



Appeal Decision

Site visit made on 21 May 2019

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 11 June 2019

Appeal Ref: APP/J1535/W/19/3220805

Garden Centre, Crown Hill, Waltham Abbey EN9 3TF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Bundy against the decision of Epping Forest District Council.
 - The application Ref EPF/1419/18, dated 19 May 2018, was refused by notice dated 12 September 2018.
 - The development proposed is to demolish Garden Centre Shop/Office and erect Building with 10no Affordable Apartments.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I note that the Epping Forest District Council Local Plan (Submission Version) (2017) (the emerging plan) has been published and submitted but has yet to be examined. It only attracts limited weight in my determination of the appeal as a further material consideration.
3. I have also dealt with another appeal (Ref 3220804) on this site. That appeal is the subject of a separate decision.

Main Issues

4. The main issues are:
 - Whether or not the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies;
 - The effect of the development on Upshire Conservation Area which is a heritage asset;
 - The effect of the development on existing trees and the potential for future tree planting;
 - The effect of the development on the Epping Forest Special Area of Conservation (the SAC); and

- If the development is inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal in accordance with the Framework.

Reasons

Whether inappropriate development/effect on openness

5. The development involves the construction of ten affordable apartments. Paragraph 145 of the Framework sets out that limited infilling in villages is not inappropriate development in the Green Belt. Paragraph 145 also describes the complete redevelopment of previously developed land (PDL) as not inappropriate development, providing that the development would not have a greater impact on the openness of the Green Belt than the existing development or would contribute towards meeting an identified affordable housing need.
6. Policy GB2A of the Epping Forest District Local Plan Alterations (2006) (the Local Plan Alterations) restricts development in the Green Belt unless it falls within one of eight specific categories. Policy GB2A predates the first National Planning Policy Framework. Whilst it is broadly in accordance with the restrictive approach to development in the Green Belt, it is out of date with the Framework because the categories set out in Policy GB2A do not include infilling in villages or the complete redevelopment of PDL. For that reason, Policy GB2A attracts moderate weight in my determination of the appeal.
7. The appeal site forms part of a larger site of a former garden centre which lies between the edge of the village of Upshire and the M25 flyover. This part of Crown Hill, which extends under the M25, is characterised by ribbon development on one side of the road with generally undeveloped heathland on the opposite side.
8. The land which falls outside the appeal site but within the former garden centre area, has the benefit of planning permission for four semi-detached houses granted at appeal under Appeal Reference APP/J1535/W/17/3186698 (the 2017 appeal scheme). The Inspector in that case took the view that the M25 flyover defines the edge of the village. On the basis of the evidence before me and my own observations on site, I concur with that view which leads me to determine that the site lies within a village and that the development would constitute infilling. However, given the scale of the development it would not amount to 'limited' infilling in a village. Consequently, the development would be inappropriate development in the Green Belt.
9. Turning to the issue of PDL. There is a building on the site and a hard-standing area which were previously used for the shop associated with the garden centre; this indicates that at least part of the site is PDL. The appeal scheme would involve the erection of a two-storey building with rooms in the roof. Both the footprint and the height, scale and massing of the new building would be significantly larger than the existing building. In combination with the proposed extensive areas of car parking and hard-standing, the redevelopment of the site would have a greater impact on the openness of this part of the Green Belt.

10. Whilst the development would have a greater impact on openness given the particular circumstances of the case it would not cause substantial harm. The appellant has brought the scheme forward as affordable housing. However, the Council does not accept that it would meet an identified housing need and there is no mechanism before me to ensure that appropriate occupancy criteria would be defined and enforced, and that it would remain affordable to first and subsequent occupiers. Therefore, the development would not meet the criteria set by Paragraph 146 (g) of the Framework and would amount to inappropriate development in the Green Belt.
11. I conclude that the appeal proposals amount to inappropriate development in the Green Belt having regard to the Framework and its effects on the openness of the Green Belt. The development is therefore contrary to Policies GB2A and GB7A of the Local Plan Alterations. These policies, jointly, amongst other things, restrict development in the Green Belt and prevent conspicuous development where it would have an excessive adverse impact on the openness of the Green Belt.

Upshire Conservation Area

12. Upshire Conservation Area (the CA) covers a wide area to the north of the M25 and east of Waltham Abbey, including both sides of Crown Hill. Notwithstanding that the appeal site and the remaining part of the former garden centre fall outside the boundary of the CA, the other side of the road falls within the CA. Thus, the site forms part of the surroundings in which a heritage asset is experienced.
13. The existing housing on the same side of the road as the appeal site is varied in character but front and side gables are a prominent feature in the street and buildings are generally close to the edge of the road. These features are reflected in the design of the houses which have been allowed on appeal on the adjacent site.
14. Neither the site nor the wider former garden centre area makes a positive contribution to the street scene particularly given the high security fence on the road frontage. The former shop element of the garden centre is set back from the road frontage of the appeal site. However, it is a comparatively low structure and set against a tree lined boundary, which results in it appearing recessive in the wider site context which forms part of the CA.
15. The proposed building which I have already acknowledged as being significantly larger than the existing building, would be set back from the road frontage in comparison with some of the houses on Crown Hill and the dwellings which were allowed under the 2017 appeal scheme. In combination, this siting, the hipped roof shape, the vertical emphasis of some of the windows, the flat roof dormers and the two-storey projecting window feature, would result in the new building appearing as an incongruous and alien part of the street scene, which forms part of the setting of the Conservation Area.
16. The appellant refers to a development at Woollard Street in Waltham Abbey (Council Ref EPF/2170/17) (the Woollard Street scheme) which has been approved by the Council. The Council's report describes the location of this development as 'within an already built-up residential estate' and there is no reference to the site being in or close to a Conservation Area. On this basis I do not find the Woollard Street scheme to be directly comparable to the current

appeal proposals and this reference has attracted limited weight in my determination of the appeal.

17. In relation to the effect of the development on the Conservation Area, the appellants invite me to consider a revision to the building to reduce its scale by one storey. This would amount to a significant change to the appeal scheme and it would not be fair to all parties for me to consider such a revision. Moreover, there are no amended plans before me to illustrate the effect of a reduction of scale of the nature presented.
18. I conclude that the appeal scheme would have a harmful effect on Upshire Conservation Area which is a heritage asset. The development would, therefore, be contrary to Policies HC6 and DBE1 of the Epping Forest District Local Plan 1998 (the Local Plan) and CP2 of the Local Plan Alterations. These policies, jointly, amongst other things, require development to enhance the rural environment and respect their setting in terms of siting, massing and detailing and resist development which would be detrimental to the setting of a conservation area. For similar reasons the development would not accord with the design objectives of the Framework.
19. I do not find Policy HC7 of the Local Plan to be relevant as this relates to development within a conservation area, which is not the case in respect of the appeal site.
20. Paragraph 196 of the Framework makes it clear that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. Paragraph 196 requires that less than substantial harm to a heritage asset, as is the case here, should be weighed against the public benefits arising from the proposal. There is very limited evidence before me relating to the public benefits of the scheme save for the reference to occupation of the building as affordable housing. However, as I have reasoned above, there is no mechanism before me to ensure that the development remains affordable to first and subsequent occupiers. In the light of this I do not find that any public benefit would outweigh the harm to the designated heritage asset that I have found in this instance.

Existing trees and the potential for future tree planting

21. There are mature trees along the rear boundary of the appeal site including a large tree in the corner of the site adjacent to the planting which provides screening to the M25 flyover. These trees soften the boundaries of the site and make a significant contribution to the appearance of the street scene. The appeal scheme would require the removal of trees along the rear boundary, but the large tree is shown as retained. A strip of land to accommodate a hedge or similar feature is shown on the plans to the road frontage.
22. I am persuaded that adequate measures could be secured by planning condition to ensure the long-term health of the large tree in the corner of the site and that a hedge would be a suitable form of landscaping to the site frontage in view of the presence of similar features in the street scene. However, given the importance of the existing trees on the rear boundary to the street scene and the lack of space for replacement tree planting along this boundary arising from the site layout, their removal would have a harmful effect on the appearance of the site and its wider context.

23. The appellants have referred to the trees on the rear boundary having been agreed to be removed as part of the 2017 appeal scheme. This is not clear from the evidence which is before me and I note that the Inspector in that case considered that trees elsewhere on the rear boundary of the Garden Centre could be retained.
24. I conclude that the appeal scheme would have a harmful impact on existing trees and the potential for future tree planting would be limited. The development is therefore contrary to Policy LL2 of the Local Plan which, amongst other things requires that development in the countryside should respect the character of the landscape.

Epping Forest SAC

25. The Council has confirmed that the site is within a settlement close to Epping Forest. The Forest is defined as a Special Area of Conservation (SAC) because it is an important conservation site and a SAC falls within the definition of a European site. The Conservation of Habitats and Species Regulations 2017 requires that where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, an appropriate assessment must be made in view of that site's conservation objectives. Circular 06/2005 sets out that the decision on whether or not an appropriate assessment is necessary should be made on a precautionary basis.
26. Policy NC1 of the Local Plan states that the Council will comply with the UK's international obligations for SACs and the Framework requires that if significant harm to biodiversity cannot be avoided, for example through mitigation, planning permission should be refused. Policies DM2 and DM22 of the emerging plan, which are material considerations, also require that development proposals conserve the SAC in terms of access management and monitoring of visitors and that the SAC is not adversely impacted in terms of air quality.
27. The proposal would be likely to result in an increase in traffic in close proximity to the SAC, which on its own or in combination with other plans or projects, could lead to impacts on the SAC in terms of both air quality and recreational pressure. I do not have any objective evidence before me regarding the impacts of the development on air quality.
28. With respect to recreational pressure, the Council has adopted an Interim Approach to Managing Recreational Pressures on the SAC. This approach includes a requirement for a contribution of £352 per dwelling to mitigate the impacts arising from the harm the proposal will bring to recreational receptors within the SAC. However, whilst the appellants have indicated a willingness to enter into an agreement which would secure the requested contribution, there is no such agreement before me. Therefore, I cannot be certain that any harm arising from additional recreational pressure on the SAC can be suitably mitigated.
29. Overall, a very limited case has been set out in terms of the impacts of the development on the SAC and an appropriate assessment has not been carried out. I therefore cannot be certain that this particular development would not adversely affect the integrity of the SAC as required by Circular 06/2005. In view of these circumstances and the acknowledged importance of the SAC, the lack of information in this case cannot be overcome by the imposition of a

planning condition to secure an appropriate assessment and any mitigation measures which may arise from such an assessment.

30. I have a statutory duty to ensure there would be no adverse effect upon the integrity of the SAC and the evidence before me does not lead me to that finding. Adopting a precautionary approach, I conclude that the development could have a harmful effect on the Epping Forest SAC and that it would be contrary to Policy NC1 of the Local Plan.

Other Considerations

31. The appellants argue that the Council cannot demonstrate a five-year supply of housing land (5YHLS) and the Council has not disputed this. This means that paragraph 11 (d) of the Framework falls to be considered. This requires that where relevant policies are out of date planning permission should be granted unless the application of policies in the Framework that protect areas or assets of importance provide a clear reason for refusal. As I have found that the development would be harmful to the SAC which is an area protected by policies in the Framework, the presumption in favour of sustainable development does not apply in this case.
32. My attention has been drawn to the potential for the existing building on the site to be converted to a dwelling. Prior Approval has been granted for such a conversion (Council Ref EPF/0592/18 PN). However, there is no certainty that the permitted change of use would be implemented should this appeal be dismissed. As such the potential fall-back of conversion of the existing building attracts only moderate weight in my determination of the application and it does not outweigh the potential harm which I have identified in relation to the main issues.
33. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I am not persuaded on the basis of the evidence before me that the scheme would deliver affordable housing and I have not identified any other benefits which would clearly outweigh the harm to the Green Belt by reason of inappropriateness, and in terms of the harm to the setting of Upshire Conservation Area and as a result of the loss of existing trees and the potential harm to the Epping Forest SAC. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Other Matters

34. I acknowledge the concerns raised by local residents and the Epping Forest Heritage Trust, in addition to those relating to the main issues, including overlooking, highway safety, drainage, access including to telecommunications equipment, archaeology, relationship to local services and reliance on the private car. Given that I find the proposal to be unacceptable for other reasons, and any such concerns would have no bearing on my overall planning balance, it is not necessary for me to address these matters any further as part of this decision.

Overall Planning Balance

35. The proposed development is contrary to the development plan, and other material considerations are not of such weight as to indicate that permission should be granted in this instance.

Conclusion

36. For the reasons given above, the appeal is dismissed.

Sarah Dyer

Inspector

Richborough Estates