



Appeal Decision

Site visit made on 4 November 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2025

Appeal Ref: APP/J1535/W/25/3368413

Land south of Hamlet Hill (adj Clouds), Hamlet Hill, Roydon, Essex CM19 5LD

- 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 Mr Leonard Richards against the decision of Epping Forest District Council.
 - The application Ref is EPF/0977/25.
 - The development proposed is Erection of up to two dwellings and associated work.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Permission in Principle has 2 stages, the first of which (permission in principle, herein PIP) establishes whether a site is suitable in-principle. The second Technical Details Consent stage (herein TDC) is when detailed proposals are assessed. This appeal relates to the first stage. The scope of considerations for PIP is limited to location, land use and amount of development. All other matters are considered as part of a subsequent TDC application if a PIP is granted. I have determined this appeal accordingly.
3. The appeal form states it is against the failure to give notice of a decision within the appropriate period. While it might not have been issued within the agreed time-period, a decision notice pre-dating the appeal form by 19 days is included with the appeal, which the appellant refers to and addresses throughout their evidence. As the Council still had jurisdiction and issued a decision before the appeal was lodged, I have treated the appeal as being against the Council's decision to refuse permission, which reflects the banner heading above. No party would be prejudiced by this approach.
4. The Council's evidence did not initially express an objection in respect of any possible effects upon the Epping Forest Special Area of Conservation (SAC). However, having regard to my duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations), this is a matter I have sought the views of the Council, the appellant and Natural England (NE) upon, and in consequence of the evidence, have considered the matter as a main issue.

Main Issues

5. The main issues are whether or not the location, land use and amount of development would be acceptable with particular regard to:
 - the effects upon the SAC as a designated habitats site; and,

- whether or not it would be inappropriate development in the Green Belt.

Reasons

The SAC

6. The Regulations require that where a plan or project may result in a likely significant effect (LSE) upon a designated habitats site (i.e. the SAC), a competent authority is required to make an appropriate assessment (AA) of its implications upon the integrity of that site, in view of its conservation objectives. Any LSEs arising from a proposal need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
7. The SAC qualifying habitats are beech forests on acidic soils with Ilex and sometimes Taxus in the shrub layer, dry heaths, wet heathland with cross-leaved heath, and the qualifying species is the Stag beetle. The SAC's conservation objectives are to achieve a favourable conservation status of the qualifying features by: maintaining or restoring the extent, distribution, structure and function of the qualifying habitats and those of the qualifying species; the population and distribution of the qualifying species; and, the supporting processes on which the qualifying habitats and those of qualifying species rely.
8. The Interim Air Pollution Mitigation Strategy (2020) (the IAPMS) and the Local Plan Habitat Regulations Assessment (2022) (the LPHRA) state detailed traffic modelling show new housing in the district is likely to result in increased traffic on certain highways through and close to the SAC. Traffic using combustion engines results in increased atmospheric pollution from nitrous oxides, nitrogen, ammonia and sulphur dioxide, adversely affecting the SAC. Emissions can be directly toxic to vegetation and lichens, increase soil fertility and affect the quality nitrogen-limited terrestrial habitats. So, alone and in combination with other development in the area, there could be LSEs from new housing from this pathway.
9. The appellant's Habitat Regulations Assessment¹ (SSHRA) states that while the former nursery use would generate vehicle movements, no vehicle movements can be attributed specifically to the site. There is no other figure relating to a lawful use of the site put to me, and/or demonstrating it would affect the SAC. Using TRICS data for up to 2no. 4-bedroom residential dwellings, the proposal could generate up to 3504 annual vehicle movements. Given its distance from the SAC a conservative estimate of 5% of the total, would result in up to 173.8 vehicle movements (worst case) travelling within 200 metres of the SAC. There might be less movements, with fewer and potentially smaller dwellings, but this would be unlikely to mean there would be no movements affecting the SAC.
10. The SSHRA states the proposal would, result in a net increase of movements. So, the appellant's SSHRA confirms a per dwelling financial contribution should be provided in accordance with the IAPMS, and the appellant will agree to all reasonable planning conditions, such as electric vehicle (EV) charging points, which may well contribute to EV use in the future. NE considers that without mitigation there would be adverse effects upon the integrity of the SAC, and to mitigate them, a contribution in accordance with the IAPMS is required.

¹ SITE SPECIFIC HABITATS REGULATIONS ASSESSMENT (May 2025).

11. Therefore, based upon the substantive evidence before me, adopting the precautionary principle, I cannot rule out that there would not be a net increase in vehicle movements from the proposal, resulting in increased pollution at the SAC, resulting in LSEs, and harm to the integrity of the SAC.
12. The IAPMS strategic approach to mitigating air quality impacts is by conditions (e.g. for broadband and EV charging) and securing financial contributions to implement strategic mitigation measures and monitoring activities (SAMMs) via planning obligations. SAMMs include introducing a clean air zone and traffic management measures. The imposition of conditions and securing contributions, in accordance with the IAPMS are therefore, important for mitigating LSEs from new development upon the SAC.
13. The appellant considers mitigation can be addressed at the TDC stage. I note the Planning Practice Guidance (PPG) states that PIP can be granted if, after taking account of mitigation measures, it is concluded the proposal would not adversely affect a habitats site. However, the PPG also states the terms can only include the location, type and amount² of development, it is not possible to impose conditions on a PIP, and planning obligations may be agreed at the TDC stage³. Although, it is unclear to me that there is a legal reason why it would not be possible for an obligation to be provided against a PIP containing all mitigation.
14. To conclude a development would not adversely affect the integrity of the SAC, and as required under Regulation 63(5) of the Regulations, I must be satisfied that adverse effects upon the integrity of the SAC would be avoided, taking the precautionary approach. To reach this conclusion there must be full certainty the necessary mitigation is secured and will be delivered in the event the appeal was allowed. With no planning obligation before me, there is insufficient certainty.
15. The two dwellings permitted next door⁴ which the appellant confirms was in 2016, appear to pre-date the IAPMS, so do not justify allowing the appeal. The appellant has not demonstrated there are no alternative solutions to providing unmitigated housing at the site. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh LSEs to the SAC. Section 63(5) of the Regulations states a competent authority may agree to a plan or project, only after having ascertained that it will not adversely affect the integrity of Habitats sites. As I cannot do this without mitigation being secured, the scheme comprises habitats development excluded from a grant of permission under Article 5B of the Order⁵. These matters preclude the proposal from proceeding.
16. For the reasons set out, I cannot be certain the location, land use and amount of development would not have LSEs upon the SAC as a designated habitats site, in conflict with Regulation 63 of the Regulations, the relevant provisions of which I have set out above. It would also conflict with Policy DM2 of the Epping Forest District Local Plan (2023) (the LP) which sets out similar requirements.

Inappropriate development

17. Paragraph 142 of the National Planning Policy Framework (2024) (the Framework) states the fundamental aim of Green Belt policy is to prevent urban sprawl by

² Paragraph: 020 Reference ID: 58-020-20180615.

³ Paragraph: 022 Reference ID: 58-022-20180615.

⁴ Ref. EPF/3348/16.

⁵ The Town and Country Planning (Permission in Principle) Order 2017 (as Amended).

keeping land permanently open. Paragraph 153 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 confirms the construction of new buildings should be regarded as inappropriate development subject to certain listed exceptions.

18. Policy DM4 of the LP explains that within the Green Belt permission will not be granted for inappropriate development, except in very special circumstances, in accordance with the Framework. It lists exceptions to inappropriate development similar to those in the previous (2023) iteration of the Framework, but as it pre-dates the latest Framework, it does not include some changes to some exceptions in paragraph 154 or the provisions of new paragraph 155 of the Framework.
19. An exception listed at C) (v) of Policy DM4 is limited infilling in rural communities, and there is a similar exception at Framework paragraph 154e) for limited infilling in villages. The LP was examined and adopted in the context of the same exception in earlier iterations of the Framework. While development plan policies should be consistent with the Framework, I am not convinced this means they must be the same. However, there are no definition differences put to me between 'rural communities' and 'villages', and I see no reason why they would not amount to the same, so I have treated them as meaning the same and I take the exception to be consistent with the Framework. The Council has referred to 'smaller settlements', but there is no substantive evidence that it differs from the term 'rural communities' so I have also treated them as all meaning the same.
20. The Council states site is outside the designated settlements of Lower Nazeing and Roydon, and not within a settlement designated in the hierarchy in Policy SP2. However, from what I have been provided with Policy SP2 does not designate or list settlements. Though the Council refers access to services and facilities, such a matter may not be determinative in defining a rural community. The Council does not advance a specific definition and provides quite limited substantiation how it reaches a view on the appeal site. Moreover, development plan settlement boundaries are not necessarily determinative of whether a site can be regarded within a village or rural community, and a decision maker should have regard to the situation on the ground.
21. The appeal site comprises land the Council states, was previously a horticultural nursery that ceased some 20 years ago, albeit remnants of former structures and infrastructure remained. The Council states that express permission has not been granted for a change of use of the site, and it's aerial photograph and street view images said to be from 2018 indicate the site previously had a number of trees, with little operational development or active use discernible.
22. The appellant's view is that Hamlet Hill is a village of around 150 dwellings, constituting a small village as defined by dictionary definition of 'a community in a country area that is smaller than a town', falling between the size of a Hamlet and a Town. Development around this part of Hamlet Hill is defined by a generally linear pattern, most strongly defined on its northern side, including along Barn Hill. On its southern side, dwellings and other development are of a lower density, although settlements are rarely uniform in character and there is a defined alignment of, primarily residential development, either side of the site.

23. When at the front and within much of the appeal site there is quite a strong sense of being surrounded by dwellings, with several visible nearby for some distance, and from this, a feeling of being within a rural community. I find neither main party's submissions unequivocal or fully definitive in this regard. However, on balance, as a matter of judgement I find the appellant's substantive submissions more convincing and it would appear to me, from what I saw, experienced and the substantive evidence, the site can be regarded as being within a rural community.
24. The Council takes the view the proposal could constitute 'limited infilling' given its surrounds. The supporting text to Policy DM4 states that this should be appropriate to the scale of the locality and should not have an adverse impact on the character of the countryside or local environment. It would appear, that up to two dwellings could be developed in a sensitive manner in accordance with the pattern of surrounding development, and in a layout, of a scale, and of a character and appearance in keeping with the surroundings to ensure it would constitute limited infilling and meet the relevant policy expectations.
25. The Council and the appellant make substantive comments in respect of Framework paragraph 155. Even if I were satisfied the appellant has adequately demonstrated the rest of criteria (a), and criteria (b) and (c) are satisfied, 'grey belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 provide a strong reason for refusing the development. Therefore, in light of my findings in respect of the SAC as a designated habitats site, and my conclusions below, the proposal would not fall within the definition of 'grey belt'.
26. Nevertheless, as I find it meets the exception to inappropriate development set out earlier, my findings upon grey belt are not determinative in respect of this main issue. For the same reason, there is no need to assess the effects upon openness, or, whether any other considerations amount to very special circumstances necessary specifically to justify inappropriate development.
27. Therefore, for the reasons set out above, the location, land use and amount of development, could be developed to ensure the proposal meets the exception of being limited infilling in rural community in Policy C) (v) of Policy DM4 and constitute limited infilling in a village in paragraph 154e) of the Framework. Therefore, it would not be inappropriate development in the Green Belt.

Planning Balance

28. Both parties agree the site was previously in a horticultural use. The Council's evidence indicates several structures, containers and equipment were not present in 2018, and the appellant does not appear to dispute no express consent was granted for any change of use. The lawfulness of the structures and site as I saw it has not been fully substantiated. However, though it might also be at odds with the appellant's SSHRA, were I to adopt a position they are lawful, high-quality submissions at the TDC stage could result in clear benefits to the setting of the Nazeing and South Roydon Conservation Area and the character and appearance of the area, attracting notable weight in favour of the scheme.
29. Given the limited intervisibility with Hill Farm as a designated heritage asset, a high-quality scheme may be able to be designed to result in some minor benefits to its setting and significance, attracting positive weight in favour of the proposal. Subject to high-quality schemes at the TDC stage the proposal could secure

landscape and biodiversity enhancements, which having regard to their potential scope may be likely to result in moderate overall benefits in favour of the proposal.

30. A decision letter⁶ refers to the 2023 Housing Delivery Test result (HDT) being 66%. In another⁷ a position was taken it could only demonstrate a 1.43-year housing land supply (HLS), and in a third the HLS is estimated to have ranged between 3.4 – 3.9 years. The Council considers at 31 March 2024 it could demonstrate a HLS of around 6.57 years and following revisions the 2023 HDT result is 75.31%⁸. Though noting the live table, it is not clear the result has been officially updated.
31. I find neither parties' position on HLS and HDT conclusive. However, if I were to take the appellant's view, the policies most important for determining the application are considered out of date, there has been some past under delivery, having a 5-year HLS and meeting certain HDT thresholds are not a ceiling. The provision of up to two dwellings would attract moderate weight in favour of the scheme. There would also be limited economic benefits during construction and on-going spend and support to local services and facilities following completion.
32. The proposals to integrate various measures to attain low carbon and water efficient dwellings, and renewable energy measures are noted. However, it is unclear these would result in anything other than minor overall benefits at best. Were I to agree a scheme would be or subject to planning conditions could be, made compliant with policies in respect of matters such as the living conditions of future and neighbouring occupiers, contaminated land, arboricultural protection, drainage, accessibility, parking and highway access design specifications, these would be neutral matters in the balance. Based upon the evidence before me, not constituting inappropriate development would also be a neutral matter.
33. Overall, the policy compliance and benefits of the proposal attract significant weight in its favour. However, I cannot be certain the proposal would not result in LSEs upon the SAC. The policy conflict and harm from LSEs to the SAC are of such a high order, this significantly outweighs the benefits of the proposal. Moreover, section 63(5) of the Regulations precludes the proposal from proceeding. In accordance with paragraph 11d)i) of the Framework the application of policies that protect areas or assets of particular importance provide a strong reason for refusing the development, for which Framework policies are not met. Therefore, the harm outweighs the benefits, and the appeal should not succeed.

Conclusion

34. The proposal conflicts with the development plan read as a whole, the Framework read as a whole and the Regulations. There are no material considerations advanced, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan and the Regulations. Therefore, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR

⁶ Ref. APP/J1535/W/24/3347690.

⁷ Ref. APP/J1535/W/24/3354909.

⁸ Paragraphs 6.20 and 6.21 of the Council's Appeal Statement.