



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: 21 June 2019

Appeal Ref: APP/J1535/W/18/3216022

Land East of Church Lane, Sheering

- 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 The Chelmsford Diocese Board of Finance against the decision of Epping Forest District Council.
 - The application Ref EPF/0141/18, dated 16 January 2018, was refused by notice dated 13 June 2018.
 - The development proposed is erection of 3no. new dwellings complete with garages, infrastructure, and associated works, including access from Church Lane.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 3no. new dwellings complete with garages, infrastructure, and associated works, including access from Church Lane at Land East of Church Lane, Sheering, in accordance with the terms of the application, Ref: EPF/0141/18, dated 16 January 2018, subject to the conditions set out at the end of this decision.

Procedural Matters

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 the 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 Issue

3. The main issue is 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.

Reasons

4. The revised National Planning Policy Framework (February 2019) (the revised 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 limited infilling in villages. It is common ground between the main parties to this appeal that, for the purposes of assessing

- whether the proposal constitutes inappropriate development in the Green Belt, the site is located within the village of Sheering.
5. The revised Framework is a very important 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 revised 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. A nationally prescribed definition for limited infilling is absent in the revised Framework. Whether the proposal constitutes limited infilling in a village is therefore a matter of planning judgement based on the details of the proposal put forward and the site-specific circumstances at hand.
 7. The site, which is roughly rectangular in shape and takes the form of grassed agricultural land, is situated such that is surrounded by existing development on three of its sides with only the eastern side of the site adjoining undeveloped land. The Church Hall building located immediately to the south of the site, I note, is a sizeable structure and is served by a large expanse of hard-surfacing set out to its rear. Church Lane is characterised by built development on both of its sides on the approach from the appeal site to the core of the village situated to the north.
 8. The proposed development is not insignificant in scale. Indeed, each dwelling would provide two stories of living accommodation and be served by a detached garage. However, I am satisfied that the proposed development would sit comfortably with the surrounding character of the village. Because the appeal site is largely enclosed with built development, I am satisfied that the proposed development would not encroach into the open area and it would amount to the circumstances of limited infilling. My findings here are not inconsistent with the circumstances of a scheme advanced by the appellant for a similar development in proximity to the appeal site that was approved by the Council.
 9. For the above reasons, the proposal would not be inappropriate development in the Green Belt and, in this regard, it would accord with the revised Framework. As I have found that the proposed development is not inappropriate development in the Green Belt in accordance with an exception that does not expressly state a need to assess its effect on openness, the proposal should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt.¹ Very special circumstances do not need to be demonstrated in order to justify the proposal.

Other Matters

10. The site lies in the proximity of the Epping Forest Special Area of Conservation (the SAC) and therefore I must consider the appeal against The Conservation of Habitats and Species Regulations 2017. These regulations require that, where the project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects, I (as the competent

¹ Court of Appeal judgement Lee Valley Regional Park Authority v Epping Forest District Council, 2016 refers.¹

authority) must make an appropriate assessment of the implications of the project in view of the relevant site's conservation objectives.

11. 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.
12. 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 Council's plan-level Habitats Regulations Assessment (HRA) (relating to the emerging Epping Forest Local Plan). The interim advice, to which I apportion significant weight, identifies in-combination effects from recreational activities and air pollution impacts from increased road traffic as areas of specific concern that would threaten the various habitats and important species contained within the SAC. With respect to recreational impacts, the appeal site is located considerably in excess of the 6.2km zone of influence identified as relevant by NE (the appeal site being some 14km from the SAC). As such, I am satisfied that there would be no likely significant effects associated with recreational impacts.
13. With respect to air pollution impacts from increases in road traffic, NE's interim advice relating to the emerging Local Plan states that, with respect to proposals for 'minor development', neither a likely significant effect nor an effect on the integrity of the SAC can be ruled out. Indeed, they advise that all residential and employment proposals within the Epping Forest District likely to have an air pollution impact on the SAC will need to be subject to HRA.
14. In my judgement, the site does not have an immediate relationship with the SAC. The appellant has stated that it is located in excess of 14km away and I have no reason to doubt this to be an accurate assessment of the separation distance that is involved. I must take a precautionary approach and note that the number of trips that would be expected to be generated by three dwellings would likely be greater than the number of trips generated by the site's present use as grazing land. Despite this, I do not consider that the quantum of additional traffic on roads (and associated air pollution) in the proximity of the SAC could realistically be expected to result in a demonstrable net increase in traffic as a result of a proposal that is for merely three dwelling houses given the distance involved.
15. I therefore conclude that there would be no likely significant effects on the SAC due to the lack of demonstrable evidence of any increase in traffic on roads within or adjacent to the SAC that could be attributable to the appeal site.
16. I acknowledge that Church Lane is narrow in width and is not afforded a footway along either of its sides close to the site. The access arrangements that are proposed appear appropriate in a highway safety context and have drawn no objections from the Local Highway Authority. A development of three dwellings would not be expected to generate significant flows of traffic. The appeal site, it appears, would be able to satisfactorily accommodate construction traffic (including parked vehicles) during the construction phase of development so as not to be likely to cause obstructions along Church Lane, particularly given that the proposed dwellings themselves would be setback within the site.

17. I note that concerns have been raised by a local resident due to their personal circumstances and difficulties that are encountered with hearing traffic noise and the associated challenges posed by the lack of footways along Church Lane. I have had regard to the equalities implications and associated duties arising but, due to the limited scale of development proposed, I do not consider that the proposal, once occupied, would likely lead to a noticeable change in the number of traffic movements experienced along Church Lane. Construction traffic movements to be generated would be expected to be relatively limited in terms of both their frequency and duration. I am content that the proposal would have an acceptable effect notwithstanding the specific circumstances raised.
18. Concerns have been raised by third parties to this appeal about grave space capacity at the nearby Church's graveyard. It is however apparent that the appeal site (i.e. that delineated in a red line on the submitted location plan) does not immediately adjoin the existing graveyard such that it would not appear that the proposal would prejudice any potential future extension to the graveyard that may be required. In any event, I am not aware of any planning restriction/requirement that would dictate that this matter should be considered any further here.
19. I also note that whilst the proposed dwellings are of relatively generous size, they would not, I consider, appear unduly large or prominent when considered alongside other housing stock in the immediate locality.

Conditions

20. The Council has suggested a number of conditions that the appellant has had the opportunity to comment upon and has noted. I have considered the suggested conditions against advice in the revised Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes. Pre-commencement conditions have only been applied where agreed to by the appellant and where necessary to guide initial works on site.
21. In the interests of certainty, a condition specifying the approved plans is required. Following consultation with the main parties, I have adjusted (when compared to the plans listed on the Council's decision notice) the revision references for plans 3277:03 Rev B (now 3277:03 Rev C), 3277:04 Rev A (now 3277:04 Rev C) and 3277:05 (now 3277:05 Rev B). This is to ensure that full elevational details of all 3 of the dwellings are secured. I am of the understanding that these plans were before the Council when it made its decision to refuse planning permission and I am content that no interested party to this appeal is prejudiced by me taking this approach.
22. To ensure that the potential for archaeological remains to be present is properly investigated, a condition securing a written scheme of investigation is required. In the interests of highway safety, conditions requiring wheel washing facilities to be in place on site during construction and requiring approved parking areas to be retained for such purposes are required. A condition to limit construction hours in the interests of safeguarding neighbouring living conditions is also reasonable and necessary.
23. In the interests of visual amenity and safeguarding the character and appearance of the area, conditions are required securing details of intended

external-facing materials and hard and soft landscaping (including means of enclosure, external levels and the provision of replacement planting where necessary). It is not necessary for the hard-landscaping details to cover car parking layouts, as these are already illustrated on the approved plans. The submission of an Arboricultural Method Statement is required to ensure that existing trees of value are properly safeguarded and protected. A condition securing the submission of an ecological enhancement scheme is also reasonable in the interests of seeking to enhance biodiversity.

24. The provision of electric vehicle charging points is reasonable and necessary in the interests of seeking to support air quality improvements (although, for the avoidance of doubt, their provision is not determinative in my finding that the proposal would not adversely affect the integrity of the SAC). With respect to seeking to limit water use, a condition securing the achievement of a water efficiency standard is reasonable. To ensure enforceability, conditions shall be worded so as to secure full details of the intended charging points and water efficient measures prior to their installation.
25. Conditions securing compliance with the submitted flood risk assessment and the future stopping of development works, should unexpected contamination be found, appear prudent and reasonable. Details of surface water disposal mechanisms are reasonable and necessary to secure prior to the development's first occupation. These details, noting that the mechanisms would likely be installed late in the construction phase of development, are not required before any development takes place.
26. I note that the Council, in the interests of preventing a future need for additional buildings in a Green Belt location, has suggested a condition requiring that garages are only used for the parking of cars together with any ancillary storage. I see merit in guarding against the future development of buildings at the site, such that a condition to this effect would be both reasonable and necessary.

Conclusion

27. For the reasons set out above, the appeal is allowed.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted will be completed strictly in accordance with the following approved plans: Location Plan (scale 1:1250); 3277:01 Rev E; 3277:02 Rev E; 3277:03 Rev C; 3277:04 Rev C; 3277:05 Rev B.
- 3) No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which shall first be submitted to and approved in writing by the local planning authority.
- 4) 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 first be submitted to and agreed in writing by the local planning authority. The approved installed washing/cleaning facilities shall be used to clean vehicles immediately before leaving the site.
- 5) No development shall take place, including site clearance or other preparatory work, until full details of both hard and soft landscape works (including tree planting) and an implementation programme have been 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, details of existing features to be retained, proposed finished levels or contours, means of enclosure and 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.
- 6) 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 agreed in writing by 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.
- 7) If any tree, shrub or hedge intended to be retained (as illustrated via details to be submitted in accordance with Condition 6 of this permission) is removed, uprooted or destroyed, or dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the

same size and species shall be planted within 3 months at the same place, unless the local planning authority gives its written consent to any variation. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.

- 8) No construction works above ground level shall take place until full details of the types and colours of the external finishes of the development have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with such approved details.
- 9) Prior to the first occupation of the development, details to demonstrate that the development secures a water efficiency standard of 110 litres (or less) per person per day shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with such approved details.
- 10) Prior to the first occupation of the development, measures to improve the ecological value of the site shall be implemented in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 11) Prior to the first occupation of the development, an electric vehicle charging point shall be provided for each of the approved dwellings in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 12) Prior to the first occupation of the development, details of surface water disposal shall be submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved details have been implemented in full, which shall thereafter be retained at all times.
- 13) All construction/demolition works and ancillary operations, including vehicle movements on site which are audible at the boundary of noise sensitive premises, shall only take place between the hours of 0730 to 1830 Monday to Friday and 0800 to 1300 hours on Saturdays, and at no time during Sundays and Public/Bank Holidays.
- 14) 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, all development works shall be stopped, the local planning authority contacted and a scheme to investigate the contamination risks and/or to set out any required remedial measures shall be submitted to and agreed in writing by the local planning authority prior to the recommencement of development. Following the completion of development and prior to its first occupation, information to demonstrate that any required remedial measures were satisfactorily implemented or confirmation that no unexpected contamination was encountered shall be submitted to and approved in writing by the local planning authority.
- 15) The external parking areas shown on the approved site layout plan (Ref 3277:02 Rev E) shall be provided prior to the first occupation of the

development hereby approved and shall at all times be retained free of obstruction and for the sole purpose of parking vehicles.

- 16) The garages hereby approved and shown on the approved site layout plan (Ref 3277:02 Rev E) shall be retained at all times such that they are capable of accommodating parked vehicles together with any ancillary storage in connection with each of the dwellings hereby approved, and no garage shall be converted into a habitable room or used for any other purpose.
- 17) The development hereby approved shall be carried out in accordance with the flood risk assessment (Evans Rivers and Coastal - Flood Risk Assessment and Surface Water Drainage/SuDS Strategy, Ref 1937/RE/11-17/01 Revision A January 2018).