



Appeal Decision

Site visit made on 21 January 2025

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th February 2025

Appeal Ref: APP/J1535/W/24/3347150

The Bungalow, Paynes Lane, Nazeing, Waltham Abbey EN9 2EZ

- 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 Peter Pizzo against the decision of Epping Forest District Council.
 - The application Ref is EPF/1398/23.
 - The development proposed is the conversion of existing garage into 4 bedroom bungalow involving rear extension and loft conversion.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. Whilst I have had regard to the revised national policy as a material consideration in my decision-making, planning decisions must still be made in accordance with the development plan unless material considerations indicate otherwise. Comments have been sought from both parties in relation to the revised Framework and any comments received have been taken into consideration within my decision.

Main Issues

3. The main issues are:
 - the effect of the proposed development on flood risk; and
 - whether the development is inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the 'Framework') and relevant development plan policies.

Reasons

Flood risk

4. The appeal site is an area of land to the east of the dwelling, The Bungalow, and is currently occupied by a garage outbuilding, a further outbuilding and some residential garden land. It is located within Flood Zone 3. The proposed development would convert the existing garage outbuilding into a separate four bedroom dwelling and includes a rear extension and loft conversion.
5. Paragraph 170 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at

highest risk. It goes on to state that where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

6. Paragraph 176 of the Framework states that applications for some minor development and changes of use should not be subject to the sequential test, nor the exception test, but should still meet the requirements for site-specific flood risk assessments set out in footnote 63. This footnote requires a site-specific flood risk assessment be provided for all development in Flood Zones 2 and 3. Paragraph 181 of the Framework also states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere and, where appropriate, applications should be supported by a site-specific flood risk assessment.
7. Policy DM15 of the Epping Forest District Local Plan 2011-2033 Part One (the LP) 2023 states that the Council will require all development proposals to demonstrate that they avoid and reduce the risk of all forms of flooding to future occupiers and do not increase the risk of flooding elsewhere and where required by national planning policy and guidance, development proposals must be informed by a site specific flood risk assessment.
8. Whilst the appeal site is located within flood zone 3, the appellant has not provided the necessary site-specific flood risk assessment, as required by Policy DM15, to establish the risks of flooding from all sources, the potential of the proposed development to increase flooding elsewhere and measures to deal with these effects and risks. This assessment is intended to establish whether the principle of development is acceptable in terms of flood risk and therefore a pre-commencement condition to secure such an assessment would not be acceptable in this instance.
9. Policy DM16 and DM18 of the LP require proposals for new development to seek to manage surface water as close to its source as possible using the most appropriate sustainable drainage solutions. No details of surface water drainage on the appeal site have been provided. However, I am content that a drainage strategy could be secured by pre-commencement condition, as confirmed by the Council, and therefore, subject to this condition, the proposal would not conflict with these policies.
10. However, due to the location of the appeal site within flood zone 3 and without the evidence to suggest otherwise, in the form of a site-specific flood risk assessment, the proposed development would likely result in an increased flood risk on the appeal site and in the surrounding area. It would therefore conflict with Policy DM15 of the LP and the relevant sections of the Framework, as outlined above.
11. Whilst included in the Council's reason for refusal, Policies DM17 and DM21 of the LP are not relevant to this main issue as they largely relate to the protection of watercourses, local environmental impacts, pollution and land contamination, rather than flood risk.

Whether it is inappropriate development

12. The appeal site is also located within the Green Belt and includes removal of the existing conservatory and addition of a rear extension and loft conversion to the existing garage outbuilding.

13. Paragraph 154 of the Framework indicates that development in the Green Belt is inappropriate subject to a number of exceptions. Under paragraph 154 (c) of the Framework, these exceptions include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Policies SP5 and DM4 of the LP sets out the Green Belt boundaries and also indicates that the above exception would not constitute inappropriate development in the Green Belt, consistent with the Framework's approach.
14. The Council have outlined that the resultant building would have a 20% greater volume than the existing building, which, under this exception, they do not consider to be a disproportionate addition over and above the size of the original building. I agree with this finding and therefore the extension of the existing building would fall under the exception in paragraph 154 (c) of the Framework.
15. However, the proposed development also includes the conversion of the outbuilding into a separate residential dwelling. Paragraph 154 (h) also lists other forms of development which would be considered not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These includes (iv) the re-use of buildings provided the buildings are of permanent and substantial construction.
16. The appeal building is of permanent and substantial construction. I am also satisfied that the proposed re-use of the building would not conflict with the purposes of the Green Belt as outlined in Paragraph 143 of the Framework, as it is already in situ and in use for domestic purposes. The Council raise no objection in this regard.
17. In considering the concept of openness, the courts have found that it broadly has two dimensions; spatial and visual. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension.
18. The Council contend that the loss of the garage would result in additional outdoor vehicle parking at The Bungalow and would introduce additional hardstanding on the appeal site. However, the hardstanding shown on the submitted plans is already present. Furthermore, during my site visit I noted that outdoor vehicle parking was already prevalent on the appeal site, to which the proposal would not contribute significantly further. Therefore, I consider that the proposed re-use of the building would preserve both the spatial and visual openness of the Green Belt. The proposed re-use of the building would therefore fall under the exception in paragraph 154 (h)(iv) of the Framework.
19. Subsequently, the development is not inappropriate development in the Green Belt as it would fall under the exceptions listed in paragraph 154 (c) and 154 (h)(iv) of the Framework. It also accords with Policy SP5 and DM4 of the LP which seek to protect the Green Belt.
20. Whilst included in the reason for refusal, Policy SP6 of the LP is not relevant to this main issue, as it does not relate specifically to the Green Belt.

Planning Balance

21. The proposed development would contribute to the housing supply in the area with a new dwelling. However, due to the nature of the proposed development, as a single dwelling, this is only a small contribution to the housing supply which is given only limited weight. Nevertheless, the appellant indicates that the Council currently are failing to meet their Housing Delivery Test (HDT). Therefore, the test in paragraph 11(d) of the Framework should be applied.
22. However, whilst the framework advocates granting planning permission where there are no relevant development plan policies, this is unless, in accordance with paragraph 11(d)(i), the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. The harm resulting from an increased flood risk identified is such that the policies in the Framework relating to areas at risk of flooding provide that strong reason for refusing the development. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposal.

Other Matters

23. The Council have stated that the development has the potential to result in a net increase in traffic using roads through the Epping Forest Special Area of Conservation (EFSAC) and have included this as a reason for refusal. However, the Council, through the development of an Interim Air Pollution Mitigation Strategy (IAPMS), has provided a strategic, district wide approach to mitigating air quality impacts on the EFSAC through the imposition of planning conditions and securing of financial contributions for the implementation of strategic mitigation measures and monitoring activities. However, whilst the appellant appears willing to provide a legal agreement to secure a financial contribution in relation to this impact upon air pollution, this has not been submitted as part of the application or the appeal.
24. Whilst the Council's reason for refusal also includes the adverse impact of recreational pressures on the EFSAC, their report outlines that the appeal site is outside of the Zone of Influence in this regard. Therefore, the development will not result in a likely significant effect on the integrity of the EFSAC as a result of recreational pressures.
25. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

26. Whilst I have found that the proposed development would not be inappropriate development in the Green Belt, without the evidence to suggest otherwise, it would be likely to result in an increase flood risk on the appeal site and in the surrounding area.

27. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR