



Appeal Decision

Site visit made on 28 January 2025

by **M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th February 2025

Appeal Ref: APP/J1535/W/24/3347206

Land adjacent to Willows End, Cumley Road, Toot Hill CM5 9SJ

- 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 Farthing against the decision of Epping Forest District Council.
 - The application Ref is EPF/0486/24.
 - The development proposed is the construction of new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In December 2024, the Government published a revised National Planning Policy Framework (the Framework). Although some sections and paragraph numbers have changed, the revisions do not relate to anything that is fundamental to the main issues in this appeal. The parties would not therefore be prejudiced by reference to the revised Framework.

Main Issues

3. The main issues in relation to this appeal are;
 - Whether the effect of the proposal on the openness of the Green Belt is a relevant factor in considering the appeal, having regard to local and national planning policy and, if so, what effect the proposal would have in that regard;
 - The effect of the proposal on the character and appearance of the area; and
 - The effect on the living conditions of the occupants of Elm Cottage, with particular regard to outlook.

Reasons

Openness

4. Paragraph 154 of the Framework identifies that the construction of new buildings within the Green Belt should be regarded as inappropriate, save for a number of specific exceptions, including limited infilling in villages. The parties agree that the proposed 2-storey dwelling with basement would not be inappropriate development in the Green Belt. I see no reason to take a different view.

5. In those circumstances, caselaw is clear that it is not necessary to consider whether any harm would arise to the openness of the Green Belt¹. To do so would effectively negate the objective of the Framework in recognising that certain types of buildings need not be excluded. Therefore, once a particular development is found to be “not inappropriate” in principle, the question of the impact of the building on the openness of the Green Belt no longer falls to be considered.
6. The Council refers me to Policy DM12 of the Epping Forest District Local Plan, Part One (EFDLP) 2023. It advises that within the Green Belt basement developments may be considered acceptable, provided they do not result in disproportionate additions over and above the size of the original building or have a greater impact on the openness of the Green Belt, either themselves or cumulatively with other developments. Caselaw advises that openness can be perceived both visually and spatially².
7. The proposed dwelling would include a basement contiguous with the ground floor. The development would be formed following the demolition of the remains of the dwelling left behind following the construction of a previous replacement dwelling³. Therefore, the proposal does not amount to the creation of a basement to a pre-existing building. Whether or not the proposed basement is the equivalent of a 4 bed 6-person accommodation according to the Nationally Described Space Standards (NDSS), it does not automatically render it disproportionate.
8. Volumetrically the basement would be the largest space within the proposed dwelling. However, the Council has not provided any evidence as to what proportion of the overall floor area or volume of the dwelling it would comprise, such that I could consider it as disproportionate. From the submitted plans it seems that the above ground building would be larger than the basement in both floor area and volume.
9. Even if I could share the Council’s view that the proposed basement is disproportionate, the plans indicate that there would be no evidence of its existence above ground, other than a single lightwell to the side passage. This feature alone would not physically or visually have a material impact on the openness of the Green Belt. As I have discussed, the impact of the above ground dwelling on the openness of the Green Belt is accepted by it not being inappropriate development.
10. For clarity, I should stress that my position here relates purely to compliance with Green Belt policy. The effect of the proposal on the character and appearance of the area remains to be considered in respect of the second main issue.
11. For the above reasons, I find that the proposed dwelling and its associated basement would not have a greater impact on the openness of the Green Belt. Conflict does not therefore arise with Policy DM2 of the EFDLP or paragraph 142 of the Framework.

Character and Appearance

12. Cumley Road contains properties of individual designs and materials, predominantly of a low bungalow or chalet-style appearance set behind wide front

¹ Lee Valley Regional Park Authority v Epping Forest District Council [2015] EWHC 1471 (Admin)

² With reference to the Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466 and (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3 judgements.

³ Planning application reference EPF/0941/21.

gardens. It therefore has a mixed and spacious residential character where the low heights of and space between the dwellings allows the countryside setting to be appreciated.

13. The properties within the street typically have space between their southern elevations and their southern boundaries that is greater than the width of a standard domestic path. This is exemplified by the relationship between No 3 and No 1 Cumley Road. Other properties such as Elm Cottage and Pyrigo appear to have infilled this gap with development including garages that have taken their built envelope to the southern boundary. However, these structures are generally set back and single storey with flat or low roofs, such they appear subordinate with a degree of visual separation maintained between the main parts of the neighbouring dwellings.
14. The proposal would result in the dwelling being located close to the boundary with Elm Cottage which has a narrow, unassuming and low-set appearance even with the gable to the front. I acknowledge that the former dwelling that occupied the appeal site was in a similar position relative to the southern boundary. However, this seems to have already been an anomaly to the established pattern of development within the street scene and it had a significantly lower ridge height and limited depth⁴. Whilst there would be a narrow pathway on either side of the boundary fence, the degree of separation between the proposed dwelling and Elm Cottage would not reflect that found elsewhere within the street scene as described above. From my observations and the evidence presented it appears that the proposed dwelling would occupy a narrower plot width than those which lie adjacent.
15. The proposed dwelling would have side facing gables with the ridge line pushed back into the site and a similar eaves height to neighbouring properties. However, it would be higher overall than that of Willows End despite that property forming the bookend to the cul-de-sac. It seems to me that the proposed dwelling whilst well separated from Willows End, would appear squeezed onto the site with specific regard to its height and proximity to Elm Cottage. Its prominence would be exacerbated by its position slightly forward of both adjacent properties. The effects of perspective would not prevent a cramped appearance and the varied street scene would fail to mitigate its impact.
16. I also note that the plans indicate a fence would mark the northern boundary of the dwelling but this does not correlate with the northern boundary of the site edged red⁵. It is unclear what, if anything, would happen to the land in-between. It would be within the appellant's gift to improve the visual relationship with Elm Cottage if there is additional land within the appeal site that could be utilised.
17. I acknowledge that there may be dwellings with a closer relationship found in Hill Crest Road and Epping Road. Nonetheless, it is within the context of Cumley Road specifically, that the proposal would be viewed.
18. On balance, the overall height and position of the proposed dwelling relative to Elm Cottage would result in an adverse effect on the character and appearance of the area. It would therefore conflict with Policy DM9 of the EFDLP which requires development proposals to relate positively to their locality having regard to building

⁴ As exemplified at figure 2 of the appellant's statement of case and figure 4 of the Council's statement of case.

⁵ As shown on the existing location plan contained on the existing plans and elevations drawing number 01.

heights and the form, scale and massing around the site. Conflict is also found with the Framework in respect of achieving well designed places.

Living Conditions

19. The proposed development would replace a previous dwelling in a similar position relative to the boundary with Elm Cottage to the south. The plans clearly indicate that it would be of a greater scale being taller with a more steeply pitched roof and it would extend significantly further into the plot than the original dwelling.
20. The Council is concerned that this increase in scale would result in a dominating effect to the north flank of Elm Cottage and its walkway access to the rear garden. During my visit I observed that there is a door and 2 windows on the northern elevation of Elm Cottage. From the evidence before me and my site visit, I have been unable to determine the type of room(s) they serve, including whether they are a type of living space where outlook would be expected. The appellant has not provided evidence to demonstrate otherwise.
21. The existing boundary fence and remnants of the previous bungalow will already affect the outlook from these windows to some degree. Given the uncertainty regarding these windows and the potential harm that could be exerted on the neighbouring occupiers' living conditions, through the increased enclosure of space from the scale and height of the proposal, it would be reasonable to take a precautionary approach.
22. The passageway along the side of the dwelling is not private amenity space. Any additional enclosure of the passageway by the proposed development would be unlikely to be harmful given that the good-sized rear garden would be unaffected.
23. The appellant has failed to demonstrate that the proposal would not result in harm to the living conditions of the neighbouring occupiers of Elm Cottage, with specific regard to outlook. Therefore, the proposal would conflict with Policy DM9 of the EFDLP which amongst other things, requires development proposals to take account of the privacy and amenity of the development's neighbours. Conflict is also found with paragraph 135(f) of the Framework which seeks a high standard of amenity for existing and future users.

Other Matters

24. The appeal site lies within the Zone of Influence of the Epping Forest Special Area of Conservation (SAC), which is afforded protection under the Conservation of Habitats and Species Regulations 2017. The Regulations require that permission may only be granted after having ascertained that the development would not affect the integrity of the designated habitat. Neither party has provided me with the Council's Epping Forest Interim Approach to Managing Recreational Pressure (2018) which is said to set out the approach to mitigation in the form of financial contributions.
25. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the SAC, including through the undertaking of an appropriate assessment (AA) including consideration of any suggested mitigation. The need for mitigation in the form of financial contributions is not disputed and the appellant has submitted a draft unilateral undertaking (UU) to

this effect. However, the UU has not been signed or dated and does not include a plan, such that I cannot attribute weight to it.

26. I am satisfied that as the requirement for the proposal to not adversely affect the structural stability of the host building, neighbouring buildings or other infrastructure is set out within Policy DM12 of the EPDLP, it is not a matter to be left to be dealt with by the building regulations procedure. The appellant's Desk Study and Basement Impact Assessment recommends that intrusive geotechnical ground investigation to confirm ground conditions and groundwater levels be undertaken. Were the scheme acceptable in all other regards I would need to be certain that the proposed development would not give rise to land stability concerns, prior to making a decision.
27. A lack of harm in respect of highway safety, NDSS, trees and landscaping, contaminated land and drainage is to be expected of new development and does not weigh in favour of the proposal.

Planning Balance and Conclusion

28. The development would not amount to inappropriate development within the Green Belt and, as such, it is not necessary to consider the effect on the openness of the Green Belt as a distinct matter. In any event, I have found that the proposed basement would not in and of itself be harmful to the visual or spatial qualities of the Green Belt. This weighs neutrally in the planning balance.
29. I have found that the proposal would be harmful to the character and appearance of the area and the living conditions of the occupiers of Elm Cottage, with regard to outlook. The proposal would conflict with the development plan and there are no material considerations which indicate a decision should be made otherwise than in accordance with it.
30. There is no need for me to undertake an AA or consider the need for further ground investigation because the scheme is unacceptable for the reasons identified. These matters would not lead me to a different conclusion. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR