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## Appeal Decisions

Site visit made on 20 August 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19<sup>th</sup> September 2025

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### Appeal A Ref: APP/J1535/W/25/3360270

#### Marles Stud, Epping Road, Epping Upland, Epping, Essex CM16 6PF

- 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 A Bowers (English Architectural) against the decision of Epping Forest District Council.
  - The application Ref is EPF/1630/24.
  - The development is described as 'Retrospective application for the erection of 3x dwellings in replacement of approved conversion under EPF/1296/22'.
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### Appeal B Ref: APP/J1535/W/25/3366244

#### Marles Stud, Epping Road, Epping Upland, Epping, Essex CM16 6PF

- 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 A Bowers (English Architectural) against the decision of Epping Forest District Council.
  - The application Ref is EPF/0314/25.
  - The development is described as 'Re submission of retrospective application for the erection of 3 x dwellings in replacement of approved conversion under EPF/1296/22'.
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## Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

## Preliminary Matters

3. As set out above, there are two appeals. Both relate to erection of the same three dwellings and the reasons for refusal were also the same. However, additional supporting evidence and arguments were introduced on resubmission of the planning application (Appeal B). I have considered each appeal on its individual merits, but to avoid duplication I have dealt with the issues together, while highlighting where the supporting evidence differs.
4. The dwellings have been erected on the site of a barn which benefitted from a series of prior approvals granted under Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. Most recently, prior approval had been granted for its conversion to three dwellings, pursuant to application reference EPF/1296/22 (the Class Q scheme). However, the barn, including its structural frame, was demolished during construction. There is no dispute that the dwellings which have now been erected are new buildings and I have considered the appeals on that basis.

5. At the time of my site visit the dwellings appeared substantially complete, although photovoltaic panels, green roofs and balcony screens shown on the plans had not been implemented. There are also some minor variations in window detailing. At least two of the dwellings are occupied. As such, I am considering the development retrospectively and have done so based on the application drawings and details.
6. In the banner heading above, I have included the appellant's name as given on both planning application forms. It has subsequently been clarified that English Architectural are agents acting on behalf of the applicant, Mr A Bowers. Nevertheless, I am satisfied that the appeals were submitted by the party with authority to do so.

## **Main Issues**

7. The first reason for refusal alleges conflict with three development plan policies, including Policy DM9 of the Epping Forest District Local Plan 2023 (EFDLP), which sets out criteria for securing high quality design. However, the reason for refusal otherwise refers only to Green Belt considerations, namely the definition of inappropriate development, the effect of the development on openness and its effect on the Green Belt purpose of safeguarding the countryside from encroachment. Furthermore, the Officer Report described the development as being in accordance with Policy DM9 in terms of good design, while going on to say that does not mean that the development is acceptable within the Green Belt.
8. Against that background, I consider that the main issues in both appeals are:
  - whether the dwellings as built are inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies,
  - the effect on the openness and purposes of the Green Belt, and
  - 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 development.

## **Reasons**

### *Whether inappropriate development*

9. Policy SP5 of the EFDLP states amongst other things that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy and Policy DM4. Policy DM4 sets out the five purposes of the Green Belt and states that planning permission will not be granted for inappropriate development in the Green Belt, except in very special circumstances. It goes on to confirm that the construction of new buildings is inappropriate, with a number of exceptions, reflecting those set out in the Framework at the time the plan was adopted.
10. In the current Framework, published in December 2024, paragraphs 154 and 155 list the forms of development which are defined as not being inappropriate. Development in the Green Belt is inappropriate by definition unless one of those forms of development is involved.

11. In the evidence for Appeal A, the appellant did not dispute that the dwellings are inappropriate development in the Green Belt. However, the Design and Access Statement (DAS) for Appeal B describes the site as previously developed land (PDL), alluding to the history of prior approval having been granted for change of use of the previous building to dwellings. The evidence with Appeal B goes on to suggest that the dwellings should not be considered 'inappropriate' in the same way that a new building in an open, previously undeveloped space might be.
12. The building which was demolished is described by both parties as a barn and in the appellant's statement for Appeal A as an agricultural barn. Indeed, the Class Q permitted development rights, under which prior approval was granted for its conversion to residential use, are for conversion of agricultural buildings.
13. The definition of PDL in Annex 2 of the Framework excludes land that is or was last occupied by agricultural buildings. Although prior approval had been granted for change of use of the barn, that was on the basis of its conversion and the DAS for Appeal A states that the barn was completely demolished. There is no indication that any residential use had commenced before that, and the prior approval is described as being void.
14. There is no specific evidence contradicting the sequence of events set out in the DAS for Appeal A, or that the barn was in agricultural use. Therefore, the evidence before me indicates that, prior to erection of the dwellings, the site was last occupied by an agricultural building. On that basis, when the dwellings were constructed, the site fell outside the definition of PDL, and the development does not benefit from the provision in paragraph 154g of the Framework for redevelopment of PDL in the Green Belt.
15. While paragraph 154d allows for the replacement of a building in the Green Belt, it is only applicable where the new building is in the same use. It has not been suggested by either party that the development benefits from any of the other exceptions in paragraphs 154 or 155. I therefore conclude that the dwellings as built are inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies. As such, the development conflicts with Policies SP5 and DM4 of the EFDLP as summarised above.

### *Openness and purposes of Green Belt*

16. The openness of the Green Belt has both spatial and visual aspects. Even if development is not widely visible from public viewpoints, it can affect openness in spatial terms. Openness can also be affected by the way land is used and activity generated by development as well as the erection of buildings.
17. Although the dwellings are new structures, their scale and form closely reflect that of the previous barn. The curved metal roof has a similar profile and, while the outer walls have been enclosed and windows introduced, the building still has a barn-like appearance. Unlike the Class Q scheme, the dwellings include a single storey projection to the rear. However, the appellant's photographic evidence shows that there was a single storey lean-to along the rear of the barn, in the same position.
18. The form of the single storey projection differs somewhat from the previous lean-to, and balcony screens are proposed, which would project above the flat roof. Nevertheless, the dwellings are of very similar form, scale and siting to that of the

previous barn and lean-to in combination. According to the appellant, their overall footprint and height does not exceed that of the previous buildings and that has not been disputed. Consequently, the new built form has a very similar effect on openness to the previous buildings.

19. The development has, however, also introduced additional development and activity around the dwellings. A car park has been created, with a sealed surface and a single storey plant room. Gardens have also been created, with hard surfaced patios where outdoor furniture and play equipment have been introduced, separated by close boarded timber fencing. The patios are not indicated on the proposed site plan<sup>1</sup> and the boundary treatment is not labelled, but the close boarded fencing is specified on the annotated landscaping plan<sup>2</sup>. There is also a variety of timber fencing and other hard landscaping such as retaining walls and steps around the perimeter of the car park.
20. The gardens and parking area are of more than limited extent and project into areas which the photographic evidence shows as being previously undeveloped. As such, they have a materially greater impact on openness in spatial terms than the previous development on the site. In contrast, the covering letter provided with the Council's statement for Appeal A confirms that the curtilage of the Class Q conversion was proposed to be no larger than the footprint of the existing building. There are other areas of hardstanding near the building, where it appears cars could be parked, and there is no clear evidence that the Class Q scheme would have involved formation of a similar car park.
21. The appeal site is within an established enclave of buildings, contained by a well-established hedgerow, which provides a sense of separation from the surrounding landscape of open agricultural fields. Public views into the site are very limited. However, the new car park is visible along the access drive, from an adjacent public right of way. While the plant room and gardens are not currently visible, they would be exposed to view if the boundary hedge should be reduced or die back, or potentially while it is dormant in the winter. The whole development is also clearly visible from the private driveway through Marles Stud, which is not public land, but is used by occupiers of several of the surrounding buildings.
22. Due to the restricted public views, the development and activity around the dwellings has a limited impact on openness in visual terms. Nevertheless, there is overall a moderate impact on openness, mainly in spatial terms.
23. Marles Stud is in the countryside, in an area generally characterised by wide open, agricultural fields and only limited, sporadic built development. The gardens and car park extend into an open, grassy area on two sides of the dwellings, which is contiguous with the adjacent fields, albeit inside the boundary hedge. To that extent, the development also conflicts with the Green Belt purpose of safeguarding the countryside from encroachment, but to a limited degree given its relationship with the other buildings.
24. The applications provide an opportunity to secure additional native planting through landscaping conditions. That could soften the appearance of the gardens and car parking, as well as views of the dwellings themselves. However, it is likely that boundary features would still be required to maintain privacy between the

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<sup>1</sup> Drawing 835/22/005 Rev G

<sup>2</sup> Drawing 835/22/019 Rev G

dwelling, since the gardens are close together and accessed via large ground floor window openings. The presence of parked cars, hard surfaces and domestic paraphernalia would also still have an effect on openness in spatial terms. The effect on the openness and purposes of the Green Belt would not, therefore, be fully mitigated through planting.

25. For the reasons given above, although the dwellings themselves do not affect the openness of the Green Belt, when compared with the previous buildings, the development as a whole does cause moderate harm to openness and conflicts to a limited degree with the Green Belt purpose of safeguarding the countryside from encroachment. That is contrary to Policies SP5 and DM4 of the EFDLP, as summarised above. While the harm to openness is limited in visual terms by the existing boundary screening, paragraph 153 of the Framework requires that any harm to the Green Belt should be given substantial weight.

### *Other Considerations*

26. No harm to the living conditions of neighbouring occupiers is alleged and there are representations expressing support, commenting that the dwellings provide much needed housing, are of good quality, do not affect the Green Belt and enhance the appearance of the Marles Stud complex, compared to the previous barn.
27. Visually, the dwellings strongly resemble a converted barn and relate well to the appearance of other former agricultural buildings nearby. The external detailing has been executed to a high standard, and the level of glazing has been reduced, in comparison with the Class Q scheme. The Council's Officer Report commented that the design is sympathetic and subdued and concluded that, in terms of good design, there was no conflict with Policy DM9, which sets out criteria for achieving a high quality of design and contributing to the distinctive character and amenity of the local area.
28. No harm has been alleged to the setting of the nearby Grade II listed building Marles Farmhouse. As far as can be determined from the limited evidence available, the significance of the listed building derives from its historic and architectural interest. Its position within an enclave of agricultural and former agricultural buildings contributes to its significance, by maintaining a rural setting consistent with its historical role as a farmhouse. The barn-like appearance of the dwellings is compatible with those features, and based on the evidence before me, I am satisfied that the setting of the listed building has been preserved.
29. In common with the Class Q scheme, three dwellings have been provided. I saw during my site visit that they provide good quality, spacious family housing. Since reverting to the Class Q scheme is no longer possible, should the Council decide to take enforcement action against the development, its contribution to the supply of housing would be in jeopardy.
30. Although a change in the local housing need figure has been highlighted by the appellant, there is no substantive evidence challenging the Council's position that a housing land supply exceeding six years can be demonstrated. Since the EFDLP is less than five years old, the annual housing requirement in that plan, not local housing need, is the appropriate basis for calculation, as set out in paragraph 78 of the Framework. The housing delivery figures used to derive the 2023 Housing Delivery Test (HDT) result of 66% have been challenged by the Council and evidence has been provided with Appeal B that revised housing delivery figures for

2022-23 have been accepted by MHCLG<sup>3</sup>. Although the published HDT result will not be revised, the updated delivery figures indicate a HDT figure standing at just over 75%.

31. Neither the Council nor the Highways Authority raised any concerns about the location, against the background of previous prior approvals for residential use. Nevertheless, the site is accessed by narrow rural lanes, where occupiers of the dwellings are likely to rely on travel by car. As such, the location does not offer any particular benefits in terms of accessibility to services and facilities. While any new dwellings help to boost the supply of housing, in the context of the Council's housing supply and delivery evidence, the benefits of three dwellings in this location are inherently modest.
32. Additional native landscaping could provide some biodiversity benefits, green roofs are proposed, and bird and bat boxes could be installed. However, the other ecological enhancements recommended in the Preliminary Ecological Appraisal would extend beyond the boundaries of the appeal site. Although a legal agreement is mentioned to secure off-site enhancements, no such agreement is before me. This could be addressed through submission of the Biodiversity Gain Plan, but at this stage there is some uncertainty as to the level of enhancement which would be secured on and around the site, or whether the biodiversity benefits would go beyond the statutory minimum.
33. Drainage, refuse and water efficiency could be addressed by condition, if necessary. Since ground works are complete and have been subject to inspection during construction, there would be no apparent benefit from providing any updated contamination evidence at this point. However, these are neutral factors weighing neither for nor against the development.
34. The merits of any enforcement action which may be taken by the Council falls outside the scope of these appeals. Nevertheless, I am mindful that any such action could have implications for the rights of the occupiers under Article 8 of the Human Rights Act 1998 to respect for their private and family life, their home and their correspondence. The best interests of any children would also be a primary consideration in those circumstances, in accordance with Article 3(1) of the United Nations Convention on the Rights of the Child. However, at the time of considering these appeals, no specific evidence has been presented that the Article 8 rights of the occupiers or the best interests of any children could not be met elsewhere.
35. There would also be an economic and environmental cost if enforcement action required demolition of the dwellings. However, while demolition of the previous barn may have been inadvertent, there is no dispute that it was contrary to the approved development. It would be counter-productive to an effective planning regime to give a high level of weight to resources expended in the process of undertaking or rectifying unauthorised development. While it is unfortunate that the breach of planning control was not identified earlier, that is not the purpose of Building Control inspections.
36. While the circumstances of the Cedar Barn<sup>4</sup> decision were similar, and the Inspector's reasoning on the openness and purposes of the Green Belt was also similar, the other considerations were materially different. In particular, that case

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<sup>3</sup> Ministry of Housing, Communities and Local Government

<sup>4</sup> Appeal Refs APP/R0335/C/20/3245838 and APP/R0335/C/20/3245839

included a mechanism to secure removal of a separate, dilapidated residential caravan, which was a beneficial factor to which significant weight was given. While the DAS for Appeal B also highlights two developments approved by the Council, justified by fallback considerations in one case and previous structures and PDL in the other, the circumstances of each such case are rarely identical. The evidence provided does not establish that any of these other cases are directly comparable to the development in these appeals.

### *Green Belt balance*

37. The dwellings are inappropriate development in the Green Belt as defined in the Framework and development plan. While the dwellings themselves have a very similar effect on openness to the previous buildings, there is moderate harm to openness, mainly in spatial terms, as a result of development and activity around the dwellings. To a more limited degree, the development conflicts with the Green Belt purpose of safeguarding the countryside from encroachment.
38. The Framework states that substantial weight should be given to any harm to the Green Belt including harm to its openness. Very special circumstances will not exist unless that harm, and any other harm resulting from the development, is clearly outweighed by other considerations.
39. There are several factors in favour of the development, as set out above. The similarity of the dwellings to the previous buildings, and their overall quality, weigh particularly in favour. However, the other positive considerations are each of more modest weight. Even when considered collectively, the other considerations fall short of clearly outweighing the substantial weight which should be given to any harm to the Green Belt, including the harm to openness. Consequently, the very special circumstances necessary to justify the development do not exist.
40. Even if paragraph 11d of the Framework is deemed to be applicable due to the Council's published 2023 HDT result, there is a strong reason for refusing the development following the application of policies in the Framework to protect the Green Belt. Therefore, paragraph 11di is applicable and the development does not benefit from the presumption in favour of sustainable development.

### **Habitats Regulations Assessment**

41. Epping Forest is designated as a Special Area of Conservation (SAC) in accordance with the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The appeal site is within a zone where additional residential development has been identified as having a likely significant effect on qualifying features of the SAC, which encompass beech forest, wet and dry heaths and its population of stag beetle. Mitigation measures are sought, including financial contributions to address additional air pollution and recreational disturbance, in accordance with requirements in Policy DM2 of the EFDLP. The sums required are specified in the Council's evidence for Appeal A.
42. The appellant does not dispute the requirement for a financial contribution and has provided evidence with Appeal B of a payment having been made to the Council, which purports to equal the required contribution in relation to air pollution. However, it does not appear to include the recreational disturbance or monitoring contributions. The Council does not dispute that this payment has been made but

continues to advise that a legal agreement or undertaking is required, to overcome the second reason for refusal.

43. The only documentary evidence for the direct payment is a payment confirmation which appears to relate to an electronic bank transfer. Although this includes the application reference for Appeal B, it does not mention the reference for Appeal A. Nor does it specify that the funds provided should be used for mitigation measures relating to the Epping Forest SAC. While I am aware from other casework that some Councils allow for direct payments in similar circumstances, having internal arrangements to ring-fence the funds, this particular Council has advised that it relies on a legal undertaking or agreement to ensure that funds are directed to the relevant mitigation strategy.
44. That being the case, the evidence before me does not provide adequate certainty that the payment made will be used for mitigation of likely significant effects on the SAC. Furthermore, the contributions for recreational disturbance and monitoring do not appear to have been made. Planning Practice Guidance advises against use of negatively worded conditions requiring completion of a planning obligation, as was suggested in Appeal A, and in any case, since the development is already occupied, there is no suitable trigger for such a condition to take effect.
45. Had I been otherwise minded to allow the appeals, these would have been considerations informing the appropriate assessment required under the Habitats Regulations. However, since I am dismissing the appeals for other reasons, there is no need for me to consider the matter any further.

### **Conclusion**

46. The development conflicts with the development plan and the other material considerations, including the provisions of the Framework, do not indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, both appeals should be dismissed.

*Jane Smith*

INSPECTOR