



Appeal Decision

Site visit made on 7 October 2025

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2025

Appeal Ref: APP/J1535/W/25/3368372

Ridge House Hoe Lane, Nazeing, 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 permission in principle.
 - The appeal is made by C & D Developments & Investments Ltd against the decision of Epping Forest District Council.
 - The application Ref is EPF/0673/25.
 - The development proposed is erection of five new detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of the development on the application form, I have dealt with the appeal on the basis that it would comprise the demolition of the existing building on the site and the erection of five detached dwellings as this is how it has been described in the evidence.
3. The proposal is for permission in principle. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (permission in principle stage) establishes whether a site is suitable in-principle and the second (technical details consent stage) is when the detailed development proposals are assessed. This appeal relates to the first of those two stages.
4. The PPG also sets out that the scope of the considerations of permission in principle is limited to location, land use, and the amount of the development proposed. All other matters are considered as part of the subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly and have considered the submitted site plan as indicative.
5. Article 5B(1) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) (the Order) states that permission in principle cannot be given for habitats development. This is defined in Article 5B(5) of the Order as development (a) which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans and projects) and is not directly connected with or necessary for the management of the site; and (b) for which the competent authority has not given consent, permission or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017 (Assessment of implications for European sites and European offshore marine sites).

6. The appeal site is located within the zone of influence of the Epping Forest Special Area of Conservation (EFSAC), which is a European site as defined in the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). Consequently, it is necessary for me to consider the effect of the proposal on the EFSAC and I have dealt with this matter as part of the main issue in this appeal. In doing so, I have taken account of the comments the parties have made on this issue during the appeal process.

Main Issue

7. The main issue in this appeal is whether the site is suitable for residential development, having regard to its location, land use, and the amount of development proposed, with particular consideration to:
 - the effect of the proposal on the integrity of the EFSAC;
 - whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and
 - whether any harm by reason of inappropriateness, or any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasoning

Integrity of the EFSAC

8. The EFSAC is designated for the purpose of protecting its qualifying features, which include the North Atlantic wet heaths; wet heathland with cross-leaved heath, European dry heaths; beech forests on acid soils; and its population of stag beetles. The conservation objectives are to ensure the integrity of the site is maintained and restored, and to ensure that the site contributes to achieving the favourable conservation status of its qualifying features.
9. The integrity of the EFSAC is under threat from atmospheric pollution and recreational pressure, which would be exacerbated by the increase in population and vehicle movements associated with the growth in population from additional housing. Consequently, because the development would lead to an uplift in the number of households in the area, it would be likely to have significant effects on the integrity of the EFSAC both alone and in-combination with other plans and projects. In this circumstance, it is necessary for me to undertake an Appropriate Assessment (AA) in accordance with my duty under the Habitats Regulations.
10. The appellant does not dispute that the development would be required to provide mitigation for the EFSAC, which is proposed in the form of on-site measures and financial contributions towards the strategic measures set out in the Epping Forest Interim Air Pollution Mitigation Strategy (December 2020) and the Epping Forest Strategic Access Management and Monitoring (SAMM) Strategy 2021. Amongst other things, these documents set out a tariff approach for new development that would fund a suite of mitigation measures including air pollution reduction schemes, the physical management of paths, signage, and visitor engagement campaigns. The strategies were developed in communication with Natural England, and I have no reason to doubt that the measures contained therein would be effective in mitigating the effect of the proposal on the EFSAC.

11. The PPG states that permission in principle can be granted if, after taking account of mitigation measures in the AA, a decision-maker concludes the development would not adversely affect the integrity of a habitats site. However, in order to come to such a conclusion, I must be satisfied beyond all reasonable scientific doubt that an adverse effect on the integrity of the EFSAC would be avoided. This means there must be certainty that the mitigation proposed would be delivered.
12. I have been provided with other appeal decisions in which the use of a unilateral undertaking (UU) or legal agreement was considered acceptable for securing the financial contributions required¹. However, because the PPG states that there is no scope to secure obligations at this permission in principle stage, there is no such UU or agreement before me. I note that the parties agree that the necessary obligations and conditions could be secured at the technical details consent stage. However, in carrying out this AA, I must take a precautionary approach. In the absence of an effective mechanism before me through which the mitigation measures could be secured, I do not have the necessary certainty that an adverse effect on the integrity of the EFSAC would be avoided. Imperative reasons of overriding public interest of a social or economic nature are not present that would be sufficient to overcome the harm that would be caused to the EFSAC.
13. It is clearly open to the appellant to seek to rectify this issue by applying for full or outline planning permission or through the provision of an effective mechanism through which the mitigation could be secured. However, I have necessarily considered the appeal on the basis of the information that is before me.
14. Consequently, the proposal would cause harm to the integrity of the EFSAC which would conflict with Policy DM2 of the Epping Forest District Local Plan 2011-2033 Part One (Adopted March 2023) (LP). It follows that the proposal would comprise habitats development, which precludes me from granting a permission in principle for the development proposed. For this reason, the proposal cannot succeed on the basis that it would not comply with Article 5B of the Order.

Whether inappropriate development

15. The appeal site lies in the Green Belt, where the Framework states that development is inappropriate, other than in a few exceptions which are set out in paragraphs 154 and 155 of the Framework. Policy DM4 of the LP also sets out some exceptions to Green Belt policy. However, the policy pre-dates the latest version of the Framework and it does not align precisely with the 2024 revisions to national Green Belt policy. I have therefore had regard to Policy DM4 insofar as it is consistent with the Framework.
16. Paragraph 155 of the Framework states that the development of homes in the Green Belt is not inappropriate where the development would utilise grey belt land and where other certain circumstances apply. It is common ground that the site does not strongly contribute to any of the Green Belt purposes (a), (b), or (d) in paragraph 143 of the Framework, and I see no reason to take a different view. However, the definition of 'grey belt' in the Framework, when read together with footnote 7, specifically excludes land where the policies of the Framework relating to habitats sites would provide a strong reason for refusing the development.

¹ Appeal decision references: APP/J1535/W/24/3342224, dated 11 November 2024; APP/J1535/W/23/3334925. Dated 16 July 2024; APP/J1535/W/22/3294576, dated 24 January 2023; APP/J1535/W/20/3255892; and APP/J1535/W/20/3258787 & APP/J1535/W/20/3263876, dated 15 June 2021

Given my conclusions in respect of the effect of the proposal on the EFSAC, and the Framework's policies in relation to habitats sites, the site is excluded from the definition of the grey belt and the proposal would not utilise grey belt land.

17. On this basis, and even if I were to accept the appellant's arguments that there is a demonstrable unmet need for the development proposed due to the housing land supply (HLS) position and the latest Housing Delivery Test (HDT) results, the proposal would not fall within the exception to Green Belt policy set out in paragraph 155 of the Framework. It is therefore not necessary for me to form a view on whether the other criteria within paragraph 155 of the Framework are met.
18. I have considered whether the proposal would comprise limited infilling in a village and, therefore, whether it would fall within the exception set out in paragraph 154e) of the Framework. However, the site is clearly distinct from the built-up edge of Nazeing which, from my observations, comprises the relatively compact residential development on streets such as Palmers Grove and the ribbon of looser-grained dwellings on Hoe Lane. Conversely, the appeal site has a closer physical and visual relationship to the adjacent fields than it does to the dwellings on Hoe Lane. Consequently, I see no reason to depart from the view expressed in a previous appeal decision² at this site that it lies outside of the village. Therefore, the proposal does not comprise limited infilling in a village.
19. It is common ground that the site comprises previously developed land (PDL), and the evidence does not lead me to a different conclusion. Paragraph 154g) allows for limited infilling or the partial or complete redevelopment of PDL provided the development would not cause substantial harm to the openness of the Green Belt.
20. I do not know the full circumstances that led to the cul-de-sac of dwellings on the opposite side of the track from becoming established. Those dwellings could have had an urbanising influence on the immediate surroundings to the site. However, large areas of the appeal site are devoid of permanent structures, which allows for views over the site towards the sky and nearby trees from the track and the residential properties opposite. The open character of the site marks the edge of the built form at this end of the access track and, overall, it makes a positive contribution to the openness of the Green Belt in this location in both visual and spatial terms. The loss of this space that is largely absent of permanent built form would undermine a key purpose of the Green Belt, which is to safeguard the countryside from encroachment.
21. At this permission in principle stage, I do not know the scale and layout of the proposed dwellings. However, in any potential detailed design iteration, the proposed dwellings with additional built form including access routes and boundary treatments, plus other domestic paraphernalia, would inevitably have a deleterious effect on openness in spatial terms when compared to the existing property and storage area. Moreover, even if the dwellings were single storey, the roofs would obstruct views of the sky and trees from the track and the cul-de-sac opposite causing a loss of openness as it is experienced visually.
22. Given the number of dwellings proposed, the size of the site, and its proximity to adjacent areas of open land that are largely devoid of buildings, the harm to openness would be substantial. Consequently, the proposal would not fall within the exception to Green Belt policy set out in paragraph 154 g) of the Framework.

² Appeal decision reference: APP/J1535/W/20/3250197, dated 7 May 2021.

23. Overall, I conclude that the proposal would be inappropriate development in the Green Belt, having regard to the Framework and Policy DM4 of the LP which seek to resist inappropriate development in the Green Belt.

Other considerations

24. It is a matter of dispute as to whether or not the Council is able to demonstrate a five-year supply of deliverable housing sites as is required by the Framework. If I were to accept the appellant's view that there is a significant shortfall, the delivery of the proposed dwellings would make a modest but meaningful contribution to local housing needs, and it would also contribute towards the national objective to significantly boost the supply of homes. Furthermore, as a small site delivered by a Small and Medium Enterprise housebuilder, it could be built out relatively quickly. Consequently, I ascribe these benefits significant positive weight.
25. The development would make more efficient use of this previously developed site. Due to its small scale, this benefit carries moderate weight in support of the scheme. However, I do not consider the site to be urban land and, therefore, it would not assist with urban regeneration which is a key purpose of the Green Belt.
26. The proposal carries some third-party support due to the local preference for residential rather than commercial uses on the site. However, the absence of objection does not equate to lack of harm and therefore this matter weighs neither for nor against the proposal.
27. The development would cause harm to the Green Belt by way of its inappropriateness and loss of openness. I attach substantial weight to this harm in accordance with the Framework. Whilst there would be some benefits arising from the proposal, the other considerations in this case do not clearly outweigh the harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal is therefore in conflict with Policy DM4 of the LP and the Green Belt policies in the Framework.

Planning Balance and Conclusion

28. The proposal would conflict with the aforementioned planning policies and with the development plan when read as a whole. In these circumstances, planning permission should be refused unless material considerations indicate otherwise.
29. Even if I were to conclude that paragraph 11 d) of the Framework is engaged due to the HLS position and the latest official HDT result, the harm that would be caused to the Green Belt and to the EFSAC would provide strong reasons for refusing the development proposed under the provisions of paragraph 11d)(i) and Footnote 7 of the Framework. Consequently, the presumption in favour of sustainable development does not apply.
30. The proposal conflicts with the development plan and the material considerations do not indicate that a decision should be made otherwise than in accordance with it. Moreover, the Order prevents the grant of permission in principle for this habitats development. Therefore, I conclude that the appeal should be dismissed.

E Catchside
INSPECTOR