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# Appeal Decision

Site visit made on 28 November 2022

**by A Parkin BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 December 2022**

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**Appeal Ref: APP/J1535/W/22/3298615**

**Land to the South of Chigwell Rise IG7 6BN**

- 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 F Cheroomi against the decision of Epping Forest District Council.
  - The application Ref EPF/2131/19, dated 27 August 2019, was refused by notice dated 2 March 2022.
  - The development proposed is the use of site as a burial ground with associated landscaping, access improvements and ancillary storage and reception buildings.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs was made by Mr F Cheroomi against Epping Forest District Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. Upon reviewing the case file, I noticed that the issue of inappropriate development in the Green Belt was not a matter of dispute between the main parties. With reference to the National Planning Policy Framework 2021 (the Framework) and the evidence, I sought further information to substantiate the positions of the main parties in this regard, including, if the proposal was inappropriate development, whether very special circumstances exist that would allow the development and if so, what they would be.
4. I have had regard to the responses submitted by the Council and the appellant in determining this appeal.
5. The Council's officer report listed a number of documents in relation to the Epping Forest Special Area of Conservation (SAC), which were not included in the Council's evidence. Consequently, I contacted the Council and asked them to provide copies, or updated copies, of these documents; to provide information about the designation of the Epping Forest SAC; and, to provide any views on these from Natural England.
6. Copies of various documents were provided, together with information regarding current mitigation measures for developments where adverse effects on the integrity of the SAC cannot be excluded. This was copied to the appellant for their information.

## Main Issues

7. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;
- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on parking and highway safety;
- The effect of the proposal on the drainage of the site; and,
- If the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## Reasons

### *Inappropriate development in the Green Belt*

8. The proposed development would be located in the Green Belt to the west of Chigwell by the M11 motorway and south of the B170 road, which links Chigwell to Buckhurst Hill. The terrain slopes gently downwards from east to west, with the M11 located in a cutting below the level of the appeal site, whilst the B170 is at a similar elevation to the appeal site.
9. The site is said to be used for car boot sales on Saturdays and Bank Holidays for part of the year. It comprises grassland bounded by trees and hedgerows and is typical of the countryside in this area. At the time of my visit the site remained largely visible to traffic on the B170 despite the boundary hedgerow.
10. The Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to a number of exceptions<sup>1</sup>, one of which is the provision of appropriate facilities...for cemeteries and burial grounds...as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it<sup>2</sup>.
11. Certain other forms of development in the Green Belt, including material changes in the use of land (such as for cemeteries or burial grounds)<sup>3</sup>, are also not inappropriate providing they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
12. Policy GBA2 (Development in the Green Belt) of the Epping Forest Local Plan and Alterations 2006 (EFLPA) is inconsistent with the Framework in that it does not require a consideration of openness or the purposes of including land within the Green Belt in relation to a cemetery proposal. Draft policy DM4 (Green Belt) of the submission draft Epping Forest Local Plan 2017 (SDEFLP) is also inconsistent with the Framework in that it does not identify a change of use to a cemetery to not be inappropriate development, even if it would preserve the openness of the Green Belt or not conflict with the purposes of including land within it.

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<sup>1</sup> Paragraph 149 b) of the Framework

<sup>2</sup> Paragraph 138 of the Framework

<sup>3</sup> Paragraph 150 e)

13. With reference to Paragraphs 219 and 48 of the Framework, I give very limited weight to Policy GBA2 of the EFLP and to draft Policy DM4 of the SDEFLP; I give full weight to the Framework as a material consideration in this regard.
14. The proposed development has been reduced in scale somewhat from that originally proposed. Around one third of the site would be kept in a natural state, including a large area of natural grassland located to the east, next to the rear gardens of the dwellings on Chester Road in Chigwell. Further landscaping is proposed around the boundary of the site, including by the B170 road.
15. Two single storey buildings, with a combined floorspace of some 458 square metres would be constructed as part of the proposal. The larger building would be L-shaped, with a flat roof and various windows. It would contain the main auditorium, which would be some 4.5 metres in height, and a somewhat smaller element, some 3.0 metres in height, containing ancillary spaces. This building would be located at the north western corner of the site, close to the B170, near to the vehicular access, the visitor car park containing 30 spaces, as well as the memorial gardens.
16. The smaller building would be located towards the south west of the site and would contain equipment for the maintenance of the grounds. It would have a floorspace of some 84 square metres and a shallow pitched roof.
17. Some 150 burials per year are proposed, with the graves to be accessed by driveways within the site and marked by headstones, which would be some 1.0 metre in height, 0.7 metre in width and 0.125 metre in depth. From the Section drawing<sup>4</sup>, the proposed graves would typically be less than one metre apart along one axis. It is not clear what the burial capacity of the proposed cemetery would be, although around 50% of the 10 hectare site is shown as interment areas<sup>5</sup>.
18. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence<sup>6</sup>.
19. The introduction of two buildings, 30 car parking spaces and access roads to a grass field, would be manifestly harmful to the openness of the Green Belt; it would also be a permanent urbanising encroachment into the countryside between the settlements of Buckhurst Hill and Chigwell.
20. Notwithstanding the proposed landscaping of the site, the visual openness of the Green Belt would be significantly reduced in the north western corner, due to the scale and massing of the proposed main building, and its position close to the B170 road. The proposed off-white render for the main auditorium would increase the visual prominence of the building, whilst the effectiveness of much of the existing screening vegetation would be reduced in late autumn, winter and early spring as a result of its deciduous nature.
21. The spatial openness of the Green Belt would be manifestly reduced by the proposed buildings, the car park and driveways. Furthermore, as burials take place there would be an additional and permanent reduction in openness across

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<sup>4</sup> 2485 01/01 (revised January 2022)

<sup>5</sup> 2485 01/02 (revised January 2022)

<sup>6</sup> Paragraph 137 of the Framework

- the site over time. The extent of the burial areas and the proximity of the graves means that this would be a significant effect, even if the size of the associated headstones were to be limited by way of a condition, as is proposed.
22. I do not accept the appellant's statement that the proposed cemetery would be essentially rural in character or appearance, cemeteries can be readily found in towns and cities. Moreover, the proposed layout, including long straight drives, with formal and highly-maintained landscaping, and rows of closely positioned headstones, would not be characteristic of the countryside in this area.
23. Instead, the proposal would increase the permanently developed area between the nearby settlements of Chigwell and Buckhurst Hill. Reference is made by the appellant to the existing M11 motorway forming a barrier between these settlements. Nevertheless, motorways can be found in many urban areas and so do not prevent urban sprawl or the merging of settlements.
24. Whilst I recognise that both main parties consider that the proposed cemetery would not be inappropriate development in the Green Belt, the Framework clearly states that this is dependent upon the proposal preserving the openness of the Green Belt or the reasons for including land within it.
25. Both main parties consider that the appeal site would remain largely open; that the proposed buildings, the car park and the associated driveways represent a small proportion of the overall site; and, that with appropriate planting the proposed cemetery would be adequately screened from public views.
26. I do not accept the main parties' position that there would be a very limited effect on the openness of the Green Belt from the proposed development and that the vast majority of the site would remain open. However, even if I did, a very limited effect would still mean that the openness of the site would be reduced and so not preserved. Furthermore, the proposal would permanently encroach upon the largely natural character and appearance of the countryside between the settlements of Buckhurst Hill and Chigwell. Consequently, the proposal would be inappropriate development in the Green Belt.
27. I note the appellant's comments that a cemetery use would almost certainly require headstones, which would inevitably have an effect upon the openness of the Green Belt and the purposes for including land within it. I have already stated that the extent of the burial areas and the proximity of the graves would affect openness. Furthermore, there is no evidence that the appellant has considered the scale and design of the proposed headstones with regard to their cumulative effect on openness, whilst still fulfilling the function of a headstone.
28. Moreover, not all Green Belt land is as open as the appeal site. For sites where there are existing buildings, structures or hard-surfacing, a change of use to a cemetery could preserve the openness of the Green Belt or not conflict with the purposes for including land within it. That is not the case in this instance.
29. For these reasons the proposal would be inappropriate development in the Green Belt. It would harm the visual and spatial openness of the Green Belt and would conflict with reasons for including land within it. Consequently, it would not accord with Paragraphs 149 b) and 150 e) of the Framework.

*Character and appearance*

30. The proposed development would be located in the countryside, which in this area includes gently sloping terrain, with grass fields, hedgerows with trees and small woods. Noise from traffic using the M11 to the west of the site is noticeable, although the motorway itself is very largely screened in views from the site.
31. The B170 road, which links Buckhurst Hill with Chigwell and forms the north east boundary of the site, is a reasonably busy road that is also a bus route, whilst the western extent of Chigwell is clearly visible to the east. The site is used for car boot sales on Saturdays and Bank Holidays for part of the year.
32. However, as previously stated, the appeal site is predominantly grassland with hedgerows, trees and other vegetation around its borders, particularly the southern, northeastern and western boundaries. It has an open and largely natural appearance for the vast majority of the year.
33. Whilst the countryside in this area is not formally designated for its landscape value, the submitted 2010 Landscape Character Assessment (LCA) identifies the appeal site as being within the G3 (Chigwell) Wooded Ridges and Valleys Landscape Character Area, which has a low to moderate sensitivity to change.
34. The LCA is a strategic document covering the whole of Epping Forest district, as part of the evidence base for its Local Development Framework. The G3 (Chigwell) sub-area is still a large and diverse area. Nevertheless, the sloping grassland of the appeal site, bounded by mature hedgerows and trees, is not out of keeping with the sub-area, and in my view contributes positively to the largely rural and natural character of this area at the edge of Chigwell.
35. The proposed development, whilst retaining and augmenting substantial areas of natural space in and around the site, would significantly change its character and appearance. The main building, car park and driveways would be urbanising features. Furthermore, the proposed burial areas, with highly-maintained landscaping, long straight drives and rows of closely positioned headstones, would increasingly detract from the largely natural character and appearance of the countryside, as time goes by and more burials take place.
36. The main building, which is close to the B170 road, would be a large structure with a floorspace of some 374 square metres, and is not a type of building commonly found in the countryside. Whilst the building would have a flat sedum roof, the main auditorium element would be some 4.5 metres in height with the remainder of the building some 3.0 metres in height. The main auditorium element would also be rendered an off-white colour, increasing its visual prominence, in contrast to the smaller timber-clad element of the building.
37. The design, scale, massing and materials of this building would therefore be incongruous and visually obtrusive, particularly when the boundary trees and hedges have shed their leaves. Despite the area of natural grassland and the additional landscaping, the main building, together with the associated car park and driveways and the large and highly maintained internment areas with headstones, would significantly detract from the predominantly rural character and appearance of the area.

38. The design, scale and massing of the smaller building is similar to a small barn or farm outbuilding, and with appropriate planting would not be visually obtrusive.
39. I do not accept the appellant's reasoning that the effects on character and appearance of the proposal are consistent with the Framework for the reasons given above. Consequently, the reference to the Supreme Court Judgement provided<sup>7</sup> is not relevant to my determination of this appeal.
40. For these reasons the proposed development would adversely affect the character and appearance of the area. It would, therefore, conflict with policies LL1 and LL2 of the Epping Forest Local Plan 1998 (EFLP) which concern the character and appearance of the countryside; with draft policies SP7 and DM3 of the SDEFLP which, amongst other things, concern the character and appearance of the countryside, including landscape character; and, with the Framework, in this regard.

*Parking and highway safety*

41. The original proposal included a car park with 60 spaces. This was reduced to 51 spaces by the time the September 2020 Transport Statement<sup>8</sup> was produced. However, officers were concerned that this number of car parking spaces would still be likely to have a significant adverse effect on the Epping Forest SAC. This would be as a result of increased numbers of vehicles travelling through the SAC to get to and from the cemetery, with a consequent increase in atmospheric pollution.
42. As part of the Habitats Regulations Assessment (HRA)<sup>9</sup> undertaken by the Council, and to address this significant effect upon the SAC, amongst other things, the proposal would be limited to no more than 150 burials per year and would be limited to 30 car parking spaces, of which a minimum of 20% would be served by EV charging facilities.
43. Setting aside the HRA of the proposal, the appellant produced an Addendum<sup>10</sup> to their Transport Statement that considered the transport effects of the proposal that was refused planning permission by the Council.
44. The Addendum notes that with an estimated 20 vehicles for each burial (not the 15 referenced by the Council), this would generate around 6000 additional vehicle trips per year. A car park with a capacity of 30 spaces would be able to accommodate this number, whilst still providing room for employees and occasional visitors to the cemetery.
45. Whilst there is some disagreement between the parties regarding the seating capacity of the auditorium this does not directly affect the issue of parking provision; 20 cars each with four people, would mean 80 people would be present, which is somewhere between the 100 people referenced by the Council and the 52 people referenced in the Addendum to the Transport Statement.
46. I note that there are no specific car parking standards for cemeteries and that the Council claims that using a proxy would mean that 41 spaces would be

