



Appeal Decision

Site visit made on 15 January 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th February 2025

Appeal Ref: APP/J1535/W/24/3347690

Land adjacent to Jubilee Bungalow, Bournebridge Lane, Stapleford Abbots, Romford RM4 1LT

- 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 Kyson Design Ltd against the decision of Epping Forest District Council.
 - The application Ref is EPF/2456/23.
 - The development proposed is build two new 5-bedroom dwellings on the current vacant plot of land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice includes reasons for refusal in relation to access visibility (No 1) and connection to the public highway (No 2). Following the submission of appeal evidence, the Council no longer wishes to pursue these reasons for refusal. It is also content that a reason for refusal in respect of protected species (No 5) can be addressed by conditions. I have had regard to this in setting out the main issues below.
3. Since the appeal was lodged the National Planning Policy Framework (2024) (the Framework) was revised and the 2023 Housing Delivery Test measurement (HDT) results were published. I have allowed the Council and appellant the opportunity to comment upon these, and I have taken any submissions into account in determining this appeal.

Main Issues

4. The main issues are:
 - the effect of the proposed development upon the Epping Forest Special Area of Conservation (the SAC) as a designated habitats site;
 - whether or not the proposed development would be inappropriate development in the Green Belt;
 - the effect of the proposed development upon Green Belt openness; and,
 - if the proposed development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and if so, would this amount to the very special circumstances required to justify the proposed development.

Reasons

Habitats sites

5. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require that where a plan or project is likely to result in a likely significant effect (LSE) on a European site (in this case the SAC), a competent authority is required to make an appropriate assessment (AA) of its implications on the integrity of the European site, in view of its conservation objectives. Any LSEs arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
6. The SAC is ancient wood-pasture with habitats and species of high conservation value. It has three qualifying habitats (Atlantic beech forests, European dry heaths, Northern Atlantic wet heaths) and one species (the Stag Beetle). The SAC conservation objectives are to achieve a favourable conservation status of the qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying features, the population and distribution of the qualifying species, the supporting processes on which the qualifying habitats and species rely, and the structure and function of the qualifying species' habitats.
7. The adopted Epping Forest Interim Air Pollution Mitigation Strategy (2020) (the IAPMS) states that detailed traffic modelling has found that new housing and employment development within the district is likely to result in increased traffic on certain highways¹ through and close to the SAC. Increased air pollution from nitrous oxides (NO_x), ammonia (NH₃) and sulphur dioxide (SO₂) from vehicles will adversely affect the SAC. Emissions can be directly toxic to vegetation, result in increased nitrogen deposition rates, eutrophication of water and soils, increase soil fertility and affect the quality of semi-natural, nitrogen-limited terrestrial habitats².
8. Development resulting in increased traffic on identified highways would have LSEs upon the SAC. There is not full certainty as to the routes new occupiers would use, the number of additional vehicle trips would be limited, as would associated additional emissions. However, based upon the evidence before me any increase atmospheric pollution would result in LSEs. Given their potential to travel via routes through the SAC, adopting the precautionary principle, I cannot rule out that future occupiers would not travel on roads that would result in some increased atmospheric pollution at the SAC, alone and in combination with other development. The appellant does not dispute this matter and has stated they would be willing to make the necessary contribution towards mitigation measures.
9. The IAPMS sets out a strategic district-wide approach to mitigating air quality impacts upon the SAC. This is through the imposition of conditions upon planning permissions (such as in respect of broadband and electric vehicle charging points) and securing a per dwelling financial contribution for the implementation of strategic mitigation measures and monitoring activities. Mitigation contributions are to be used for measures such as funding wider electric vehicle charging points (EVCP), introducing a clean air zone and traffic management measures.
10. Natural England's (NE's) initial consultation response stated there would be no LSEs upon the SAC. However, it confirmed this was an error and their revised

¹ Figure 1 of the Epping Forest Interim Air Pollution Mitigation Strategy (2020).

² Section 3.1 and Table 1 of the Epping Forest Interim Air Pollution Mitigation Strategy (2020).

consultation response to the proposal confirms there would be an air pollution pathway impact as a result of the development, so it would result in LSEs upon the SAC. In consequence, the appeal scheme must secure mitigation measures, including a financial contribution towards the IAPMS, to mitigate the LSEs.

11. This appeal scheme could be the subject to planning conditions in respect of broadband and on site EVCP. However, it is necessary to secure a financial contribution to fund the IAPMS strategic mitigation measures. While the appellant indicates they are willing to pay contributions, I am not aware any payments have been made, and there is no planning obligation before me securing contributions.
12. The Planning Practice Guidance³ advises that in exceptional circumstances a condition for an obligation might be appropriate where there is clear evidence the delivery of a development would otherwise be at risk, such as for particularly complex developments. However, this is not demonstrated. Moreover, Section 63(5) of the Regulations states the competent authority may agree to a plan or project, only after having ascertained that it will not adversely affect the integrity of habitats sites. Therefore, a condition to propose a planning obligation does not secure mitigation as required by the Regulations.
13. This scheme makes inadequate provision to mitigate atmospheric pollution impacts and thus maintain the integrity of the SAC. In the absence of appropriate mitigation, the scheme would have LSEs on the integrity of the SAC. The appellant has not demonstrated there are no alternative solutions to providing unmitigated housing at the site. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SAC. Given a competent authority may agree to a plan or project, only after having ascertained that it will not adversely affect the integrity of Habitats sites, Regulation 63(5) of the Regulations precludes the development from proceeding.
14. The appeal scheme would have LSEs upon the SAC as a designated habitats site. Therefore, it would conflict with Policies DM2 and DM22 of the Epping Forest District Local Plan (2023) (the LP), which seek to protect the district from the impacts of air pollution and ensure development secures appropriate mitigation to ensure it has no adverse effect upon the integrity of the SAC.

Inappropriate development

15. Paragraph 142 of the Framework states the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 153 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 states the construction of new buildings should be regarded as inappropriate development subject to certain listed exceptions. Paragraph 155 of the Framework was introduced by the recent changes. It states the development of homes should not be regarded as inappropriate where specific criteria are met.
16. Policy DM4 of the LP explains that within the Green Belt permission will not be granted for inappropriate development, except in very special circumstances, in accordance with the Framework. It then goes on to list exceptions to inappropriate development similar to those set out in the previous (2023) iteration of the

³ Paragraph: 010 Reference ID: 21a-010-20190723.

Framework, but as it pre-dates the latest Framework, it does not include the new provisions of paragraph 155 of the Framework, so is not fully consistent with it.

17. An exception listed at C) (v) of Policy DM4 is limited infilling in rural communities. There is a similar exception at paragraph 154e) of the Framework for limited infilling in villages. No differences are put to me between 'village' and 'rural community', and the Council and appellant agree the site is within a rural community. The dispute is whether the appeal scheme is 'limited infilling'.
18. The Framework does not define 'limited infilling'. However, the supporting text of DM4 explains it means the development of a small gap in an otherwise continuous built-up frontage. It also includes the infilling of small gaps within built development. It states limited infilling should be appropriate to the scale of the locality and should not have an adverse impact on the character of the countryside or the local environment.
19. The appellant advocates the scheme comprises the infilling of a small gap within built development, and the Council's case does not justify an alternative finding. I also see little reason to disagree with the appellant's substantive analysis in respect of matters such as the pattern of development, spacing, setback and façade widths. However, the dwellings along this part of Bournebridge Lane are bungalows with some roof accommodation that are of limited heights.
20. The appeal dwellings would be sizeable, with ridge heights of 7.5m and 8.1m to their respective ridge parts with higher chimney stacks. The new dwellings would be significantly higher above ground levels than Jubilee Bungalow, Rose Cottage and Spindrift. The difference to Jubilee Bungalow would be exacerbated by the land slope. Though Top of the Hill and Fairlawn to the east are on higher land, the appeal dwellings would also appear visually much taller buildings.
21. The proposed height and scale would, in context, appear significantly greater than those dwellings within their closest visual context. Their proximity and relationship with Bournebridge Lane mean these bungalows are the buildings within which the appeal dwellings would have the closest visual relationship and viewed closest in the context of. Varying combinations of the setback from the lane and the appeal site, the distances and relationship with the new dwellings, means taller buildings such as Greenacres Farm and Butcher's Farm have a more distant relationship. The existence of wider taller buildings does not mitigate or outweigh the height differences between the new dwellings and visually closest dwellings.
22. While I note the Council's comments in respect of Policy DM10(A), I take the design to be the general forms and use of materials, and the internal size and layout to reflect just that, and not their external height. In context the proposed development would not be limited, and so would not constitute limited infilling. Existing hedgerows and additional landscaping could not adequately mitigate this.
23. Though it would be broadly aligned with Jubilee Cottage's frontage wall, because it is a sizeable, pitched roof building forward of existing and proposed front facades of the dwellings, the detached garage of the western dwelling would visually not appear to infill, which would further add to my concerns.
24. Framework paragraph 154g) includes the... the partial or complete redevelopment of previously developed land, ..., which would not cause substantial harm to Green Belt openness. The Framework definition of previously developed land (PDL)

