



Appeal Decision

Site visit made on 22 October 2024

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 14 November 2024

Appeal Ref: APP/J1535/W/24/3340205

Bramleys, Foster Street, Hastingwood, Harlow CM17 9HS

- 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 and Mrs Ward against the decision of Epping Forest District Council.
- The application Ref is EPF/2529/23.
- The development proposed is new dormer bungalow utilising existing dedicated access.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) Whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - ii) The effect of the proposal on the openness of the Green Belt;
 - iii) The effect of the proposal on the character and appearance of the area; and
 - iv) Whether any harm by reason of inappropriateness would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

3. The appeal site is formed from the subdivision of the rear garden of Bramleys in Foster Street, a small rural settlement comprising loosely aggregated clusters of residential and commercial buildings. In this context, Bramleys forms part of a short ribbon of detached and semi-detached dwellings set in substantially long plots. It is in the Green Belt.
4. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should only be approved in very special circumstances.
5. Policy DM4 of Epping Forest District Local Plan 2011-2033 Part One Adopted March 2023 (the LP) sets out that the construction of new buildings is inappropriate in the Green Belt with certain exceptions including limited infilling

in rural communities. This is broadly consistent with the exception in paragraph 154e) of the Framework, limited infilling in villages.

6. The Framework does not define what constitutes “limited infilling” and it is therefore a matter for planning judgement. However, the term is commonly understood to be the filling of a small gap in an otherwise continuously built up frontage or the filling of a gap between existing buildings.
7. In this case, there is a dwelling to one side of Bramleys but the other side is widely separated from built development by vegetated land. Irrespective, the appeal site is to the rear of Bramleys and it does not have a highway frontage. Consequently, the appeal site is not a gap in a built-up frontage.
8. The boundaries of the appeal site are formed by the remaining part of the garden of Bramleys, open agricultural land, the long rear garden of The Willows and an undeveloped grass paddock used for grazing ponies. Beyond the paddock, the land to the west is developed for commercial uses. To the east, there appear to be several large outbuildings to the rear of May’s Wish but these are widely separated from the appeal site by the largely undeveloped rear gardens of The Willows, Kernis and Jubilee. Consequently, the appeal site is not contained by built form and it is not a gap between existing buildings.
9. One dwelling would be a limited amount of development and Foster Street appears to be a rural community. Nevertheless, the appeal site is not a gap in a continuously built-up frontage nor is it a gap between existing buildings.
10. Therefore, I conclude that the proposal would not be limited infilling in villages for the purposes of paragraph 154e) of the Framework. It would be inappropriate development in the Green Belt, in conflict with LP policies DM4 and SP5 and the policies in the Framework that protect the Green Belt.

Openness

11. The Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Therefore, the essential characteristics of Green Belts are their openness and permanence. Openness is the absence of development and it has both spatial and visual aspects.
12. The appeal site comprises a large area of amenity grass, with a chicken coop in a post and wire run sited close to the side boundary.
13. The proposal would be a detached single storey dwelling with roof dormer, finished in render and slate. It would occupy a footprint of roughly 189sqm, with eaves about 2.9m and a pitched roof ridge height of around 5.8m. Access would be via a long driveway through the garden of Bramleys. There would be turning and manoeuvring space and parking for 2 vehicles, and a patio to the rear of the dwelling. The increase in the footprint and volume of development would result in a moderate spatial loss of openness of the Green Belt.
14. By virtue of its siting to the rear of Bramleys, the dwelling would not be prominent in the street scene. Moreover, the proposal would be screened in part from views by the vegetated boundaries around the rear garden and by the built form of Bramleys. However, there would be views of the dwelling through the boundary hedgerows, particularly when they were not in leaf and during the dark due to light spill. The dwelling would be visible from Bramleys

and from neighbouring land and nearby properties. It would also be visible in oblique views from the front of the adjoining paddock.

15. There would be an increase in residential activity and comings and goings of future occupiers and their visitors. Vehicular activity through the rear garden of Bramleys, and the parking and manoeuvring of cars next to the dwelling, with associated headlight visual disturbance, would be conspicuous and obtrusive. There would also be residential paraphernalia. Taking into account the surrounding context and rural location, there would be adverse visual impacts due to the significant bulk of the building and its residential use, so widely separated and to the rear of Bramleys. The extension of the residential built envelope towards the wider countryside would have an urbanising effect and it would result in a marked visual loss of openness.
16. Therefore, the proposal would result in a permanent spatial and visual impact on openness. Taking into account the scale and location of the proposal, there would be a moderate and harmful loss of openness of the Green Belt.

