



Appeal Decision

Site visit made on 29 April 2025

by **S J Warder BSc(Hons) MA DipUD(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 MAY 2025

Appeal Ref: APP/J1915/W/24/3354166

Mill Farm, 224 Hertingfordbury Road, Hertford, Hertfordshire, SG14 2LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
 - The appeal is made by Mr and Mrs Rowland against the decision of East Hertfordshire District Council.
 - The application reference is 3/24/0798/FUL.
 - The development proposed is change of use and conversion of stables to provide one new dwelling, with associated access, parking, bin store and amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated after the appeal statements were submitted. The parties were given the opportunity to comment on the implications of the updated Framework and I have taken those comments into account.
3. The fifth reason for refusal concerns insufficient information on the effects of the proposal on ecology. However, the appellant submitted an updated assessment and the Council's appeal statement confirms that this overcomes its concerns over this matter. I see no reason to disagree. As the matter is no longer disputed, I have not considered it further.

Main Issues

4. The main issues are:
 - the effect of the proposal on flood risk;
 - whether the proposal would be inappropriate development in the Green Belt (GB) and its effect on openness having regard to the Framework and relevant development plan policies;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the provision of equestrian facilities;
 - whether the proposal makes adequate provision for waste storage and collection;
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Flood risk

5. The Council does not dispute the methodology or technical assessments in the appellant's Flood Risk Assessment (FRA). However, it takes issue with the finding that there is no need to carry out the sequential test normally required for sites in Environment Agency Flood Zone 2 because the proposal is for a change of use. While footnote 62 of the Framework exempts most changes of use from the need to undertake the sequential test, the proposal also involves extensions to the existing building and non-residential extensions are not exempted.
6. The appellant has referred to an appeal decision (ref APP/P1133/W/21/3277468) in which the Inspector found that a proposal involving change of use to residential, and extensions did not need to be subject to the sequential test, despite being in Flood Zone 3. Although the Inspector was not explicit on the point, I note that the extension in that case was at third and fourth floor levels and therefore not likely to have an effect on flood risk. As such, it does not provide a robust justification for not carrying out a sequential test in this case.
7. Framework paragraph 181 sets out the requirements to be demonstrated where development is allowed in areas of flood risk. Policy WAT1 of the East Herts District Plan 2018 (DP) has similar requirements. While the FRA outlines potential resistance and resilience measures to mitigate potential flooding, together with recommendations for flood warning alerts, evacuation routes and a surface water drainage strategy, little specific information has been provided. In the absence of this information, it has not been adequately demonstrated that the proposal could comply with the requirements of Framework paragraph 181 and DP Policy WAT1. Given that the matters concern the safety of future occupiers and may affect the design and layout of the proposal, it would be unsafe to leave them to be secured by condition.
8. Consequently, I find that insufficient information has been provided to show that the proposal meets the flood risk requirements of Framework paragraphs 173, 174 and 181 and DP Policy WAT1.

Whether inappropriate development?

9. Framework paragraph 153 confirms that inappropriate development is, by definition, harmful to the GB and requires substantial weight to be given to any harm to the GB. Paragraph 154 sets out the forms of development in the GB which are, exceptionally, not inappropriate. Policy GBR1 of the DP requires proposals to be considered in line with Framework GB provisions.
10. The appellant claims that the exception in Framework paragraph 154 (g) (limited infilling of previously developed land which would not cause substantial harm to openness) applies to the appeal proposal. The appeal site sits apart from the residential curtilage of Mill Farm. It includes two modest, but closely spaced stable buildings, associated hardstanding, the remains of a menage and post and rail fencing. There is nothing to suggest that the buildings are not permanent or were erected unlawfully. As such, I consider that the site falls within the Framework Glossary definition of previously developed land.

11. The proposed extensions would, in essence, infill the gap between the existing buildings. There would be a limited extension of the original footprint and, from most viewpoints, the extensions would not increase the original width of the buildings. The proposal would replace the menage area with an orchard. The Council considers that the orchard should be regarded as part of the proposed residential curtilage and would thereby fragment the existing openness of the land. I consider that the physical change, of itself, would be in keeping with the treed grassland which characterises the adjoining land.
12. The appellant has suggested that a condition could be used to exclude the proposed orchard from the residential curtilage. While the land in question is included within the application red line boundary, I am not convinced by the Council's contention that it should necessarily be treated as residential curtilage. The appellant's suggested condition is clear and precise in its intention and any future use of the land for domestic purposes would be detectable. Had I been minded to allow the appeal, the condition would have overcome this element of the Council's concerns. Consequently, I find that the proposed orchard would not reduce the openness of the GB.
13. The Council has not objected to other elements of the proposal on grounds of loss of openness. Overall, therefore, I find that the proposal would not cause substantial harm to the openness of the GB. As such, it would meet the requirements of Framework paragraph 154(g) and would not amount to inappropriate development in the GB. It would therefore not conflict with paragraph 153 or DP Policy GBR1. On this basis, it is not necessary for me to consider the appellant's other arguments that the proposal would meet the paragraph 154(c) exemption or would amount to grey belt land.
14. As the proposal would not be inappropriate development and would not have an unacceptable impact on openness, there is no need to consider the question of whether very special circumstances exist.