includes land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land. Although it should not be assumed the whole of the curtilage should be developed.

25. The appeal site has been used for play space and keeping horses by owners of Jubilee Bungalow. It is divided from Jubilee Bungalow's formal garden area by post and rail fencing with wire. This is viewed as a significant demarcation between what appears as an informal field and the formal more manicured garden area, so it appears very different in character. It does not visually appear part of the same unit, intimately or necessarily functionally linked. The appeal site is also of a considerable size and some of it is quite distant from the dwelling. I am not satisfied the appeal site as a whole can be considered to fall within a curtilage, so does not constitute PDL. Therefore, the exception at paragraph 154g) is not met.
26. Paragraph 155 of the Framework states the development of homes should not be regarded as inappropriate where all of criteria (a) – (c), and if relevant (d) applies. In respect of criteria (a) the Framework defines 'grey belt' as land in the Green Belt comprising... any other land that, does not strongly contribute to any of the purposes (a), (b), or (d) in paragraph 143. But it excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.
27. In-light of my findings in respect of designated habitats sites, footnote 7 provides a strong reason for refusing the development. Therefore, the appeal scheme does not meet paragraph 155a), and so cannot meet the exception at paragraph 155 of the Framework, even if I were satisfied the appellant has adequately demonstrated the rest of criteria (a), and criteria (b) and (c) are satisfied.
28. Therefore, for the reasons set out above, the proposed development would be inappropriate development in the Green Belt, which as identified by paragraph 152 of the Framework, would be, by definition, harmful to the Green Belt.

Openness

29. The appeal site field is largely undeveloped and free from development. Whether or not the proposed development could be defined as urban sprawl, it would result in a significant addition of built development by virtue of two sizeable dwellings, associated subdivision of the appeal site, garaging, hardstanding areas such as access, circulation and parking areas, paraphernalia, associated activity and comings and goings. Therefore, the proposed development would result in a marked adverse effect upon the spatial openness of the Green Belt.
30. The appeal site is largely open with only limited screening from boundary trees and hedgerows, due north and existing dwellings to the east and west. The new dwellings would be of some significant height and scale, with garaging, refuse stores, boundary treatments, being more limited, but nevertheless noticeable. Given this and the nature and levels of the surrounding landscape, the harm to visual openness would be significant, and apparent from a significant length of the public highway, a field to the north and a significant extent of the landscape to the south, including a public right of way.
31. Therefore, for the reasons set out above, the proposed development would be harmful to the openness of the Green Belt, conflicting with the aims of paragraph

142 of the Framework insofar as this aims to keep land permanently open. As there is no reference to an overriding aim to keep Green Belt open, I have not specifically concluded against Policy DM4 of the LP in respect of this main issue.

Other considerations

32. The proposed development would result in moderate economic benefits during construction, and once complete limited on-going benefits to the local economy, including through on-going spend, and small contributions to the vitality of local and rural communities, services, and facilities. The Council has only achieved 66% of its HDT measurement, and the proposal would meet a number of Framework objectives, including those of significantly boosting the supply of housing and promoting a more effective use of land. Given the recent under delivery as measured by the HDT results, I attribute the contribution of two dwellings a moderate benefit to supply.
33. Subject to the imposition of suitably worded conditions to secure high-quality materials and new landscaping, the appeal scheme might result in a minor overall benefit to the character and appearance of the area. It could secure biodiversity enhancements. Having regard to their scope, and the various measures indicated, these would be likely to be moderate overall benefits, attracting moderate weight in favour of the scheme. It is possible there might be overall benefits in respect of drainage and remediation from contamination, which would attract limited weight in favour of the appeal scheme.
34. Were I to agree the proposed development would be or subject to conditions could be made compliant with policies in respect of matters such as the living conditions of future and neighbouring occupiers, avoiding harm to protected species, arboricultural protection, site electric vehicle charging, superfast broadband, accessibility measures, parking and highway access design specifications, these would be neutral matters in the balance.
35. As a signed planning obligation securing mitigation in accordance with the IAPMS, would mitigate the LSEs and not be a benefit, this would be a neutral matter. The proposals to integrate various measures to attain low carbon, water efficient dwellings, and renewable energy technologies is noted. However, it is unclear that these would result in any other than a minor overall benefit in respect of net renewable energy generation.