Character and appearance

17. The ribbon of residential development of which Bramleys forms part, is characterised by 2-storey dwellings with frontage parking, set in long and largely undeveloped plots. In contrast, the proposal would be a single storey dwelling deeply set back in the rear garden of Bramleys, with a long driveway through the retained garden of the appeal property. Consequently, and irrespective of development elsewhere in the area, the proposal would be discordant and out of keeping with the surrounding built environment.
18. The dwelling would be high quality design with adequate private outdoor space and parking. Nevertheless, the backland arrangement would be poorly related to the prevailing pattern of residential development in the area. It would not make a positive contribution to local distinctiveness or sense of place.
19. Therefore, the proposal would harm the character and appearance of the area. It would conflict with LP policy DM9 which requires, among other things, that proposals contribute to the distinctive character of the area, responding positively to context and having regard to building heights and form and the rhythm of neighbouring plots. It would conflict with the aims of the Framework in relation to being sympathetic to local character, the surrounding built environment and landscape setting, and maintaining a strong sense of place.

Other Considerations

Ancillary use and personal circumstances

20. The proposed dwelling is intended to be occupied by the appellants' elderly parents, who want to continue to live independently but close to family. It would enable the parents to see the appellants' family without the need to travel, which may become increasingly difficult for them. When the dwelling was no longer required by the parents, it would be occupied by another member of the family or alternatively it would be suitable for others with mobility issues or who wished to downsize.
21. That being said, the proposal would be a 3-bed dwelling with all of the facilities for independent day-to-day living. It would be physically separated from the garden of Bramleys, set in its own private curtilage with tall boundaries,

dedicated driveway and parking and large private garden. Future occupiers would not share facilities and the dwelling would not be functionally connected to Bramleys. While it might be occupied by the appellants' parents in the first instance, the proposal would not be ancillary residential accommodation. To all intents and purposes, it would be the creation of a new planning unit.

22. I note the suggestion that the proposal could be treated as a bungalow in its own right but with an option to impose a planning condition that it is ancillary to Bramleys. However, it would be an independent dwelling and it would not be used as part and parcel of the use of Bramleys. A condition would not control ownership nor secure a functional relationship such as would not exist, and it would be difficult to monitor or enforce. Therefore, the development could not be made acceptable through the use of conditions. I acknowledge that the proposal would be a benefit to the appellants, but their personal circumstances carry limited weight in favour of an independent new dwelling.

Other permissions and case law

23. Planning permission Ref EPF/0803/19 relates to 10 detached houses, with new vehicular access and new road, on land on the opposite side of the road. The land was previously developed and the scheme resulted in a reduction in built form and the replacement of large areas of hardstanding with soft landscaping, thereby increasing the openness of the Green Belt. It is not therefore directly comparable to the proposal. Schemes elsewhere that accord with policies that protect the Green Belt do not weigh in favour of the proposal. Commercial and employment sites in the Green Belt are similarly not directly comparable to the proposal and attract neutral weight.
24. The case of Vision Engineering Ltd v SoS and Guildford Borough Council relates to a factory premises in the Green Belt where vehicular access, but not building extensions, was allowed on appeal. The decision letter was quashed insofar as it related to the building extensions because the Inspector failed to give clear and proper reasons for the decision. That case is not directly comparable to this appeal and it does not weigh in its favour.

Housing supply

25. At the time the appeal was made, the Council's Housing Delivery Test (HDT) for 2022 stood at 30%. Footnote 8 of the Framework states that where the HDT indicates that the delivery of housing was below 75% of the requirement over the previous 3 years, then the paragraph 11d) presumption in favour of sustainable development applies. This is the approach taken by the Inspectors in the appeals at Chigwell¹ and Ilford². However, DLUHC has subsequently recalculated the Council's HDT, following change of adopted housing requirement figure for purposes of HDT dated 15 May 2024. Based on the new requirement, the Council's HDT 2022 measurement is 105%.
26. Even if paragraph 11d) had been engaged in this regard, paragraph 11d)i. sets out that the presumption in favour does not apply where the application of specific policies in the Framework, including those that relate to the Green Belt, provides a clear reason for refusing the development proposed.

¹ APP/J1535/W/22/3294576

² APP/W5780/W/21/3266612

27. That being said, the Council's housing land supply and HDT position does not preclude further housing development coming forward to contribute to the government's objective of significantly boosting the supply of homes. Even so, one new dwelling would make a negligible contribution in this regard and carries only limited weight.

Fall back

28. The evidence indicates that, if the appeal should fail, the appellants would be advised to apply for a lawful development certificate for a Class E building. This is a reference to the permitted development (PD) rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 relating to the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse, subject to restrictions including in terms of its height. Case law has established that fallback development, including the exercise of PD rights, is a material consideration in the making of planning decisions.
29. The appellants consider there is "*potential for some form of decent size Class E building*" which, through a convoluted and time consuming approach, could be converted to ancillary accommodation. However, there is little evidence that a building the size of the proposal could be constructed. A PD building would be restricted to 4m in height, and therefore much lower than the proposal. An incidental use is not the same as the primary residential use. In determining whether a building proposed under Class E would be PD, consideration would need to be given to whether it was genuinely and reasonably necessary for a purpose incidental to the enjoyment of a dwelling. The physical size of the building in comparison to the dwelling might be part of that assessment.
30. Even accepting there is a real prospect of a large, although lower, PD building being constructed, it would not have the separate curtilage, private outdoor space, vehicular access or parking as proposed. It would not result in the additional activity associated with a separate dwelling. On this basis, a Class E building would not be similarly or more harmful than the appeal proposal either in terms of the openness of the Green Belt or the character and appearance of the area. The fallback position carries limited weight in favour of the scheme.
31. The appellants consider it would be reasonable and necessary to remove the Class E PD rights from Bramleys if the appeal was allowed. This would prevent the construction of further buildings in the garden without planning permission. However, even if it would be reasonable to remove PD rights, the ability to control further development does not weigh in favour of a new dwelling.

Other matters

32. The accessibility of the appeal site by public transport does not weigh in favour of the proposal. The difficulty of maintaining a large garden similarly does not weigh in favour of a new dwelling.
33. The proposal would provide adequate internal and external living conditions. There would be no adverse impacts on highway safety. Tree protection during construction, landscaping and biodiversity enhancement could be secured by planning condition. Compliance with planning policy in relation to these, and other, matters is a neutral factor that weighs neither for against the scheme.

34. There would be limited economic benefits during construction and occupation of the dwelling. Notwithstanding the benefit to the appellants' family, one new dwelling would make a negligible contribution in terms of support for the local community. These matters carry limited weight in favour of the scheme.

Habitats sites

35. The appeal site is within the 3-6.2km Zone of Influence of Epping Forest Special Area of Conservation (EFSAC). The EFSAC comprises extensive wood pasture with a variety of habitats including Annex I forest and heath habitats and it supports Stag beetle, an Annex II species. The proposal would result in increased recreational pressure and atmospheric pollution on the EFSAC that, in combination with other plans or project, would result in a likely significant effect on the integrity of the EFSAC in the absence of mitigation. The Council has adopted a strategic approach to mitigation based on financial contributions.
36. A signed and dated unilateral undertaking (the UU) has been provided. This includes obligations to provide financial contributions to mitigate and monitor air pollution impact on EFSAC in accordance with the Epping Forest Air Pollution Mitigation Strategy; and towards infrastructure enhancement projects to mitigate recreational impacts in accordance with Epping Forest SAC Strategic Access Management and Monitoring (SAMM) Strategy.
37. Planning obligations in this regard are necessary to make the development acceptable in planning terms, directly related to it, and fairly and reasonably related in scale and kind to the development. Nevertheless, the avoidance of adverse effects on the integrity of the EFSAC is a neutral matter that weighs neither for nor against the proposal.

Green belt balance

38. I have concluded that the proposal would be inappropriate development in the Green Belt, in conflict with local and national policies that protect the Green Belt. There would be a harmful loss of openness of the Green Belt. In accordance with the Framework, these matters attract substantial weight. The harm to the character and appearance of the area weighs moderately against the proposal.
39. On the other hand, there are no other considerations that would clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness and other harm. Therefore, the very special circumstances necessary to justify the proposal do not exist.

Conclusion

40. For the above reasons, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR