



Appeal Decision

Site visit made on 16 July 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th August 2025

Appeal Ref: APP/J1535/W/25/3359991

Bellevue, Hoe Lane, Nazeing, Waltham Abbey, Essex EN9 2RJ

- 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 Chelvaa Homes against the decision of Epping Forest District Council.
 - The application Ref is EPF/1302/24.
 - The development proposed is for the creation of 2 no. newbuild houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline form with all matters reserved. The drawings showing the proposed layout, elevations and floor plans of the proposed dwellings have therefore been assessed as being for indicative purposes only.
3. The appellant submitted amended indicative plans with the appeal. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage. Whilst acknowledging that the scheme is outline, the amendments would be substantially different when compared to the indicative details at the application stage and the house types envisaged on the application form. Furthermore, the amendments would cause procedural unfairness to anyone involved in the appeal as the changes have not been consulted upon. As a consequence, the amended plans have not been accepted.
4. The evidence indicates that a tree located on the appeal site is protected by a Tree Preservation Order¹. The Council's delegated report indicates that matters relating to the protection of this tree could be dealt with at reserved matters stage. I find no reason to reach a different conclusion in this regard and the main issues are defined on the basis of the Council's reasons for refusal.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the integrity of the Epping Forest Special Area of Conservation (EFSAC);

¹ Council ref: TPO/EPF/10/20

- whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and the development plan, including the effect on the openness of the Green Belt;
- whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to noise and disturbance;
- the effect of the proposed development on the public right of way known as Public Footpath 3 Nazeing (PROW);
- whether the proposed development would effect an existing watercourse; and
- if the proposed development is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Epping Forest Special Area of Conservation (EFSAC)

6. The appeal site is located approximately 6.15 kilometres away from the EFSAC. The EFSAC is an ancient woodland recognised for its beech forests with holly and notable populations of stag beetle.
7. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) as the competent authority it is necessary to undertake an appropriate assessment in relation to the likely significant effects of the proposed development, alone or in combination with other plans or projects, on the integrity of the EFSAC.
8. There is no dispute between the main parties that in combination with other plans and projects, the proposed development, could contribute to a deterioration of the quality of the habitat by reason of increased recreational disturbance.
9. The Epping Forest Strategic Access Management and Monitoring (SAMM) Strategy (2021) requires all net new dwellings within a 6.2km radius to pay financial contribution towards a mitigation strategy. This contribution would support both the creation of Suitable Alternative Natural Greenspaces (SANGs) and the ongoing management and monitoring of the EFSAC.
10. The appellant's evidence indicates that they are fully aware of the mitigation strategy, the costs involved and requirement for a legal agreement securing this payment. However, there is no S106 agreement before me to secure the provision of the required financial contribution. Furthermore, the Council's decision refers to the potential for atmospheric pollution to result from the increased traffic using the roads through the EFSAC resulting from the proposed development. Limited information has been provided to confirm whether or not any mitigation is additionally required in this regard. It would also typically be necessary to consult NE to verify the effectiveness of any mitigation put forward. In any event, a consultation with NE would not resolve the absence of a S106 agreement.
11. For the reasons set out, I conclude that it has not been demonstrated that the proposed development would not adversely effect the integrity of the EFSAC. The scheme would not therefore comply with the requirements of the Habitats Regulations.

Furthermore, in this regard the proposal would be contrary to Policy DM2 of the Epping Forest Local Plan 2011 - 2033 (2023) (LP) which states that new development for which it is not possible to conclude no adverse effect on the integrity of the EFSAC will not be permitted.

Whether inappropriate development

12. Policy SP5 of the LP states that the openness of the Green Belt will be protected from inappropriate development in accordance with the National Planning Policy Framework (the Framework) and Policy DM4 of the LP which seeks to protect the Green Belt.
13. The Framework was published after Policy DM4 of the LP and is therefore more up to date. It advises that the essential characteristics of Green Belts are their openness and their permanence, and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Development in the Green Belt is inappropriate unless one of the specified exceptions applies. This includes, under part (g) of paragraph 154, limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use, which would not cause substantial harm to the openness of the Green Belt.
14. The term 'limited infilling' is not defined in the Framework. Whether or not the appeal site represents limited infilling is therefore a matter of planning judgement. Limited infilling is commonly understood to be the development of a small gap within an otherwise built-up frontage. The appeal site is to the rear of dwellings fronting Hoe Lane, which include dwellings known as Presdale, Bellevue and Ash Tree House. Other than the flank wall of Presdale, the part of the access track closest to the appeal site is devoid of buildings. The two-storey dwelling north of the appeal site, is not highly visible due to its position set away from the access track. Whilst the plans are indicative at this stage, the appeal site cannot be regarded as a gap in an otherwise built-up frontage. The proposed dwellings would extend the built form of the village further into the open land to the rear of dwellings fronting Hoe Lane, as opposed to representing a form of infill development.
15. I saw on my site visit that a large part of the appeal site contains hardstanding. A small container is also positioned on the appeal site. The definition of previously developed land in the Framework includes fixed surface infrastructure such as large areas of hardstanding. Whilst the application form describes the appeal site as vacant land, limited information regarding the use of the site has been provided and there is no substantive evidence before me, such as a lawful development certificate, to confirm that the appeal site has been lawfully developed. Even if it has, there remains a requirement to ensure the proposed development would not cause substantial harm to the openness of the Green Belt.
16. Openness is an essential characteristic of the Green Belt; it can be perceived both spatially and visually. Although the site is currently enclosed by boundary treatments, spatially, the volume of two houses in any form would represent a marked intensification of built development on site given that it would replace a more open area. This would materially reduce the spatial sense of openness. Visually, even when accounting for the outline from of the proposal, the proposed dwellings would likely contribute to a more urbanised character. Their presence would be perceptible from the access track, the PROW and from surrounding residential properties contributing

to a more enclosed appearance. When the spatial and visual effects are taken together, there would be substantial harm to openness. Accordingly, the proposed development would not meet the exception set out in paragraph 154 g) of the Framework.

17. In relation to Paragraph 155 of the Framework, the definition of Grey Belt in the Framework is clear that this excludes land where the application of the policies relating to the areas or assets in footnote 7 would provide a strong reason for refusing or restricting development. Given my findings on the first main issue, the EPSAC is an area or asset, for which I have concluded there is a strong reason for refusing or restricting development. The appeal site does not therefore constitute Grey Belt land. Accordingly, I find that paragraph 155 of the Framework is not determinative in this case.
18. Consequently, the proposed development does not meet any of the exceptions listed in paragraphs 154 and 155 of the Framework. The proposal is therefore inappropriate development in the Green Belt, which would by definition be harmful and should not be approved except in very special circumstances as per paragraph 153 of the Framework.
19. I conclude that the proposed development would be inappropriate development in the Green Belt having regard to the Framework and the development plan and would result in a substantial harm to the openness of the Green Belt. In this regard, it would conflict with Policies SP5, DM4 and DM9 of the LP which seek to protect the Green Belt and relate positively to its context.

Living conditions

20. The access track leading off Hoe Lane leads to several commercial premises. The close proximity of these premises along with the associated vehicles using the access track has the potential to generate significant levels of noise. This may result in poor living conditions for the occupiers of the proposed dwellings both internally and externally. No noise survey has been submitted to demonstrate that the potential effects of noise would be acceptable on any part of the appeal site, nor to confirm whether mitigation measures are necessary or what form they might take. Given this uncertainty, I am not satisfied that the parameters provide scope to ensure occupiers of the development would provide scope to ensure occupiers of the proposed development would be unaffected. In the circumstances, it would not be appropriate to defer consideration of potential harm to the reserved matters stage and/or by condition.
21. I conclude that it has not been demonstrated that the proposed development would provide acceptable living conditions for future occupants, with particular regard to noise and disturbance. In this regard, it would conflict with Policies DM9 and DM21 of the LP which require development proposals to address issues of noise likely to arise from neighbouring uses or activities and resist development that leads to unacceptable noise impacts. For the same reason, the proposal would conflict with Paragraph 135 of the Framework which requires developments to create places with a high standard of amenity for future users.

Public right of way

22. Public Footpath 3 Nazeing (PROW) crosses through the rear part of the site. Currently, there is a gap in the existing boundary treatment adjacent to the access

track which leads through an area of vegetation alongside a close boarded fence which dissects the appeal site, towards a footbridge and beyond.

