



Appeal Decision

Site visit made on 25 February 2025

by **G Dring BA (Hons) MA MRTPI MAUDE**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/J1915/W/24/3354622

Rooks Wood, Thorley Lane East, Thorley, Bishops Stortford CM23 4JU

- 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 Christopher Hennem, The Planning Consultancy Ltd against the decision of East Hertfordshire District Council.
 - The application Ref is 3/24/0085/FUL.
 - The development proposed is construction of new residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A revised National Planning Policy Framework (the Framework) was published in December 2024. Both main parties have had the opportunity to comment on any implications of the revised Framework on the appeal during the appeal process. Any reference to the Framework throughout this decision is to the latest version including the revised paragraph numbers.

Main Issues

3. Taking into account the Council's reasons for refusal and the evidence before me I consider the main issues are:
 - whether the proposal would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on a local green space;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on trees, ecology and biodiversity;
 - whether the proposal would provide suitable living conditions for future occupants with regard to access to daylight and sunlight; and
 - whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances required to justify the proposal.

Reasons

Inappropriate development

4. The appeal site is located within the Green Belt. Policy GBR1 of the East Herts District Plan October 2018 (EHDP) states that planning applications within the Green Belt, will be considered in line with the provisions of the Framework. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states that development in the Green Belt is inappropriate unless an exception applies.
5. The appellant has not directly referred to any of the exceptions set out under paragraph 154 of the Framework. However, the Appellant's Planning Statement contends that the proposal would represent limited infilling. Paragraph 154 e) of the Framework is an exception that relates to limited infilling in villages. The terms limited and infilling are not defined in the Framework and these factors need to be assessed as a matter of planning judgement.
6. Whilst the appeal site has development to either side, the length of the frontage is significantly more than exists for other individual plots that abut the road to the north of Thorley Lane East. I therefore do not find that the gap between the existing buildings can be considered to represent limited infill, particularly when assessing the pattern of development directly adjacent, to the east and west. The remaining woodland that would continue to abut the road to either side of the proposed dwelling would also provide separation meaning that the development would not appear to infill a gap in the existing built form. I therefore find that the proposal would not represent limited infilling.
7. Paragraph 154 g) of the Framework relates to limited infilling or the partial or complete development of previously developed land which would not cause substantial harm to the openness of the Green Belt. The appellant suggests in the Design and Access Statement that the appeal site has been previously developed. Nevertheless, the appeal site comprises a clearing within an area of woodland with no signs of development on the ground during my site visit. There is also no significant evidence before me to suggest that the site is previously developed, as defined in the Framework. The proposal would therefore conflict with the requirements of paragraph 154 g) of the Framework and this exception would not be applicable in this case.
8. Notwithstanding the proposed design, which is for a single storey dwelling with green walls and roof, the provision of built form on the site and areas of hardstanding, along with associated domestic paraphernalia would both spatially and visually reduce the openness of the Green Belt. It would be partially screened from public views along Thorley Lane East by existing trees. However, the level of screening would alter throughout the seasons, being more discernible during the autumn and winter. The creation of a vehicular access into the site would also make the development more apparent.
9. Consequently, I find that the proposal would be inappropriate development in the Green Belt and by definition, it would be harmful to it. The proposal would therefore be contrary to Policy GBR1 of the EHDP and paragraph 154 of the Framework, as set out above.

10. Policy DES4 of the EHDP and Policies HDP2 and HDP3 of the Bishop's Stortford Town Council Neighbourhood Plan for All Saints, Central, South and part of Thorley (1st Revision) 2021-2033 (NP) are referred to under the Council's first reason for refusal, but these relate to the design of development and the character and appearance of the area. I have therefore considered these policies under the third main issue relating to character and appearance.

Local green space

11. The appeal site is part of the area identified as the 'established mature woodland between Thorley Lane East and Broadleaf Avenue' under Policy SI1 of the NP which is relevant to criterion c) of Policy GIP2 of the NP. This criterion refers to other areas that have value as green spaces within the urban environment, albeit of less significance than designated Local Green Spaces. The policy states, with regard to sites falling under criterion c), that, any development will be permitted only if the value and function to the community of the land will be retained in the development or will be provided on other land within the proximity of the community they serve.
12. The NP describes the appeal site as a 'wild and mature woodland with residential areas all round. On Moor Hall Lane, a very quiet road used by local walkers and cyclists, The south west corner abuts the Southern Country Park and provides a continuation of the wildlife habitat provided by the park'. Based on the evidence before me and my site visit, I concur with this description.
13. I note that the woodland is not publicly accessible, and therefore its role is related to the effect it has on the character and appearance of the area, particularly for those using Thorley Lane East as a recreational route and with regard to the habitat it provides for wildlife. The proposal would result in the loss of part of the woodland to residential use and as such it would reduce the established value and function of the land.
14. The appellant asserts that the remaining woodland would be restored and opened up to the public and that a learning environment for educational and community groups would be created. Nevertheless, the area of woodland to the north of the appeal site is not identified as being under the ownership of the appellant and I have no mechanism before me that would ensure that the enhanced use and accessibility of the remaining woodland would be secured. I therefore cannot attribute any significant weight to this as a benefit of the scheme before me.
15. Accordingly, I find that the proposal would have an adverse effect on the identified local green space and as such it would not comply with Policy GIP2 of the NP, the aims of which are set out above.
16. The Council has referred to Policy CFLR2 of the EHDP in its first reason for refusal. However, from reading the supporting text to this policy it appears that it relates to designated Local Green Spaces as referred to in the Framework. As stated above, Policy GIP2 of the NP states that the appeal site forms part of a green space which is of less significance than a designated Local Green Space. I therefore do not consider this policy to be directly relevant to the appeal proposal before me.

Character and appearance

17. The appeal site comprises a clearing within an area of woodland. The clearing is surrounded on all sides by mature trees. Beyond the woodland there is existing development to all sides. Whilst the appeal site does not comprise open agricultural land within the countryside, it does provide an undeveloped area of sylvan character in between built form and contributes a feature of pleasant and tranquil rural character to the area as you move along Thorley Lane East. During my site visit, whilst only a snapshot in time, I noted that Thorley Lane East was well used by walkers and cyclists.
18. The proposed erection of a dwelling along with the domestication of the area around it would significantly alter the character and appearance of the area and would result in the destruction of the current undeveloped and rural characteristics of the woodland. As stated above, the site would be screened during part of the year due to the surrounding trees. However, in the autumn and winter months the presence of the development would be more discernible. The provision of the access point would also clearly demarcate all year round that there was development present.
19. The proposed design approach includes a prefabricated single storey dwelling made up of green walls and roofs utilising natural materials. Whilst these measures would help to limit some effects on the existing character and appearance of the appeal site, they would not overcome the harm that would arise through the provision of built form in an undeveloped area and the erosion that such a development would cause to the sylvan and verdant woodland setting.
20. It is proposed that there would be extensive tree planting, landscaping and the creation of natural buffers to integrate the development into the woodland, however, the specific details of these measures are not provided.
21. Consequently, I find that the proposal would result in harm to the character and appearance of the area. It would conflict with Policy DES4 of the EHDP and Policies HDP2 and HDP3 of the NP. These policies seek, amongst other things, that developments are of a high standard of design and layout, that they sit well within their setting and that they reflect and promote local distinctiveness.

Trees, ecology and biodiversity

22. The appeal site is identified as comprising of an area of mature lowland deciduous woodland that is designated as a priority habitat which is subject to a Tree Preservation Order (TPO). The trees that form the woodland contribute to the rural character and appearance of the area and also provide habitat that has the potential to contribute positively to the ecology and biodiversity of the area.
23. Whilst the appellant asserts that a tree survey and impact assessment has been carried out, no arboricultural survey or impact assessment is before me that clearly sets out the impact on the existing trees within the woodland including those covered by the TPO. It is not clear which trees would need to be removed to facilitate the development, or any trees that would require works. The root protection areas of the trees around the clearing or the proposed access are not identified. No tree protection measures are identified that would be necessary during the construction phase to protect the woodland in the longer term.

24. The appellant suggests that no dig foundations would be used to limit any harm to the surrounding trees, however, without clear survey work and an understanding of what trees would be impacted, I am not satisfied that it has been demonstrated that this would effectively mitigate any harm.
25. It is stated that new habitats will be created incorporating wildlife friendly features. An ecology report is provided, however, it does not set out a clear methodology that was followed in its preparation, nor does it clearly set out ecological constraints, predevelopment baseline information, necessary mitigation, avoidance or compensation measures, specific details about further survey work needed, detailed opportunities to deliver ecological enhancement, post development assessments in terms of expected biodiversity net gains or a substantive management strategy.
26. The Council suggest that given the characteristics of the site it is likely that bats will be present, but no preliminary bat roost assessment or emergence studies have been submitted. The presence of the rookery that gives the woodland its name and other species identified by interested parties, such as hedgehogs, are not fully considered in the submitted information. Therefore, without evidence to the contrary, I consider that this information is also lacking.
27. Therefore, I find that there is insufficient information before me to demonstrate that the appeal proposal would not result in harm to the existing trees and the ecological and biodiversity status of the site. The proposal would therefore be contrary to Policies DES3, NE2 and NE3 of the EHDP and Policies GIP4 and GIP5 of the NP. These policies seek, amongst other things, that it is demonstrated how existing landscape features will be retained, protected and enhanced, that proposals should achieve a net gain in biodiversity where it is feasible and proportionate to do so, that the mitigation hierarchy is applied, and that development should always seek to enhance biodiversity and create opportunities for wildlife.

Living conditions

28. The proposed dwelling would be located within the clearing but would be surrounded by mature trees to all sides. There is no detailed arboricultural survey before me which sets out the specific location of trees or the extent of the canopy cover when the trees are in leaf, in relation to the siting of the proposed dwelling and garden area.
29. During my site visit I noted that despite the trees not being in leaf due to the time of year, the surrounding woodland provided a feeling of being enclosed and it was fairly dark. This experience would likely be intensified when the trees are in full leaf. Therefore, given the close relationship that would result between the proposed dwelling and garden area with the surrounding woodland, it is likely that both the internal and external spaces that form the appeal proposal would be overshadowed by the existing trees. This would result in future occupants having restricted access to sunlight and daylight to an extent that would result in unacceptable living conditions. If allowed it may also lead to pressure to remove or reduce the size of trees to improve the living conditions of future occupants, further affecting the woodland.
30. The appellant asserts that the existing immediate neighbouring dwellings are subject to similar effects with regard to access to daylight and sunlight. However,

when viewing the immediate adjacent properties from the road, the plots did not appear to be entirely enclosed by such substantial trees on all sides. In any case, if other dwellings are deficient in this respect, it is not reason to support further development that does not provide suitable living conditions.

31. Consequently, without any substantive evidence to the contrary, I find that the proposal would be unlikely to provide acceptable living conditions for future occupants with regard to access to daylight and sunlight. The proposal would therefore be contrary to Policy DES4 of the EHDP which seeks, amongst other things, that proposals are of a high standard of design.

Other considerations

32. The proposal would be inappropriate development in the Green Belt. Substantial weight should be given to the harm to the Green Belt and very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations, as set out in paragraph 153 of the Framework. In addition to harm to the Green Belt, the proposal would result in harm to an identified local green space, the character and appearance of the area and the living conditions of future occupants with regard to access to daylight and sunlight. I am also not satisfied that harm would not be caused to trees, and the ecological and biodiversity status of the site.
33. Against those harms, the appeal site would provide a new dwelling on a small site within close proximity to existing services, facilities and public transport options, in an area where the Council cannot currently demonstrate an adequate supply of housing land. The appellant asserts, based on a recent appeal decision, that the Council can demonstrate a 4.7 year housing supply. Given the single storey nature of the proposal, it is likely that it would be adaptable and could accommodate changing circumstances over time. I attribute moderate weight to the provision of an additional dwelling.
34. The appellant refers to self-build and custom build housing, however, there is no mechanism before me that would secure the proposal as such a development type. I can only attribute very limited weight to this matter.
35. It is stated that the proposal would provide surveillance of the woodland, thus reducing the potential for crime. The design approach includes measures to minimise water and energy consumption, reduce waste production and utilise the latest building technologies. Economic benefits would result during the construction phase and after with future occupants supporting local services and facilities. Given the scale of the proposal these benefits would be limited.
36. The appellant identifies that the wider woodland area would be upgraded and enhanced with the extensive planting of trees, landscaping and the implementation of a long term management plan. It is stated that the delivery of the dwelling would raise funds that would go towards these enhancement works in order to stop the decline of the woodland. It is also stated that the remaining woodland area would be opened up for public use and would be used for educational purposes. There is very limited arboricultural evidence before me that sets out the works that are necessary and how the woodland would be upgraded and managed over the longer term. There is no mechanism before me to secure the enhanced use and accessibility of the remaining woodland by the public, educational and community groups and this area referred to is not clearly identified as being under the

ownership of the appellant. Without further evidence, I can only attribute very limited weight to these matters.

37. It is asserted that sufficient parking and access would be achieved and that there would be no harm to the living conditions of neighbouring occupiers as a result of the proposal. Policy compliance and a lack of harm in these respects would weigh neither for nor against the proposal.
38. I am referred to other large scale residential and commercial developments in close proximity to the appeal site that have increased the amount of built form in the local area. Nevertheless, I must consider the appeal proposal before me on its individual merits.
39. In conclusion, having considered all the matters raised as other considerations in support of the development, I conclude that they do not clearly outweigh the substantial harm that I have identified by reason of inappropriateness to the Green Belt and the other harms identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Other Matters

40. I note the representations in support of the proposal. Nevertheless, for the reasons given above, I have found that the proposal would be contrary to the relevant policies set out in the EHDP and the NP in this case.

Conclusion

41. I note that the Council accepts that it cannot demonstrate a sufficient housing land supply currently. However, I find that the application of policies in the Framework that protect the Green Belt provide a strong reason for refusing the proposed development in accordance with paragraph 11 d) (i) of the Framework. As such, the presumption in favour of sustainable development does not apply in this case.
42. For the reasons outlined above, the proposal conflicts with the development plan as a whole and other material considerations including the Framework do not indicate that the appeal should be determined other than in accordance with it. I therefore conclude that the appeal is dismissed.

G Dring

INSPECTOR