

***Report to the District Development
Management Committee***



**Epping Forest
District Council**

Report Reference: EPF/0983/20
Date of Meeting: 16 September 2020

Address: Aver House, Nursery Road, Nazeing, EN9 2JE

Subject: Demolition of a commercial building and replacement with a single dwelling. (Revised application to EPF/0196/19).

Responsible Officer: Marie-Claire Tovey (01992 564141)

Democratic Services: Gary Woodhall (01992 564470)

Recommendation:

That planning application EPF/0858/20 be recommended for approval following a recommendation by Area Planning Sub-Committee West with the following conditions:

[Note: As this application is for a new house, mitigation for air quality will be required. As the air quality mitigation measures have not been agreed, , should Members agree with the recommendation of Area Planning Sub-Committee West the application will be held in abeyance until such time as an air quality mitigation strategy has been agreed at which time a decision may issued with mitigation requirements as necessary.]

1. The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
2. The development hereby permitted will be completed and retained strictly in accordance with the approved drawings numbers: ELA/1, 22, 400 Rev P, 401 Rev L, 500 Rev K, 901 and 1400
3. No construction works above ground level shall have taken place until documentary and photographic details of the types and colours of the external finishes have been submitted to and approved by the Local Planning Authority, in writing, prior to the commencement of the development. The development shall be implemented in accordance with such approved details.
4. Prior to preliminary ground works taking place, details of surface water disposal shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.
5. The development shall be carried out in accordance with the Flood Risk

Assessment (MTC Engineering – For the Proposed Development of Additional Residential Dwelling, 1671, March 2020) unless otherwise agreed in writing with the Local Planning Authority.

6. Prior to any above ground works, full details of both hard and soft landscape works (including tree planting) and implementation programme (linked to the development schedule) shall be submitted to and approved in writing by the Local Planning Authority. These works shall be carried out as approved. The hard landscaping details shall include, as appropriate, and in addition to details of existing features to be retained: proposed finished levels or contours; means of enclosure; car parking layouts; other minor artefacts and structures, including signs and lighting and functional services above and below ground. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. 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.
7. 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 the Local Planning Authority and approved in writing. 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.
8. Notwithstanding the provisions of the Town & Country Planning General Permitted Development Order 2015 (or of any equivalent provision in any Statutory Instrument revoking or re-enacting that Order), the garage(s) hereby approved shall be retained so that it is capable of allowing the parking of cars together with any ancillary storage in connection with the residential use of the site, and shall at no time be converted into a room or used for any other purpose.
9. 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 generally permitted by virtue of Class A, B, D and F of Part 1 of Schedule 2 to the Order, shall be undertaken without the prior written permission of the Local Planning Authority.
10. No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to

and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.

11. Following completion of the measures identified in the approved remediation scheme, and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The approved monitoring and maintenance programme shall be implemented.
12. In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the Phase 2 report, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.
13. No ground works shall take place until details of levels have been submitted to and approved by the Local Planning Authority showing cross-sections and elevations of the levels of the site prior to development and the proposed levels of all ground floor slabs of buildings, roadways and accessways and landscaped areas. The development shall be carried out in accordance with those approved details.
14. All construction/demolition works and ancillary operations, including vehicle movement on site which are 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.
15. Prior to first occupation of the development hereby approved, 1 Electric Vehicle Charging Point shall be installed and retained thereafter for use by the occupants of the site.

This application was considered at Area Planning Sub-Committee West on 15 July 2020 with a recommendation from Officers to refuse consent for the following reasons:

1. The proposal constitutes inappropriate development in the Green Belt, for which there are no very special circumstances. Moreover, by reason of its

scale, height and siting, the proposal would result in a significant reduction in the openness of the Green Belt. Consequently, the development is contrary to policies GB2A and GB7A of the Adopted Local Plan and Alterations, policy DM4 of the Submission Version of the Local Plan (2017) and the objectives of the National Planning Policy Framework.

2. The application does not provide sufficient information to satisfy the Council, as competent authority, that the proposed development will not adversely affect the integrity of the Epping Forest Special Area for Conservation and there are no alternative solutions or imperative reasons of overriding public interest why the proposed development should be permitted. In the absence of such evidence, and of a completed Section 106 planning obligation to mitigate against the adverse impact that it will have on the Epping Forest Special Area for Conservation in terms of air pollution, the proposed development is contrary to policies CP1 and CP6 of the Epping Forest Local Plan (1998) and Alterations (2006), policies DM 2 and DM 22 of the Epping Forest District Local Plan Submission Version 2017, the NPPF, and the requirements of the Habitats Regulations 2017.

Discussion took place at Area Planning Sub-Committee West regarding the recommendation and a motion was made to recommend approval on the basis the application was acceptable within this Green Belt location. As a recommendation for approval is a departure from planning policy the application has been referred to District Development Management Committee with the revised recommendation.

Original Officer Report:

This application is before this Committee since it has been 'called in' by Councillor Richard Bassett (Pursuant to The Constitution Part 3: Part Three: Scheme of Delegation to Officers from Full Council).

Description of Site:

The application site is a roughly rectangular plot with a single storey building (last in use as a B8 Storage building) fronting onto Nursery Road within the rural area of Nazeing. Directly to the south of the site is a development site in the latter stages of construction for 4 detached dwellings that replaced mushroom farm buildings. To the south of this is a ribbon of detached properties all on the same side of the road as Aver House. Nursery Road is a private road, and has the appearance of a country lane with properties only on one side opposite a robust hedge/tree line which reinforces the rural appearance. The site is within the Metropolitan Green Belt and flood zone 2.

Description of Proposal:

The application seeks consent for the demolition of the existing storage building and replacement with a 2 storey property with front and rear projections and attached double garage (exactly the same design as the four properties to the south). This application is in effect the same as the previously submitted application EPF/0196/19 which was refused with the only addition for this submission an Addendum Planning Statement.

Relevant History:

EPF/0196/19 - Demolition of a commercial building and replacement with a single dwelling – Refused

The application was refused for the following reasons:

- 1. The proposal constitutes inappropriate development in the Green Belt, for which there are no very special circumstances. Moreover, by reason of its scale, height and siting, the proposal would result in a significant reduction in the openness of the Green Belt. Consequently, the development is contrary to policies GB2A and GB7A of the Adopted Local Plan and Alterations, policy DM4 of the Submission Version of the Local Plan (2017) and the objectives of the National Planning Policy Framework.*
- 2. The application does not provide sufficient information to satisfy the Council, as competent authority, that the proposed development will not adversely affect the integrity of the Epping Forest Special Area for Conservation and there are no alternative solutions or imperative reasons of overriding public interest why the proposed development should be permitted. In the absence of such evidence, and of a completed Section 106 planning obligation to mitigate against the adverse impact that it will have on the Epping Forest Special Area for Conservation in terms of air pollution, the proposed development is contrary to policies CP1 and CP6 of the Epping Forest Local Plan (1998) and Alterations (2006), policies DM 2 and DM 22 of the Epping Forest District Local Plan Submission Version 2017, the NPPF, and the requirements of the Habitats Regulations 2017.*

EPF/1582/18 - Prior approval for proposed change of use from storage unit (Class B8) to residential dwelling (Class C3) – Prior approval granted

Policies Applied:

Local Plan (1998) and Alterations (2006)

Section 38(6) Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan currently comprises the Epping Forest District Council Adopted Local Plan (1998) and Alterations (2006).

The following policies within the current Development Plan are considered to be of relevance to this application:

CP2 – Protecting the quality of the Rural and Built Environment
DBE1 – Design of new buildings
DBE2 - Effect on neighbouring properties
DBE5 – Design and Layout of new development
DBE8 – Private amenity space
DBE9 – Loss of amenity
GB2A – Development in the Green Belt
GB7A – Conspicuous development in the Green Belt
ST01 – Location of Development
ST06 – Vehicle Parking
LL10 – Adequacy of provision for landscape retention

NPPF:

The revised NPPF is a material consideration in determining planning applications. As with its predecessor, the presumption in favour of sustainable development remains at the heart of the NPPF. Paragraph 11 of the NPPF provides that for determining planning applications this means either;

- (a) approving development proposals that accord with an up-to-date development plan without delay; or
- (b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making, but policies within the development plan need to be considered and applied in terms of their degree of consistency with the Framework.

In addition to paragraph 11, the following paragraphs of the NPPF are considered to be of relevance to this application:

Paragraph	124
Paragraph	127
Paragraph	130
Paragraph	131
Paragraph	144- 146
Paragraph	170

Epping Forest District Local Plan (Submission Version) 2017

Although the LPSV does not currently form part of the statutory development plan for the district, on 14 December 2017 the Council resolved that the LPSV be endorsed as a material consideration to be used in the determination of planning applications.

Paragraph 48 of the NPPF provides that decision-takers may give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The LPSV has been submitted for Independent Examination and hearing sessions were held on various dates from February 2019 to June 2019. On the 2nd August, the appointed inspector provided her interim advice to the Council covering the substantive matters raised at the hearing and the necessary actions required of the Council to enable her to address issues of soundness with the plan without prejudice to her final conclusions.

The following policies in the LPSV are considered to be of relevance to the determination of this application, with the weight afforded by your officers in this particular case indicated:

Policy		Weight
DM2	Epping Forest SAC and the Lee Valley SPA	Significant
DM3	Landscape Character, Ancient Landscapes and Geodiversity	Significant
DM4	Green Belt	Significant
DM9	High Quality Design	Significant
DM10	Housing Design and Quality	Significant
DM22	Air Quality	Significant
T1	Sustainable Transport Choices	Significant

Consultation Carried Out and Summary of Representations Received

Number of neighbours consulted: 18 - No responses received
 NAZEING PARISH COUNCIL: No objection

Main Issues and Considerations:

Green Belt

The site is wholly within the Metropolitan Green Belt, located some 600m+ outside of the defined village of Nazeing with no development connecting the two areas. As described above the site is within an area that is more rural and distinct in character than the built up area to the south east which is within the defined built up area of Nazeing.

The supporting information states that the development is an infill proposal within the Metropolitan Green Belt, however it is the Council's view that firstly the proposal is outside of the village enclave due to the separation of this small ribbon of development from the main built up and this small ribbon is not classed as a village in its own right. Secondly the application site is not considered an 'infill' site as it is at the end of a small row of properties, with development only on one side so therefore this does not meet the Council's definition of infill since it does not infill an 'otherwise continuous row of built development'.

The NPPF is clear that an exception to Green Belt policy is 'limited infilling in villages', however as outlined above it is not considered that this site is within a village or classed as limited infill.

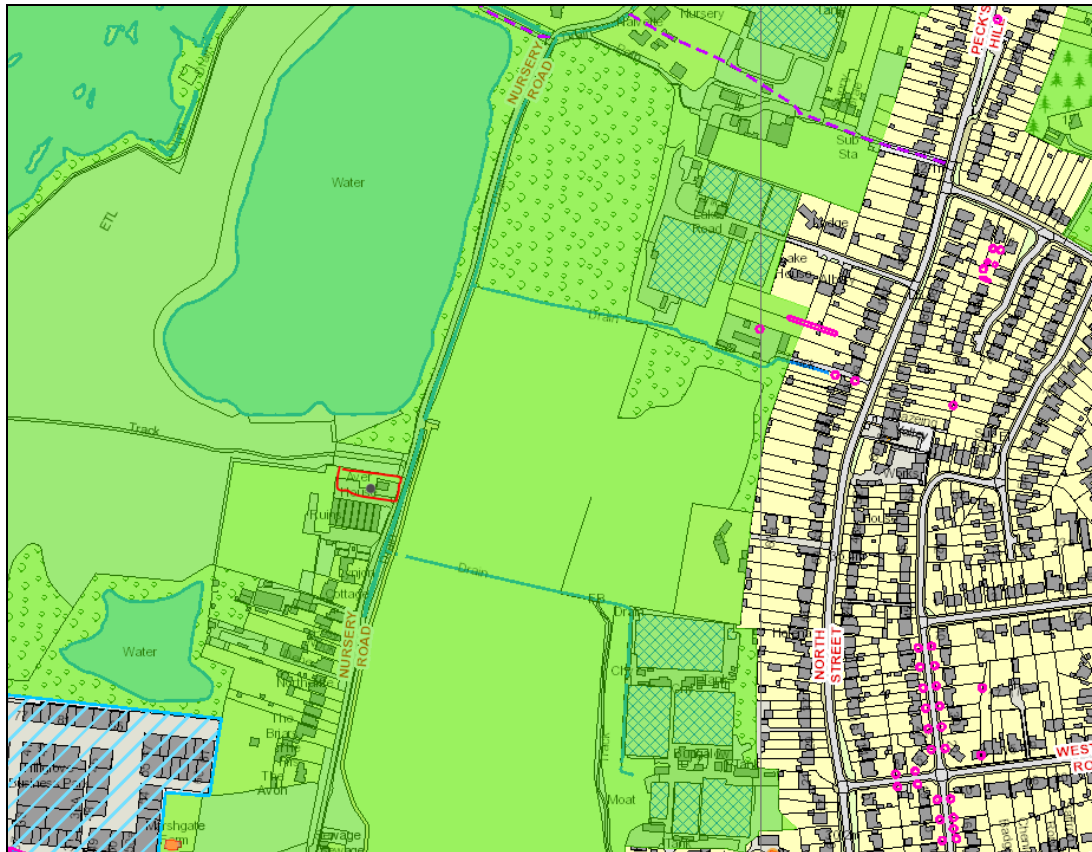


Fig.1 Showing site outlined in red within Green Belt (shaded green) in relation to village envelope (not shaded green)

Notwithstanding the above infill discussion, and although not used as an argument by the applicant, it is clear that the site would constitute previously developed land. Nonetheless it does not fall within the second exception of the NPPF:

limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: – not have a greater impact on the openness of the Green Belt than the existing development;’.

The proposed two storey dwelling scheme is far larger than the existing single storey building, extending up to the side boundaries, two storey in height and with a far greater depth and overall projection into the site and therefore the proposal will have a far greater impact on the openness of the Green Belt than the existing built form.

The adjacent site gained approval at Committee as it was considered an infill site between this current application site and the residential properties to the south, although Officers did not promote this given it is outside of the village envelope. The current application site cannot benefit from this same circumstance as there is no site to the north to make it an infill.

Information submitted cites the ‘mushroom farm’ development directly to the south of the site being approved due to the very special circumstances (VSC) and these should also apply to this site, the following very special circumstances have been put forward for this site:

1. The Application will remove an existing commercial use in a residential area.
2. There will be a reduction of traffic by the removal of the commercial use.
3. The replacement dwelling has secured additional space from the adjoining landowner to provide amenity space for the property when there is none at the present.
4. The redevelopment of this commercial building with a new residential building will provide a vastly improved vista from the adjacent Lea Valley land.
5. Whilst visually the redevelopment of the site would be beneficial since this proposal would remove numerous buildings, unsightly 2.5m high metal palisade fence, hardstanding and commercial activity.
6. The previous 'fallback' planning consent as detailed in the previous section is a very material consideration to determine this Application.

Taking each point in turn:

1. It is not known that the commercial site is causing any issue to the residential properties and in any event is of a very small scale. Clearly commercial units in proximity to residential dwellings are not an uncommon occurrence.
2. As above, the unit is very small, details of traffic movements are not known but given the small size are unlikely to be significant.
3. The additional space for amenity, although welcome for future occupiers could also presumably be secured for the prior approval conversion. Again this is not an uncommon situation
4. Although the site looks unkempt it is not considered that this would be a VSC, in addition if the prior approval proposal goes ahead then it is presumed the site would be 'tidied' in any event.
5. The removal of the fencing, commercial activity etc could all be achieved through the prior approval application
6. The fallback consent is a material consideration but not a VSC as the prior approval can go ahead but this is separate legislation and does not allow for a dwelling as large as that proposed.

A site in Crown Hill, Upshire has been identified by the Applicant (by email) as a relevant example (EPF/1709/19) however, it appears that the main reason this was considered an infill site was a) because two previous planning applications had confirmed the site falls within a village and b) that the southern boundary of the site was demarcated by the concrete bridge containing the M25 so this physical (and very, very obtrusive within the Green Belt) barrier would act as a 'natural' barrier to any further development. No such situation is present in this instance.

This example has been noted again within the revised addendum to the planning statement stating that: *The Village boundary is determined by the "hard boundary" to the North of Aver House delineated by both the Lea Valley Regional Park and the Public Right of Way.* However, it is not considered that these soft, more natural boundary markers are comparable to a concrete bridge the width of 8 vehicle lanes.

Various appeals have been quoted within the supporting statement supplied as part of the application including *Mansell v Tonbridge And Malling Borough Council* [2017] EWCA Civ 1314 which relates specifically to the fallback position (in this case it was a Class Q conversion agricultural to residential). The applicant's findings relating to this Court of Appeal case state:

The fallback position of having a residential planning consent in place for the conversion of the existing building is a very material consideration to be taken into account by the LPA to determine this Application.

The Council agree that the previous history is a material consideration as the conversion can take place, however it does not provide any weight for allowing a new, much bigger dwelling within this Green Belt, rural area.

Design

The design of the proposal is the same as those properties being built to the south. Although not rural in character, the proposal will not disrupt the streetscene as it will match the neighbouring properties.

Impact on Amenity

The proposed dwelling will be located within 1m of the shared boundary with the adjacent plot 4. Given the layouts will be similar and the sufficient separation, the proposal is not considered to raise any amenity concerns.

SAC and Air Quality

The site is not within the 3.2km buffer around the Epping Forest Special Area of Conservation (SAC) and therefore a contribution towards recreational mitigation is not required for any new dwelling. However, as with any new dwelling in the District, a contribution is required with regards to air quality mitigation. At present negotiations are still taking place to finalise the required contributions for this element, the submitted documents do not make provision for improvements to air quality and therefore on this basis the application is contrary to policy CP1 (i) and NC1 of the Local Plan and Policy DM2 and DM22 of the Submission version.

The Addendum to the planning statement expresses surprise that impact on the SAC formed a refusal. Due to ongoing negotiations with Natural England this situation has existed since June 2018. The addendum continues that there will be no impact as the current use is a commercial use. No further information has been supplied with regards to traffic frequency or routes and therefore this statement holds little weight. In addition given the commercial units size it does not appear as if traffic movements would be comparable to a large dwelling, although this is unknown due to the insufficient information provided.

It is understood that works have not commenced on the Class Q approval and therefore the change is from commercial to residential whereby impact on Air Quality will apply.

The addendum submitted suggests the applicant is willing to enter into a S106, however this does not overcome the previous reason for refusal relating to the SAC and air quality.

Flood Risk

The Council's Land Drainage Engineer has no objection subject to conditions.

Conclusion:

Given the above discussion, it is recommended that planning permission is **refused**.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

Planning Application Case Officer: Marie-Claire Tovey
Direct Line Telephone Number: 01992 564414

or if no direct contact can be made please email:
contactplanning@eppingforestdc.gov.uk