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<sup>7</sup> Dover District Council v CPRE Kent [2017] UKSC 79

<sup>8</sup> Ref. 192120-04C

<sup>9</sup> Conservation of Habitats and Species Regulations 2017 (the Regulations)

<sup>10</sup> Ref. WIE.18614.100.R.4.1.3.TS Addendum



required<sup>11</sup>. Reference is also made to the 'local knowledge' of Members regarding congestion at peak times and the view that the proposal could result in increased parking stress and impacts upon highway safety at such times.

47. However, there is no substantive evidence to support the Council's position that the car parking provision is inadequate, or that were the car parking capacity to be exceeded and visitors had to park on nearby streets that this would be detrimental to highway safety. Essex County Council, the Local Highway Authority (LHA), has considered this matter and has not objected to the proposal.
48. Whilst the Council proposed to limit the number of burials to no more than 150 in a calendar year, there was no proposed restriction to the number of burials each day. Holding more than one burial per day would increase the risk that the capacity of the proposed car park would be exceeded, potentially leading to vehicles parking on the B170 or on other nearby streets.
49. However, given the proposed annual limit to burials I see no reason why a condition could not be attached to any grant of planning permission preventing more than one burial on any given day. This would reduce the likelihood of car parking capacity being exceeded and so reduce the likelihood of any adverse effects on highway safety.
50. Furthermore, given the limited number of burials that would take place, I also see no reason why a condition could not be imposed to any grant of planning permission that would mean that burials took place well outside peak hours. This would further reduce the likelihood of conflict between visitors to the proposed cemetery and local traffic.
51. On this basis, there is no compelling evidence that there would be insufficient car parking capacity or an unacceptable risk to highway safety. I also note the proposal would be served by a bus route along the B170, with three services per hour in each direction and would be within a reasonable walking distance of both Chigwell and Buckhurst Hill London Underground stations. Reference is also made in the evidence to bicycle parking provision and I am content that this could be satisfactorily controlled by a condition attached to any grant of planning permission.
52. For these reasons the proposed development would have an acceptable impact upon parking and highway safety. It would, therefore, not conflict with policies ST4 (road safety) and ST6 (vehicle parking) of the EFLPA; draft policy T1 (sustainable transport choices) of the SDEFLP; and with the Framework, in this regard.

#### *Drainage of the site*

53. The appeal site is located within the catchment of the river Roding, which is located to the west, several hundred metres beyond the M11 motorway. The site slopes gently downwards in the general direction of the river.
54. The location of the appeal site, the underlying geology and topsoil to be found there and the initially submitted information caused the Environment Agency (EA), Highways England (HE) and Essex County Council, the Lead Local Flood Authority (LLFA), to object to the proposal.

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<sup>11</sup> From the *Essex County Council Vehicle Parking Standards* (2006)

55. The EA was concerned that the proposal may conflict with the minimum requirements for ensuring that controlled waters, including groundwater, would not be at risk of pollution. However, following the submission of further information, including a Tier 2 Groundwater Risk Assessment, the EA withdrew its objection to the proposal<sup>12</sup>. The Tier 2 assessment confirmed the separate drainage of foul water to the mains sewer network and that no standing water was encountered within the London Clay. Furthermore, the EA noted that no burials are to take place in the eastern part of the site where the gravel geology allows for groundwater.
56. I note from Figure 4 of the submitted Sustainable Drainage Systems (SuDS) report<sup>13</sup> that part of the proposed internment areas would be within an area identified as Boyn Hill Sand and Gravel, which would seem to conflict with the EA's statement that there would be no burials there. However, this is a matter that could be satisfactorily controlled by a suitably worded condition attached to any grant of planning permission. Whilst such a condition would reduce the size of the internment area, it would remain substantial.
57. HE was concerned that the proposal could adversely affect the safe and efficient operation of the strategic road network (SRN), which includes the M11. A particular concern was with regard to drainage to the operational boundary of the motorway, which is positioned in a cutting at a lower level than the appeal site.
58. However, following discussions with the appellant, HE withdrew its objection, subject to a condition being imposed to ensure that through a suitable drainage strategy, no exceedance flows would be allowed to flow off the west of the site onto the M11 motorway, should planning permission be granted for the proposed development.
59. The LLFA was concerned that the appellant's discharge rates for surface water, and the proposed means of discharge may not be adequate. However, following a further review of the submitted Flood Risk Assessment, the objection was withdrawn, subject to a number of conditions concerning a surface water drainage strategy, a scheme to minimise construction run-off and, the development and implementation of a maintenance plan for the surface water drainage system for the appeal site.
60. The Council's Contaminated Land and Environmental Protection and Drainage teams were also initially concerned by the proposal, including with regard to the drainage of the site. However, subject to the imposition of conditions to any grant of planning permission, neither team objected to the proposal at the time planning permission was refused.
61. Notwithstanding the absence of objections from the various statutory and non-statutory consultees with regard to drainage issues, the Council refused planning permission in part on the grounds of drainage. This was based on the 'local knowledge' of Members, including anecdotal evidence of the site being waterlogged after intense rainstorms, and its function as natural drainage, preventing excess water from reaching the M11 motorway to the west.
62. The position of the EA, HE, the LLFA and others is based in a large part upon the submitted technical evidence, which was supplemented over the time that