23. Drawing FP04 indicates the potential for two access points to allow for a turning circle at the site entrance, in addition to a driveway and vehicle parking areas close to the alignment of the PROW. This has the potential to cause conflict with the PROW users which may be inhibited by the manoeuvring of vehicles within the appeal site. However, as access and layout are reserved matters, the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access networks are reserved for subsequent approval.
24. Accordingly, it is possible within the parameters of the outline consent sought, that the PROW could be accommodated within any final layout without the need for diversion or without detriment highway users, in accordance with Paragraphs 105 and 115 of the Framework. The Council would retain control of this matter at the reserved matters stage.
25. Based on the evidence before me at this outline stage, I conclude that there is the potential to ensure that the proposed development would not have an unacceptable effect on the public right of way known as Public Footpath 3 Nazeing (PROW). In this regard it has the potential to comply with Policy T1 of the LP which requires development to protect and where appropriate enhance access to and the use of public rights of way.

Watercourse

26. Policy DM17 of the LP requires new development to be set back at a distance of at least 8 metres from a main river and an ordinary watercourse. The Council indicate that the illustrative layout would be in breach of this requirement, due to the indicative position of one of the dwellings being partially atop the location of a watercourse which runs close to the edge of the appeal site. However, as layout is a reserved matter, the position of the buildings and spaces around them are reserved for subsequent approval. Accordingly, it is possible within the parameters of the outline consent sought, that the required set back could be accommodated within any final layout.
27. Given that no other particular concerns regarding flood risk have been referred to by the Council, I am satisfied that the proposed development could be designed to ensure no increased risk of flooding. The Council would retain control of this matter and matters relating to site drainage at the reserved matters stage.
28. I conclude that it is likely that the proposed development could be designed to have an acceptable effect on the watercourse including its protection and enhancement in accordance with Policy DM17 of the LP.

Other Considerations

29. Benefits would be derived from the provision of self-build/custom build dwellings. However, there is nothing before me to suggest that the proposal would meet any unmet need on the Council's self and custom housebuilding register, and there is no mechanism before me to secure this in any event. Even if there was, given the scale of the development, this and any other benefits associated with the delivery of two dwellings, for examples economic benefits relative to the construction phase, would be limited.

30. The appellant suggests that the Council's decision making is inconsistent. My attention has been drawn to planning permission for two detached dwellings, now known as Bellevue and Ash Tree House². Bellevue and Ash Tree House were considered by the Council to constitute limited infill and were not therefore considered inappropriate development in the Green Belt. Indeed, I note that in that particular circumstance that they are located in an otherwise built-up frontage along Hoe Lane. My attention has also been drawn to an application for two dwellings previously refused by the Council³, in a different siting to the appeal proposal and to Bellevue House and Ash Tree House. The examples do not demonstrate inconsistent decision making by the Council. Even if they had, the circumstances that applied to the other cases is not directly comparable to those before me and do not justify the harm identified in relation to the appeal proposal.
31. The appellant also indicates that other nearby Green Belt sites have been granted planning permission for similar development. However, I do not have full details of those schemes including site addresses and case references and so I cannot be certain that the circumstances were the same. In any case I have considered the appeal proposal on its own merits.
32. The effect of the proposal on the living conditions of neighbouring occupiers, contaminated land, on-site habitat and trees are not matters in dispute between the main parties. However, these considerations indicate the absence of harm in those respects rather than any benefit.

Green Belt Balance

33. The proposed development would be inappropriate development within the Green Belt. In accordance with the Framework, substantial weight should be given to any harm to the Green Belt. Furthermore, it has not been demonstrated that the proposed development would not adversely effect on the integrity of the EPSAC or the living conditions of future occupiers, and these are additional other harms carrying significant weight.
34. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Taken together, the other considerations put forward carry limited weight. It follows that the substantial weight to be given to Green Belt harm together with the other harms identified, are not clearly outweighed by other considerations in this case. Therefore, the very special circumstances required to justify the proposed development do not exist.

Conclusion

35. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR

² Council ref: EPF/3201/15

³ Council ref: EPF/1990/15