



Appeal Decision

Site visit made on 8 May 2019

by **Andrew Smith BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 June 2019

Appeal Ref: APP/J1535/W/18/3215400

1 Mount End, Theydon Mount, Epping, Essex CM16 7PS

- 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 Robert Shaw on behalf of ARA Homes Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/1406/18, dated 18 May 2018, was refused by notice dated 10 October 2018.
 - The development proposed is demolish the barn at 1 Mount End, CM16 7PS and erect two detached houses.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has confirmed that the Epping Forest Local Plan Submission Version 2017 (the EFLPSV) was submitted for examination in September 2018 and that examination hearings commenced in February 2019. Although I understand that the examination process is yet to conclude, where the content of relevant policies has been substantiated in the evidence before me, I have given them limited weight in my consideration of this appeal. This is because their content may yet change prior to being formally adopted.

Main Issues

3. In light of the site's proximity to the Epping Forest Special Area of Conservation (the SAC) and of the Council having brought to my attention interim advice in this regard issued by Natural England (NE) in June 2018, I have elevated the effect of the proposal on the integrity of the SAC to a main issue in this appeal.
4. The main issues are:
 - whether or not the proposal is inappropriate development in the Green Belt, and, if so, whether very special circumstances exist to justify the development in the Green Belt;
 - the effect of the proposal upon the living conditions of occupiers of neighbouring properties, with particular regard to outlook; and
 - the effect of the proposal on the integrity of the SAC.

Reasons

Whether or not inappropriate development

5. The National Planning Policy Framework (February 2019) (the Framework) is a material consideration in regard to assessing proposals for development that affect the Green Belt. Policy GB2A of the Epping Forest Local Plan Alterations (July 2006) does not fully reflect the exceptions to inappropriate development that are clearly set out in the Framework and that are relevant here. Whilst therefore of limited relevance to my considerations, Policy GB2A nonetheless allows for planning permission to be granted for proposals that accord with another Green Belt policy.
6. The Framework sets out that the construction of new buildings in the Green Belt shall be regarded as inappropriate development unless, amongst other exceptions, they represent the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.
7. I am satisfied that the appeal site adheres to the definition of previously developed land as set out in the Framework. Thus, to establish whether the proposal is inappropriate in the Green Belt, I must consider whether the proposal would have a greater impact on the openness of the Green Belt when compared to the existing barn.
8. The existing barn is a substantial structure constructed around a metal frame. A mixture of timber cladding and open sides are in place to the building's perimeter. It is a prominent structure that I noted from inspection was readily visible from various publicly accessible vantage points nearby, including from Mount Road across open farmland situated to the rear of the site. I understand that the barn, whilst originally used for agricultural purposes, is now used for domestic storage associated with 1 Mount End (No 1). The appeal site is also made up of land that surrounds the barn, and which is enclosed by a mixture of post and rail fencing and hedging.
9. The proposal involves the construction of 2 dwellings, both of which would extend to 2 stories in height with gabled ends. Notwithstanding the relatively long extent of rear roof slope proposed to each dwelling, their full ridge positions would be set at a lower height when compared to the full height of the existing barn.
10. One of the proposed dwellings would be set entirely within the barn's existing footprint. The other would be partly contained within this footprint but would extend beyond it to the rear with its full ridge height aligning approximately with the rear extent of the barn. Much of this projection beyond the rear of the barn, I note, would be at only a single storey and across a narrow width. This differs with respect to a similar proposal at the site dismissed at appeal in August 2018¹, where it is apparent that 2 storey development was found to sprawl beyond the limits of the existing building.
11. The Council has raised concerns that this appeal proposal would result in a sprawl of development to the rear of the building. I do not find this to be the

¹ APP/J1535/W/18/3201577

case. The projection of development would appear relatively limited, particularly when viewed alongside an existing similarly positioned and laid out single storey building that is in place on the adjacent site to the south. It is also apparent that a portion of the barn's existing footprint would become clear of built development as a result of the proposal and, from inspection of the submitted drawings, I am content that an overall reduction in building footprint would result.

12. I note that the appellant has stated that, until recently, the barn was covered in timber cladding and that this cladding was removed to allow for ease of access. I am not, however, persuaded that I should consider the barn fully enclosed for the purposes of my considerations here. More relevant is the building's current composition which incorporates the potential for views to be formed through it (as would appear to have been the case with the similar proposal dismissed at appeal in August 2018).
13. It was apparent from inspection however that views through the barn were only available from certain angles and vantage points. I also noted that the building's sides sit beneath a substantial roof structure that incorporates solid and expansive roof slopes as well as, to its highest part, boarding to each of its ends. This roof structure is a highly visible element of the barn and can be seen from various orientations and distances from the site. The newly proposed dwellings, whilst being of fully enclosed design, would be markedly smaller in both scale and mass when compared to the barn. This is an important factor when considering the effect on openness.
14. I accept that the barn is of agricultural character and of simplistic utilitarian design. But, due to its significant scale and bulk, it appears to dominate, rather than blend in with, its agricultural surroundings.
15. With respect to the parcel of land that surrounds the barn and is contained within the appeal site, it is the appellant's position that this forms private amenity/garden land. Whilst this status has been questioned by a third party to this appeal who has provided evidence of livestock having grazed the land during past years, it was apparent from inspection that the land was distinct and separate to surrounding agricultural land and had been actively maintained through mowing. Indeed, whilst clear of residential paraphernalia or planting other than grass, the land took the appearance of either a domestic garden or paddock area and is readily accessible to residential occupiers at No 1, albeit without, for the most part, having an immediate relationship to the dwelling.
16. I accept that it would be reasonable to expect that additional domestic paraphernalia and parked cars would result from the proposed future occupation of 2 dwellings on the appeal site. The proposal also involves the erection of a small extent of additional post and rail fencing to sub-divide the land. However, particularly given that the area is already served by fencing/hedging to its perimeter, I consider that any loss of openness caused as a result of additional fencing and anticipated paraphernalia including parked cars would be limited.
17. As discussed above, the proposal would result in built development of comparatively lower height, smaller footprint and lesser volume. Whilst a limited loss of openness would likely be expected within the external areas of the appeal site earmarked to serve as private garden land for the proposed dwellings, the proposal, when considered in overall terms, would not have a

greater impact on the openness of the Green Belt when compared to existing development on the site.

18. For the above reasons, the proposal would not be inappropriate development in the Green Belt and, in this regard, it would accord with the guidance set out in the Framework. Very special circumstances do not therefore need to be demonstrated in order to justify the proposal.

Living conditions

19. The appeal is positioned such that it incorporates land located to the rear of both No 1 and 5 Mount End (No 5). Whilst the closest proposed dwelling to Nos 1 and 5 would be sited close to common boundaries, it would be set away slightly when compared to the alignment of the existing barn. I also note that this closest proposed dwelling would not be set directly to No 5's rear. Whilst a 2 storey, east-facing gable end proportioned to sit beneath a cat-slide roof is proposed, in addition to a centrally positioned north-facing dormer/glazed element, I do not consider that this closest proposed dwelling would have an excessive visual impact so as to cause harm to neighbouring living conditions at either No 1 or No 5 through loss of outlook.
20. I am satisfied that the proposal would not result in an excessive visual impact such that the living conditions of any neighbouring occupiers would be harmed with particular regard to outlook. The proposal accords with Policy DBE 9 of the Epping Forest District Local Plan (January 1998) which requires that a change or intensification of use, extension or new development does not result in an excessive loss of amenity for neighbouring properties.

Integrity of the SAC

21. The site lies in the proximity of the Epping Forest Special Area of Conservation (SAC) and therefore the requirements of The Conservation of Habitats and Species Regulations 2017 apply. These regulations require that I, as the competent authority, must ensure that there are no significant effects from the proposed development (either alone or in-combination with other projects) that would adversely affect the integrity of the SAC. It is apparent from the evidence before me that the SAC is comprised of various habitats of high nature conservation value and that it supports a nationally outstanding assemblage of invertebrates, major amphibian interest and an exceptional breeding bird community.
22. The Council has brought to my attention interim advice for development issued by Natural England (NE) in June 2018 in light of additional work being undertaken to update the Local Plan level Habitats Regulations Assessment (HRA). The interim advice, to which I apportion significant weight, identifies in-combination recreational and air pollution impacts as areas of specific concern that would threaten the various habitats and important species contained within the SAC.
23. The Council has confirmed that the site lies further than 3km from the SAC such that they consider a recreational impact would not be had. Whilst from the evidence before me NE have referenced 6.2km as the appropriate distance threshold, the Council has confirmed that Council's Cabinet has recently revolved to take up an interim approach to managing recreational pressures on the SAC whereby a contribution of £352 per each new dwelling located within

3km of the SAC boundary is to be sought. I see no reason to dispute the Council's considered assessment in this regard and am thus satisfied that the proposal would not be anticipated to have a recreational impact upon the SAC.

24. With respect to air pollution impacts, NE advise that, with respect to proposals for 'minor development', neither an adverse nor a likely significant effect nor an effect on the integrity of the SAC can be ruled out. The Council has confirmed that it is awaiting instruction from NE as to what mitigation measures are required to address the air quality impacts of the proposal.
25. The potential harm arising from the provision of two dwellings would be from additional traffic and associated air pollution being generated in the proximity of the SAC so as to have detrimental effects upon the various habitats of high nature conservation value that are present. I note the close geographical relationship that exists between the site and the SAC, and the relatively direct nature of the linking vehicular route. Whilst only two dwellings are proposed, I consider, taking a precautionary approach, that additional traffic on roads in the proximity of the SAC would realistically be expected.
26. The appellant has confirmed a willingness, in principle, to entering into a legal agreement that requires the establishment of a mitigation strategy or the making of a financial contribution with respect to the SAC. However, I do not have a completed legal agreement and, from the evidence before me, there is not sufficient clarity or guidance in place at this point in time to direct what any such agreement should specifically contain with regard to air pollution mitigation.
27. Whilst I note the appellant's willingness to make an appropriate contribution at a later date, planning permission should only be granted where it has been demonstrated that the development will not adversely affect the integrity of the SAC. An appropriate contribution cannot therefore be delayed until a later date for the purposes of determining this appeal. In the absence of appropriate mitigation in an air pollution context, I am unable to allow this appeal.

Other Matters

28. An occupier at No 5 has raised concerns about potential overlooking being caused. It is, however, apparent that the proposed dwellings have been carefully designed and orientated so as to avoid undue overlooking occurring. Whilst openings would be provided within the north-facing elevation of the dwelling that would be sited closest to No 5, any internal views to be provided of No 5's neighbouring rear garden area would be at an oblique angle and, as such, would not be direct. I also note the intended provision of additional landscaping to the appeal site's boundary with No 5 to offer further assurances in this context and to also help in fully ensuring that the privacy of existing and future occupiers would be appropriately safeguarded.
29. I also consider that it would be unlikely for any potential associated light pollution from illumination associated with the proposed development to reach such an extent to cause material harm to the living conditions of neighbouring occupiers and note that neither has the Council raised concerns in this respect. Furthermore, I am content that full details of foul and surface water disposal could be adequately secured via condition should the appeal be allowed.

30. Theydon Barn makes up part of a cluster of traditionally designed former agricultural buildings to the south of the site and is grade II listed. It makes up part of a compact arrangement of linear barn type buildings that would appear historically connected with the farmhouse at Sawkins Farm to the front, which is also grade II listed.
31. It is apparent from the evidence before me that, in contrast to the previous proposal at the site that was ultimately dismissed at appeal in August 2018, a courtyard arrangement is now proposed in the interests of respecting the existing pattern of development exhibited by the cluster of buildings to the south. It is also apparent that the proposed dwellings would be relatively uncomplicated in their design and appearance and would utilise materials, including timber boarding, that would allow for them, in their proposed setback position from Mount End, to blend appropriately with their historic and wider surroundings. I note these findings are consistent with comments made by the Council's Conservation Officer. I am satisfied that the proposal would preserve the setting of nearby designated heritage assets such that no harm would be caused in this context.
32. It should also be noted that concerns raised by the appellant with respect to how the planning application (which is now the subject of this appeal) was determined by the Council are not relevant to the planning merits of the main issues in this appeal and have therefore not been taken into account in this decision.

Conclusion

33. I have found that the proposal would not be inappropriate in the Green Belt and would not cause harm to the living conditions of neighbouring occupiers. However, as there is no agreed mitigation in place at the current time to address the effect of air pollution, I cannot be satisfied that the proposal, in-combination with other development, would not adversely affect the integrity of the SAC. This is the overriding consideration.
34. For the reasons set out above, the appeal is dismissed.

Andrew Smith

INSPECTOR