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<sup>12</sup> Email dated 19 May 2020

<sup>13</sup> Ref. 71815.04R1



the application was lodged with the Council. This includes the aforementioned SuDS report which, amongst other things, identifies drainage infrastructure installed as part of the construction of the M11, and notes the proposed provision of oversized swales and other SuDS features to address the clay geology of parts of the site. Consistent with Government guidance, this evidence and the imposition of various conditions was considered sufficient to address identified risks, or to reduce them to acceptable levels.

63. In contrast, no compelling evidence has been produced to substantiate the Council's third reason for refusal. On the basis of the evidence before me I am satisfied that the proposed drainage arrangements would not cause unacceptable risks to the environment, including groundwater and the M11 motorway.
64. For these reasons the proposal would not cause an unacceptable risk of harm to surrounding land or water resources. It would not, therefore, conflict with policy U3B (Sustainable Drainage Systems) of the EFLPA; with draft policies DM15 (managing and reducing flood risk) and DM16 (Sustainable Drainage Systems) of the SDEFLP; and, with the Framework in this regard.

#### *Other Considerations*

65. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and 'very special circumstances' will not exist unless the potential harm to the Green Belt by reasons of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
66. Neither the Council nor the appellant consider the proposal would be inappropriate development in the Green Belt and have not put forward any other considerations to demonstrate very special circumstances. Nevertheless, with reference to the evidence I have considered this matter.
67. The proposal would provide some employment opportunities in the area with regard to the burial services and the maintenance of the cemetery. However, no details have been provided and these are likely to be few in number. I therefore give this only limited weight.
68. The proposal would enhance the boundary landscaping and would provide an area of natural grassland that would be beneficial for biodiversity. However, the appeal site already has some biodiversity value and much of the proposed biodiversity enhancements are not dependent upon the proposed development. I therefore give this only limited weight.
69. I have concluded that the proposed drainage and parking / highways arrangements are satisfactory, but this is something that would be necessary in any case, so these carry neutral weight in my assessment.
70. The Council undertook a HRA of the proposal and identified potential harm to the Epping Forest SAC, a designated European site. However, the proposal has been amended to mitigate the identified harm, and I note Natural England's position that the proposal is not likely to result in significant impacts on the SAC. This matter also carries neutral weight.

71. No evidence has been provided to demonstrate a pressing need for a cemetery in this area, and I note the capacity of nearby Chigwell cemetery and that this is a matter that may be considered in the preparation of the Council's Local Plan. This matter also carries neutral weight in my assessment.
72. I have found that the proposal would adversely affect the predominantly rural character and appearance of the area and this carries some weight against the proposal.
73. For these reasons I find that the other considerations in this case, as set out above, do not clearly outweigh the totality of the harm to the Green Belt that I have identified, and any other harm. Consequently, the very special circumstances necessary to justify the proposed development do not exist. The proposed development would therefore not accord with Paragraphs 149 b) and 150 e) of the Framework.

### **Conclusion**

74. For the reasons given above, and taking into account all relevant matters, I conclude the appeal is dismissed.

*Andrew Parkin*

INSPECTOR