Other Matters

36. Two fundamental concerns were expressed by the Highway Authority (HA) due to the absence of direct connection with the public highway and concerns over visibility splays. The appellant has provided the details of a contract and confirms it has the permission of the landowner to provide an access of the necessary width and specifications. The HA is now satisfied access to the public highway is achievable, and subject to the imposition of a suitably worded pre-commencement condition to implement all necessary works.
37. The appellant's further surveys and measurements demonstrate that to the west of the access, 76m visibility can be achieved with vegetation cut back within the highway, and 61m visibility to the centre line. Surveys indicate an 85th-percentile speed of 26mph and a maximum of 31mph to the east, and the appellant can (based upon a speed of 30mph) achieve 43m visibility. The arrangements can

achieve 40.1m forward visibility for right hand turn vehicles. On this basis the HA raises no objection. I am satisfied the provision and maintenance of the access could be secured by suitability worded planning conditions. The provision of safe and satisfactory access arrangements would be neutral matters.

38. Paragraph 99 of Circular 06/2005 confirms that it is essential the presence or otherwise of protected species, and the extent that they may be affected is established before permission is granted, otherwise all relevant material considerations may not have been addressed. However, surveys should not be required unless there is a reasonable likelihood of them being present and affected by the development.
39. The site is within the amber Great Crested Newt (GCN) risk zone. I am informed there are 13 ponds within 500m, including one approximately 90m west which is suitably connected to the site, and the site encompasses some suitable terrestrial GCN habitat. The situation produces an amber risk score (Offence Likely) on the NE rapid risk assessment. The revised Preliminary Ecological Appraisal (PEA) suggests the potential loss of or significant disturbance of a significant area of suitable GCN habitat⁴. On this basis it could not be ruled out there being a reasonable likelihood of GCN being present and affected by the development.
40. The appellant's PEA states that eDNA surveys will be required of any ponds within 100m, but the appellant has been unable to access the pond. Having undertaken the NE risk assessment process, the appellant proposes a condition to require that before any works that will impact the resting or breeding place of a GCN are undertaken, the submission of either an NE licence under the Regulations, or a statement from NE confirming the activity will not require a licence. Mitigating potential harm to protected species would be a neutral matter.
41. While I note both parties' views upon precedent, as the appeal is to be dismissed, no new dwellings would be erected as a consequence of my decision upon this appeal. Therefore, I have not contemplated this matter further.

Planning & Green Belt Balance

42. The proposed development would be inappropriate development that would, by definition, harm the Green Belt, and would result in harm to the openness of the Green Belt. In accordance with the Framework, substantial weight should be given to any harm to the Green Belt. In addition to this, the proposed development would result in LSEs upon the SAC. In the absence of mitigation being secured, section 63(5) of the Regulations precludes the proposal from proceeding. The matters weighing against the scheme attract very substantial weight.
43. All of the factors and benefits set out by the appellant, do not clearly outweigh the harm to the Green Belt and the harm to the integrity of the SAC. Consequently, the very special circumstances necessary to justify the proposal do not exist, so the proposal conflicts with Framework paragraphs 142 and 153, and Policy DM4 of the LP, which in combination and amongst other things, seek to preserve Green Belt openness and protect it from inappropriate development, unless very special circumstances exist.

⁴ Page 17 of the Preliminary Ecological Appraisal (revised 25/06/2023).

44. In-light of the foregoing, in accordance with paragraph 11d) of the Framework, the application of policies that protect areas or assets of particular importance provide a strong reason for refusing the development, for which the policies of the Framework have not been met. Consequently, the tilted balance does not apply, and the harm from the development significantly outweighs the benefits.

Conclusion

45. The proposed development conflicts with the development plan read as a whole, the Framework read as a whole, and the Regulations. There are no material considerations, including the policies of the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR