



Appeal Decision

Site visit made on 2 August 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2024

Appeal Ref: APP/J1535/W/23/3326550

Auchinleck, Theydon Park Road, Theydon Bois, Epping, Essex CM16 7LS

- 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 Mrs Emma Clifford against the decision of Epping Forest District Council.
 - The application Ref is EPF/0903/23
 - The development proposed is Demolition of an existing bungalow and ancillary accommodation and erection of 1No. four-bedroom bungalow configured over two floors with associated parking, amenity spaces, refuse and cycle store
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the header above, I have used the site address provided on the appeal form since this more accurately reflects the appeal site's location.
3. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
4. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework published in December 2023, and any reference to paragraph numbers are to this version.

Main Issues

5. The main issues are:
 - whether or not the proposal would be inappropriate development within the Green Belt having regard to the National Planning Policy Framework (2023) (the Framework) and any relevant development plan policies;
 - the effect of the proposal on trees surrounding the site;
 - the effect of the proposal on the character and appearance of the area; and

- the effect of the proposal on the living conditions of the occupiers of Ashdene and St Leonards, with particular regard to outlook, privacy and loss of light.

Reasons

Inappropriate development

6. The site is located within the Metropolitan Green Belt. It contains a single storey bungalow with a single storey outbuilding located immediately to its rear which provides ancillary living accommodation. Whilst narrow, the appeal site is relatively long and has an additional single storey outbuilding located adjacent to the site's rear boundary.
7. Policy DM4 of the Epping Forest District Local Plan 2011-2033 Part One (2023) (LP) outlines the five purposes of the Green Belt, and states that the construction of new buildings is inappropriate development in the Green Belt, unless one of the stated exceptions apply. One such exception is the replacement of a building, provided the building is of the same use and not materially larger than the one it replaces.
8. The fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. Paragraph 152 of the Framework states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The Framework also outlines that the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces is an exception to inappropriate development. Consequently, Policy DM4 of the LP is consistent with the Framework.
9. The main parties have set out different mathematical comparisons between the volumes of the existing building and the proposed dwelling. The appellant suggests that the replacement dwelling would result in an 8% increase in volume. Alternatively, the Council suggest that the existing volume of the property is 266 cubic metres and that the replacement dwelling would result in a 98% increase in volume. That existing floor area figure was used by an Inspector in determining a previous appeal¹ at the site in 2011. However, the appeal site's planning history indicates that since that appeal decision, a single storey rear extension has been constructed at the property. The appellant's submitted evidence indicates that the rear extension has a volume of 67 cubic metres.
10. In addition, the outbuilding which is located to the rear of the dwelling and is in ancillary residential use has a volume of 77.4 cubic metres. Subsequent to the previous appeal, caselaw² confirmed that, in relation to replacement buildings, "building" should not be read as excluding more than one building, providing as a matter of planning judgment they can sensibly be considered together in comparison with what is proposed to replace them. In this instance, although the outbuilding is physically detached from the main dwelling, the separation is sufficiently close and direct that it has a clear visual and practical relationship. Therefore, in my planning judgement, the baseline for any comparisons should be based on the existing dwelling with the rear extension and outbuilding.

¹ APP/J1535/A/11/2148327

² Tandridge DC v SSCLG & Syrett [2015] EWHC 2503

11. The appellant indicates, and it is not disputed by the Council, that these elements were not factored into the previous Inspector's calculations. Consequently, it is clear that the increase in volume as a result of the proposal would be significantly less than the 98% suggested by the Council.
12. For the above reasons, there is a lack of certainty on the exact mathematical increase which would result from the proposal. Nevertheless, I am satisfied that the proposal would constitute an increase in floorspace and would increase the overall height of development on the site. However, neither Policy DM4, nor the Framework, define the term 'materially larger'. A conclusion on this matter cannot be arrived at purely on a mathematical calculation as a single factor as the test is primarily an objective one based on size, as referenced by the Framework. The supporting text to policy DM4 states that in respect of replacements of existing buildings it is not intended to define "materially larger" since this would depend on the characteristics of the site locality, and existing buildings themselves in relation to the specific proposals.
13. Due to the lack of definition regarding what constitutes 'materially larger', this simply relies on a planning judgement based on the case before me. In purely volumetric terms, the proposal would be larger than the dwelling it replaces. However, the building's footprint would not be significantly larger than the existing footprint. The proposal would result in the removal of an outbuilding within the appeal site, and would therefore consolidate its built form. The replacement building would be orientated so it addresses the highway head on, and it would be located further to the rear of the site, reducing its visual prominence. Whilst it would be taller in height than the existing dwelling, as a result of its crown roof design with dormer windows, this increase would not be significant.
14. On this basis, it is my judgement that the replacement building would not be materially larger than the buildings it would replace. Accordingly, the proposal meets the terms of the most relevant exception to inappropriate development within the Green Belt. Therefore, I find no conflict with Policy DM4 of the LP nor the relevant parts of the Framework which, amongst other things, seek to prevent inappropriate development from occurring in the Green Belt.
15. As the proposal is not inappropriate development, there is no need to consider the effect of the proposal on the openness of the Green Belt, nor is there any requirement to demonstrate very special circumstances to justify the development.

Trees

16. Mature trees are located along the site's boundaries with the neighbouring property, Ashdene. These form a band of mature trees which provide a green buffer, and which make a positive contribution to the character and appearance of the area.
17. Substantial excavation works are likely to be required during the construction of the proposal. Given the trees' height and proximity to the proposal, it seems to me, likely that their roots may be present across the appeal site.
18. However, an Arboricultural Assessment (AA) has not been submitted, and no further details have been provided to demonstrate how potential harm to the

trees would be mitigated. In the absence of such information, it has not been demonstrated that the health of the trees would be safeguarded.