Character and appearance

15. The Council's concern regarding character and appearance flows from its GB openness objection and the claimed fragmentation of the land. I have dealt with the substance of this concern in my consideration of the GB issue and have found that the proposal would not lead to fragmentation of the land or loss of openness. As such, the proposal would not have a harmful effect on the character and appearance of the area. It would accord with DP Policy HOU12 which presumes against changes of use to residential land which result in an adverse effect on the character and appearance of the surrounding area and landscape or involve a harmful incursion into the countryside.

Equestrian facilities

16. Policy CFLR6 of the LP requires proposals resulting in the loss of equestrian facilities to be accompanied by an Equestrian Needs Assessment to demonstrate that the facilities are no longer needed. The introduction to the Community Facilities, Leisure and Recreation chapter of the DP consistently refers to the community benefits of such facilities. The introduction to the equine development policy itself refers to the fit with agricultural activities and its help in diversifying the rural economy. While paragraph 19.7.3 refers to domestic or commercial

equestrian development, that is in connection with the provision of new facilities rather than the loss of existing facilities.

17. The appeal stables are clearly intended for domestic use only and, indeed, at the time of my site visit were accommodating llamas rather than horses. Consequently, I consider that the loss of the stable would not adversely affect the underlying aim of LP Policy CFLR6. I also note that the appellant has identified a considerable number of livery stables with capacity within a relatively close distance of the appeal site. While the list does not amount to an Equestrian Needs Assessment, nor is there firm evidence to show that it does not provide a reasonable indication of the availability of facilities.
18. Both parties have referred to appeal and Council decisions involving the loss of equestrian facilities, some for and some against. As such, they are not conclusive. Having regard to the circumstances in this case, I find that there is very limited conflict with Policy CFLR6.

Waste storage and collection

19. The distance between the proposed waste and recycling storage and collection points exceeds the 25m sought by the Council in accordance with Building Regulations Approved Document H Guidance. The proposal includes a bin storage area conveniently located close to the proposed dwelling and a bin collection point reasonably close to Hertingfordbury Road.
20. While the distance between the two points exceeds the guidance, future residents would need to travel regularly past both locations whenever they leave the property in any case. This would provide ample opportunity to take waste and recycling from the storage point to the collection point without undue convenience. Therefore, I consider that the waste storage and collection arrangements would be adequate in this case and that the proposal would not conflict with DP Policy DES4(e) insofar as it requires development to make provision for the storage of bins.

Other Matters

21. An appeal decision cited by the appellant (ref APP/J1915/W/24/3340497) found that the Council could only demonstrate a supply of new housing of between 4.20 and 4.49 years. The Council does not dispute that it cannot meet the five year supply required by the Framework. The shortfall therefore adds further weight to the Framework aim of boosting the supply of new housing. That said, the proposal for a single dwelling would make a very modest contribution to the supply.
22. The appellant's Ecological Assessment finds that the proposal would achieve a 69% biodiversity net gain in site habitats. This is significantly greater than the mandatory biodiversity net gain requirement and I accord it considerable weight in favour of the proposal.
23. The proposal would make use of previously developed land. Although this aim is supported by the Framework, paragraph 124 is clear that it should also ensure safe living conditions. Since I have found that it has not been adequately demonstrated that the proposal would be safe in terms of flood risk, little weight can be attached to this matter.

Planning Balance and Conclusion

24. I have found that the proposal would accord with DP and national policies on the GB, character and appearance and waste storage and collection. I have also found limited conflict with DP policy on equestrian facilities. However, the proposal conflicts with DP and Framework policies on flood risk and does not accord with the development plan policies as a whole.
25. Since the Council cannot demonstrate a five-year supply of housing it is necessary to consider the provisions of Framework paragraph 11(d). Clause (i) requires consideration of whether the application of Framework policies that protect areas of particular importance provides a strong reason for refusing the development. Footnote 7 confirms that this includes flood risk policies. The proposal does not meet the requirements of the Framework in terms of the absence of a sequential test and the inadequacy of information on flood resistance and resilience and a surface water strategy. These provide a strong reason for refusal and, therefore, the 'tilted balance' in paragraph 11(d)(ii) does not apply.
26. Although there is a shortfall in housing supply in the area, and this carries significant weight, the proposal's contribution to meeting that shortfall would be very modest. Similarly, the biodiversity net gain benefits, although exceeding the mandatory requirement would be limited in extent. Taken together, these benefits do not outweigh the flood risk harm and do not justify determining the appeal other than in accordance with the development plan. Consequently, the appeal should be dismissed.

S J Warder

INSPECTOR