of the gates. It is, however, necessary and appropriate to require that any gates at the vehicular access are inward opening so that the highway is not obstructed.
24. The Council has suggested the removal of certain permitted development rights set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Paragraph 54 of the Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG also states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness.
25. In this case, the retention of permitted development rights at the site could give rise to further built form within the Green Belt. However, the extent of such development would be limited by the criteria set out in the GPDO and would be constrained by, and limited to, the appeal site. Furthermore, there is no compelling evidence that suggests that exercising permitted development rights for extensions, outbuildings or boundary treatments would have an unacceptable effect on the openness of the Green Belt or its purposes. In addition, there is nothing before me that demonstrates that exercising permitted development rights, including the formation of an access, would be harmful to highway safety. Overall, there is no clear justification for the removal of permitted development rights.
26. The proposal involves the reuse of an existing building without extension or alteration. Furthermore, the driveway and parking spaces already exist. Therefore, construction works would be very limited. Consequently, I have not included the Council's suggested conditions relating to contamination, hours of work and provision of wheel washing or other cleaning facilities as such requirements are not reasonable or necessary given the nature of the proposal.

Conclusion

27. For the reasons given above, having regard to the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed.

Elaine Moulton

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: 232-PL-11 Rev A, 232-PL-12 Rev A, 232-PL-13 Rev A and 232-PL-11 Rev A.
- 3) Prior to first occupation, details of the proposed native hedgerow to the new boundary shall be submitted to and approved in writing by the local planning authority. The hedgerow shall be provided in accordance with the approved details and at the agreed time. If any plant is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased within a period of 5 years from the date of planting it shall be replaced by the same kind and size and at the same place.
- 4) The roadside hedgerow/trees shall be retained in perpetuity at a minimum height of 1.5 metres. If any tree, shrub or plant that forms part of the hedgerow is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased it shall be replaced within 3 months by the same kind and size and at the same place, unless the local planning authority gives its written consent to any variation.
- 5) Prior to first occupation of the development, a scheme to enhance the ecological value of the site shall be submitted to and approved in writing by the Local Planning Authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator. The scheme shall be implemented in full, prior to the occupation of the development hereby approved.
- 6) 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.
- 7) Prior to first occupation, the applicant shall ensure that the dwelling has been provided with the necessary infrastructure to enable its connection to a superfast broadband network or alternative equivalent service.
- 8) Prior to first occupation, active Electric Vehicle Charging Points shall have been provided for the proposed and the existing dwellings and made operational in accordance with details that shall have been submitted to and approved in writing by the local planning authority beforehand. Such details shall include the following:
 - Location of active charging infrastructure; and
 - Specification of charging equipment to be used.
- 9) Any gates provided at the vehicular access shall be inward opening only.