19. The appellant indicates that planning conditions could be imposed to require the submission of further details including mitigation measures. However, without an accurately measured assessment of the trees' root protection area or any coherent mitigation measures in place, I cannot be certain that there will not be an adverse effect on the longevity and health of the trees. Given what would need to be known prior to being certain where the footprint of the proposal can go, it would not be possible to deal with this matter through the use of conditions.
20. For the above reasons, I conclude that it has not been demonstrated that the proposal would not have a detrimental impact on the health of the trees surrounding the appeal site. I therefore find that it conflicts with Policy DM5 of the LP. Amongst other things, this policy requires that development proposals demonstrate that they have been designed to retain and where possible enhance existing green infrastructure assets, including trees.
21. I also find conflict with paragraph 180 of the Framework which requires planning decisions to contribute to and enhance the natural environment by recognising the intrinsic beauty of the countryside and trees.

Character and appearance

22. The appeal property is a small bungalow accessed via an unmade road. The site forms part of a ribbon of development on this side of the road, whilst the opposite side of the road is surrounded by open fields. Properties on this part of Theydon Park Road are set within plots which vary in size and width. Whilst properties are generally detached there is a range of bungalows, chalet bungalows and two storey dwellings. There is significant variation in the height, bulk and forms of dwellings, which are eclectic in their design in a range of traditional and contemporary styles. Properties are constructed with various external facing materials such as brickwork, render, timber boarding, and a variety of different fenestration types and roof tiles.
23. The proposal would be taller than the adjoining bungalow, St Leonards, however this would not be an unusual relationship within the area, and it would be a similar height to its other adjoining property, Ashdene. Overall, the combination of single storey and two storey building heights would conform to the character of the street.
24. The existing bungalow, is sited at an angle to the road and forward of St Leonards. The proposal would be set back within its plot, and would not project noticeably deeper within the plot than the outbuilding which is located immediately to the rear of the existing bungalow. Whilst it would have a deeper plan and taller roof height than the existing bungalow it would fit reasonably well within this context as the appeal site is large enough to accommodate the building without appearing cramped or overdeveloped. As such, the proposal would sit comfortably within its context and would respect those attributes which contribute to the local character.
25. For the above reasons, I conclude that the proposal would not cause harm to the character and appearance of the area. I therefore find that it would comply

with Policy DM10 of the LP. Amongst other aspects, these policies seek to secure development of a high standard of design.

26. Equally, the proposal would comply with paragraph 135 of the Framework which requires that development is visually attractive as a result of good architecture, layout and appropriate and effective landscaping.
27. The Council also alleges a conflict with Policy DM4 of the LP with regards to this matter. However, my attention has not been drawn to any words in it that are relevant to this issue. The policy has therefore not been determinative in my decision.

Living conditions

28. Immediately beyond the shared boundary the neighbouring property, St Leonards, has an outbuilding. This does not have side windows facing the appeal site, and the main dwelling is located a generous distance from the boundary. As a result, the proposal would not have a harmful effect on the living conditions of these neighbouring occupiers with regard to light or outlook.
29. The submitted drawings indicate that the first floor windows in the side elevation facing towards St Leonards would be obscure glazed. Had the appeal proposal been acceptable, a planning condition could have been imposed to ensure that these windows were obscure glazed. This would have ensured that the windows would not harm the living conditions of neighbouring occupiers.
30. The side elevation of the opposite neighbouring property, Ashdene, is positioned close to the shared boundary with the appeal site. It has ground floor side windows facing the proposal. The proposal's design incorporates its three bedrooms within a crown roof, with a large flat roof area, which minimises its height and bulk. As the roof form would pitch away from the shared boundary with Ashdene, the proposal would not cause a harmful loss of light or visual intrusion when viewed from the side windows of the neighbouring property.
31. Therefore, in this respect, the proposal would not be contrary to Policy DM9 of the LP which requires, amongst other aspects, that new development should not result in harm to the living conditions of neighbouring occupiers. Neither would it conflict with paragraph 135 of the Framework which states that planning decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

32. The site is located within the Zone of Influence for the Epping Forest Special Area of Conservation (SAC) which is subject to pressures from air pollution and recreational disturbance. However, as the appeal is being dismissed on grounds related to the effect on trees surrounding the appeal site, an Appropriate Assessment under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 is not required. In any event, this would have mitigated harm and would not have amounted to a benefit. For these reasons, I have not considered this matter further.

33. I am sympathetic to the appellants' personal circumstances and understand that the proposal would meet the housing need of three groups in a family environment. At present, the dwelling on site is in poor repair and the appellant indicates that it is not mortgageable or saleable. The appellant indicates that the proposal would minimise energy consumption and the carbon footprint of the house by being constructed to the standard set by the current Building Regulations. These matters are afforded moderate weight in the planning balance.
34. I have found that the proposal would be compliant with various other provisions of the development plan, including in relation to the effect on character and appearance and the living conditions of neighbouring occupiers. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
35. I have also noted comments made about the Council's handling of the case, but this has had no bearing on my consideration of the planning merits of the appeal.

Conclusion

36. Whilst I have not found the development to be inappropriate in the Green Belt I have found that there is insufficient evidence to conclude that the proposal would avoid harm to the nearby trees.
37. The proposal is contrary to the development plan as a whole and there are no other material considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

B Pattison

INSPECTOR