

Appeal Decision

Hearing held on 31 July 2018

Site visit made on 31 July 2018

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2018

Appeal Ref: APP/J1535/W/18/3200087

Granville, 119 Theydon Park Road, Theydon Bois, Epping CM16 7LS

- 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 Ayaz Vankad against the decision of Epping Forest District Council.
 - The application Ref EPF/3364/17, dated 8 December 2017, was refused by notice dated 7 March 2018.
 - The development proposed is described as 'Replacement dwelling and relocating vehicular access point.'
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling, erection of replacement dwelling and front boundary fence. Erection of detached garage and relocation of vehicular access point at Granville, 119 Theydon Park Road, Theydon Bois, Epping CM16 7LS in accordance with the terms of the application, ref EPF/3364/17, dated 8 December 2017, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. In paragraph 1 above I have adopted the description of development used in the decision notice since it more fully describes the proposal and was used by the Council in the determination of the application.
 3. The appellant's submissions include a proposal to omit the detached garage. The Council objected to this amendment. I consider that it would amount to a material change to an element of the scheme which was of concern to interested parties. Amending the scheme at the appeal stage would deny those parties an opportunity to comment on it. I have therefore, determined the appeal based on the scheme including the garage as considered by the Council.
 4. The revised National Planning Policy Framework (the Framework) was published after the parties had submitted their statements, but before the hearing. Prior to the hearing the parties were asked to be prepared to discuss at the hearing whether the revisions to the Framework had implications for their cases. I have taken those responses and the revised Framework into account.
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Main Issues

5. The main issues in this case are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- the effect of the proposal on the openness of the Green Belt;
- other considerations,
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal?

Reasons

Whether inappropriate development?

6. The appeal site is located within the Green Belt where Policy GB2A of the Epping Forest District Local Plan Alterations 2006 (LP) presumes against the construction of new buildings, unless they are appropriate. The policy goes on to list the forms of development which may be potentially appropriate in the Green Belt. This includes development in accordance with a Green Belt policy. Policy GB15A of the LP allows for a replacement dwelling in the Green Belt where, amongst other things, it would not be materially greater in volume than that it would replace and would not have a greater impact on the openness of the Green Belt than the original dwelling. Paragraph 145 of the Framework states that the construction of new buildings in the Green Belt will be inappropriate unless they fall into specified exceptions. In essence, Policy DM4 of the Submission Version Epping Forest District Local Plan 2017 (SVLP) reflects paragraphs 80, 89 and 90 of the 2012 version of the Framework. The parties agreed that, for the purposes of this appeal, there are no material differences between paragraph 89 of the 2012 Framework and paragraph 145 of the revised Framework.
7. Notwithstanding the position set out in its appeal statement, at the hearing the appellant contended that the appeal proposal falls within the exception at Framework paragraph 145(g) which allows for the partial or complete redevelopment of previously developed land (excluding temporary uses) which would not have a greater impact on the openness of the Green Belt than the existing development.
8. Policy GB7A¹ of the LP presumes against development conspicuous from within the Green Belt which would have an excessive impact on the openness, rural character or visual amenities of the Green Belt.
9. The appeal property is a detached, former 'recreational chalet' which has a certificate of lawfulness for use as a dwelling house². Certificates of lawfulness have also been granted for a number of extensions to the dwelling³. These extensions were partially completed at the time of the site visit, although there is no dispute that the structures which exist take up the full floor area and volumes of the permitted schemes. There is also an unimplemented certificate of

¹ The Council confirmed that the correct reference is to Policy GB7A, rather than GB7 as cited in the decision notice

² Application references EPF/1127/82 and EPF/2660/13

³ Application references EPF/1653/14, EPF/2043/14 and EPF/0331/15

lawfulness for the erection of a garden store and pool building to the rear of the dwelling⁴.

10. The appeal proposal would amount to the complete redevelopment of the site. There is no dispute that the appeal site, insofar as it accommodates an existing dwelling, constitutes previously developed land or that, whilst the extensions to the dwelling are not complete, nor are they temporary buildings. However, the Council considers that the appeal proposal would have a greater impact on openness than the existing development.
11. It was agreed at the hearing that the existing buildings have a floor area of 257sq m and a volume of 857cu m. The appeal proposal would have a floor area of 371sq m and a volume of 1293cu m. The appeal proposal would, therefore, significantly increase the size of built development on the site. To an extent, the effect of that increase would be reduced because the new building would have a more compact form and cover less of the site. Whereas the existing building spans the full width of the site, there would be gaps at the sides of the new building and more space would be retained to its rear.
12. Conversely, the proposed garage would be located at the front of the new dwelling and would be sited close to the side boundary. Consequently, notwithstanding the gap between new dwelling and that side boundary, any views to the rear of the site would be closed off by the new garage. Moreover, the ridge height of the new building, which would span most of its width, would be at least twice as high as the existing buildings. The proposed dwelling would, therefore, be a more imposing presence on the site and would curtail the current views over the existing building to the trees to the rear of the site.
13. The appellant also argues that, by virtue of their irregular form and layout, the existing buildings are more conspicuous than would be the simpler, more composed, form of the new building. Whilst visual impact can be an aspect of openness, in this case, I consider that the visual improvement would not be sufficient to reduce the effect of the proposal on openness to the point where it would be no greater than the existing development. Nevertheless, I return to this matter below in connection with the fall-back position.
14. Therefore, by virtue of their scale, height and siting, I find that the proposed house and garage would have a greater impact on openness than the existing development.
15. As the effect of the proposal on the openness of the Green Belt is part of the assessment on whether or not it would be inappropriate development, it is not necessary for me to consider openness as a separate matter.
16. I find that the proposal would lead to moderate harm to the openness of the Green Belt. As such, it would not fall within the exception at Framework paragraph 145(g) and would be inappropriate development for the purposes of the Framework and would conflict with LP Policies GB2A and GB15A and SVLP Policy DM4. It would also conflict with LP Policy GB7A insofar as it seeks to protect the openness of the Green Belt. Since the exception at Framework paragraph 145(g) does not require an assessment of whether the proposal would conflict with the purposes of including land in the Green Belt, it is not necessary for me to consider that matter further.

⁴ Application reference EPF/2352/14

Other Matters

17. The appeal site sits within a row of former 'recreation plots'. Some have been redeveloped with single and 1½ storey detached dwellings, although there are also vacant plots, including those on either side of the appeal site, and an original recreational chalet. Whilst the redeveloped dwellings front onto Theydon Park Road, there is not a uniform building line. That said, none of the existing properties have detached garages to the front of the dwellings. The siting of the proposed garage would not, therefore, be consistent with the overall pattern of development. However, the grant of planning permission would offer the opportunity to use conditions to secure a scheme of hard and soft landscaping and means of enclosure. Suitably designed planting and enclosures could be used to screen the garage. Having regard also to its separation from adjoining properties, I consider that the garage would not be incongruous in the street scene.
18. The redeveloped properties in the row vary in scale, form and appearance. The proposed dwelling would be at the top end of the range of scales and heights of buildings in the row. However, notwithstanding its effect on openness compared with the existing development, it would sit fairly comfortably on the plot. Having regard also to the separation created by the vacant plots on either side, I consider that the scale and height of the dwelling would not be out of place. Its form or appearance would be in keeping with the other redevelopment plots in the row. Overall therefore, I consider that the appeal proposal would not have an excessive impact on the rural character or visual amenities of the Green Belt. As such, it would not conflict with LP Policy GB7A inasmuch as it seeks to protect the rural character and visual amenities of the Green Belt.
19. It has been suggested locally that justifying the proposal on the basis that it would replace an accumulation of outbuildings allowed using permitted development rights would set a precedent. My consideration below of the fall-back position is based on the specific circumstances of this case. I have not been made aware of other sites where a comparable situation exists and each proposal should be considered on its merits. As such, I consider that this generalised fear of precedent carries very limited weight in the determination of the appeal.
20. The Council argues that, were the appeal proposal to be built, it would amount to a new 'original building' for the purpose of the exception at Framework paragraph 145(c). As such, it would open the opportunity for further extensions and alterations provided that they are not disproportionate additions over the size of the original building. There is no firm evidence to suggest that this would be the appellant's intention and any consideration of such a proposal would need to be in accordance with relevant development plan policies and have regard to its effect on the Green Belt. Therefore, I give this consideration limited weight.

Other Considerations

21. The appellant contends that, in the event that the proposal is found to be inappropriate development, he would complete the existing extensions and the unimplemented garden store and pool building scheme and that this should be taken into account as a fall-back position.
22. The appellant has owned the appeal site since 2012 and it is evident from the extensive planning history that there has been a sustained effort to maximise the

potential accommodation on the site. A quotation for completion of the extensions has been obtained. I also heard that the appellant has a growing family and his elderly parent live with him. Whilst the fall-back scheme would not be ideal, he would proceed with it in the event that the appeal was dismissed in order to provide suitable accommodation for his family. The appellant considers that other options for developing the site have been exhausted.

23. The Council argues that other suitable accommodation could be found elsewhere in the urban area. However, it is apparent that the appellant is committed to developing the site to provide additional accommodation and, on the basis of the available evidence, I consider that there is more than a realistic probability that the fall-back scheme would be implemented if the appeal were dismissed. Therefore, I give it significant weight.
24. The Council accepts that, having regard to their proximity to the existing buildings and related function, it would be appropriate to take into account the effect of the garden store and pool building cumulatively with the existing buildings when considering the fall-back position. Together, these outbuildings would have a floor area of 144sq m and a volume of 455cu m. Added to the existing buildings, the total floor area of the fall-back scheme would be 401sq m and the volume 1312cu m. On this basis, the potential development at the site would be greater in size than the appeal proposal. The built development would also be spread over a greater proportion of the site. Even taking into account the greater height of the appeal proposal therefore, I consider that its effect on openness would be no greater than the fall-back scheme.
25. The appellant has completed a unilateral undertaking which would have the effect of cancelling the certificate of lawfulness for the garden shed and pool building on the implementation of the planning permission for the appeal proposal. This removes the potential for those outbuildings to add to the size of the built development at the site were the appeal scheme to be approved and implemented.
26. The Council argues that the fall-back scheme would have an organic form which would be more suited to its countryside location than the suburban form of the appeal proposal. However, the layout of the fall-back scheme is largely dictated by the limitations imposed under the GPDO⁵ and, to my mind, would appear haphazard, rather than organic. Moreover, the extensive use of flat or shallow pitched lean-to roofs would not reflect the character of traditional rural buildings and would also be at odds with the form and appearance of most redeveloped plots in Theydon Park Road. The permitted development regime provides little control over the fenestration or design details of the extensions to the dwelling and no opportunity to secure a landscaping scheme or suitable means of enclosure of the site boundaries.
27. The garden store and pool building would take up much of the space to the rear of the dwelling and it is likely, therefore, that the space at the front of the site would be used as a private external area. In the absence of control over landscaping or means of enclosure, the associated domestic paraphernalia could be on display in views from the road. Not only would this detract from the street scene, it could also compromise the privacy of future occupiers.

⁵ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

28. Whilst the appellant argues that the internal layout of the fall-back scheme would provide workable living space, it would be constrained by the limitations of the GPDO and, in the long term, would provide less satisfactory accommodation than the purpose designed appeal proposal.
29. An appeal against an earlier refusal of planning permission for a four bedroom house on the site was dismissed in 2015⁶. The application was made in outline with all matters except scale reserved for further approval. Whilst the scale of the building in that case was slightly smaller than the current proposal, further extensions to the existing building have been added since that decision. Moreover, there was no legal mechanism before that Inspector to prevent the implementation of the garden store and pool buildings. Nor, given that the application was made in outline, was the Inspector in a position to properly compare the layout, form and appearance of the proposed building with the fall-back position then available to the appellant. Therefore, I consider that the circumstances in that case were readily distinguishable from the current appeal.

Green Belt Balance

30. I have found that the appeal proposal would be inappropriate development in the Green Belt. Framework paragraph 143 advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 confirms that substantial weight should be given to any harm to the Green Belt.
31. However, I find that the appeal proposal, including the restriction imposed by the unilateral undertaking, would result in no greater loss of openness of the than the fall-back scheme. The fall-back position would also have a significantly harmful effect on the character and appearance of the area and provide less satisfactory living conditions for future occupiers.
32. Overall therefore, I find that the other considerations in this case clearly outweigh the moderate Green Belt harm and limited other harms that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the appeal proposal. That being so, the conflict with LP Policies GB2A and GB15A and SVLP Policy DM4 and partial conflict with LP Policy GB7A is also overcome.

Unilateral Undertaking

33. Regulation 122 of the CIL Regs states that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind.
34. I have already found that the planning obligation in the submitted unilateral undertaking is necessary to make the development acceptable in planning terms. It is clearly directly related to the development. I have, therefore taken it into account.

Conditions

35. The Statement of Common Ground sets out a list of 12 suggested conditions. Suggested condition 4 requires a flood risk and management and maintenance

⁶ Appeal reference APP/J1535/W/15/3007791

plan. However, the appeal site is relatively modest in size and there is no firm evidence to suggest that it is at particular risk from flooding. Consequently, I consider that this condition is not necessary. Following discussion at the hearing the Council produced a simplified version of the landscaping condition. I have used this wording, amended to include means of enclosure and a time limited replacement planting requirement in accordance with the original condition. With amendments for clarity, I find that the remaining conditions meet the test set out in the Planning Practice Guidance.

36. A condition specifying the approved plans is necessary in the interests of certainty. Conditions controlling the external materials to be used, a scheme of hard and soft landscaping and the protection of existing trees are necessary to safeguard the character and appearance of the area. A condition to secure a surface water drainage scheme is required to prevent flooding and a condition to deal with potential contamination is necessary to protect public health. The provision of wheel washing facilities is necessary in the interest of highway safety. Conditions to control construction working hours and the installation of obscured glazing in the upper floor windows in the flank walls of the dwelling are required to safeguard the living conditions of neighbouring occupiers.
37. In view of the site's Green Belt location and the balanced assessment of the effect of the proposal on the openness of the Green Belt in this case, I consider that it is, exceptionally, necessary to use a condition to withdraw permitted development rights for the enlargement, improvement or other alteration to the dwelling, alterations to its roof and the erection of incidental buildings.

Conclusion

38. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR

Appearances

FOR THE APPELLANT

Ian Coward MRTPI

Director, Collins and Coward

Ayaz Vankad

Appellant

FOR THE COUNCIL

Sukhi Dhadwar MRTPI

Senior Planning Officer, Epping Forest District
Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Revised Statement of Common Ground
- 2 Revised landscaping condition

Schedule of conditions attached to

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- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans: 1293.65, 1293.66, 1293.67, 1293.68, 1293.70 (location plan), 1293.70 (existing & proposed street scenes - with and without boundary treatment), 1293.71, 1293.72.
- 3) No construction works above ground level shall take place until documentary and photographic details of the types and colours of the external finishes have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such approved details.
- 4) Prior to the commencement of the development hereby permitted a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall indicate the existing trees, shrubs and hedgerows to be retained, the location, species and size of all new trees, shrubs and hedgerows to be planted, those areas to be grassed or paved, the means of enclosure of the site boundaries and a programme of planting. The scheme shall include details of all surfacing materials and existing and proposed ground levels. The approved scheme shall be completed during the first planting season following the occupation of the dwelling hereby permitted or in accordance with an agreed programme. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

- 5) No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837: 2012 (Trees in relation to design, demolition and construction - recommendations) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved documents unless the Local Planning Authority gives its written consent to any variation.
- 6) No development shall take place until details of surface water disposal have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.
- 7) The proposed use of this site has been identified as being particularly vulnerable if land contamination is present, despite no specific former potentially contaminating uses having been identified for this site.

Should any discoloured or odorous soils be encountered during development works or should any hazardous materials or significant quantities of non-soil forming materials be found, then all development works should be stopped, the Local Planning Authority contacted and a scheme to investigate the risks and/or the adoption of any required remedial measures be submitted to and approved in writing by the Local Planning Authority prior to the recommencement of development works.

Following the completion of development works and prior to the first occupation of the site, a report shall be submitted to demonstrate that any required remedial measures were satisfactorily implemented or confirmation provided that no unexpected contamination was encountered.

- 8) No development shall take place until wheel washing or other cleaning facilities for vehicles leaving the site during construction works have been installed in accordance with details which shall be submitted to and agreed in writing by the Local Planning Authority. The approved installed cleaning facilities shall be used to clean vehicles immediately before leaving the site.
- 9) All construction/demolition works and ancillary operations, including vehicle movement on site which is audible at the boundary of noise sensitive premises, shall only take place between the hours of 07.30 to 18.30 Monday to Friday and 08.00 to 13.00 hours on Saturday, and at no time during Sundays and Public/Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.
- 10) Prior to first occupation of the development hereby approved, the proposed upper level window openings in the flank elevations shall be entirely fitted with obscured glass and have fixed frames to a height of 1.7 metres above the floor of the room in which the window is installed and shall be permanently retained in that condition.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any other Order revoking, further amending or re-enacting that Order) no development permitted by virtue of Classes A, B or E of Part 1 of Schedule 2 to the Order shall be undertaken without the prior written permission of the Local Planning Authority.