



## Appeal Decision

Site visit made on 31 August 2023

**by A M Nilsson BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 11 October 2023**

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### **Appeal Ref: APP/J1535/W/22/3304703**

### **Land East of 19 Orchard Way, Chigwell IG7 6EE**

- 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 Mrs P Healy and Mr J Healy against the decision of Epping Forest District Council.
  - The application Ref EPF/0463/20, dated 27 February 2020, was refused by notice dated 27 April 2022.
  - The development proposed is the erection of a three storey building to provide 2 x 2 bedroom semi-detached houses with associated car parking, amenity space and landscaping.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of a three storey building to provide 2 x 2 bedroom semi-detached houses with associated car parking, amenity space and landscaping at Land East of 19 Orchard Way, Chigwell IG7 6EE in accordance with the terms of the application, Ref EPF/0463/20, dated 27 February 2020, subject to the conditions contained in the attached schedule.

### **Application for costs**

2. An application for costs was made by Mrs P Healy and Mr J Healy against Epping Forest District Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. The Epping Forest District Local Plan 2011 to 2033 was adopted by the Council on 6 March 2023. This has replaced the Epping Forest District Local Plan (1998) and the Epping Forest District Local Plan Alterations (2006). The Council confirmed that the relevant policies for the appeal are DM2, DM4 and DM22. I have therefore determined the appeal having regard to these policies. The appellant was given the opportunity to comment on the new policies.

### **Main Issues**

4. Part of the appeal site is in the Green Belt and so the main issues are:
  - Whether or not the change of use to residential garden is inappropriate development in the Green Belt, having regard to the effect on the openness and purposes of including land in the Green Belt, in regard to the National Planning Policy Framework (2023) (the Framework) and any relevant development plan policies;

- the effect of the proposed development on the integrity of the Epping Forest Special Area of Conservation;
- If the appeal development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

## **Reasons**

### *Site and proposed development*

5. The appeal site comprises land to the side of 19 Orchard Way. Orchard Way is a cul-de-sac of residential properties, with the appeal site being located at the head of the cul-de-sac adjacent to a terrace of three-storey properties. The site is almost rectangular in shape and currently contains various shrubs, trees and bushes and appears largely overgrown as opposed to any meaningful landscape management.
6. The northern boundary of the site broadly aligns with the boundary of the rear gardens of the terraced properties that sit adjacent to the appeal site. To the east is a large, detached property, which appears to have associated equestrian activities that extend further into the Green Belt. There is also a pair of semi-detached properties that have long rear gardens that extend right up to the eastern boundary of the appeal site. To the south is Orchard Way itself and a small area of amenity grassland, and to the east are the terraced properties that make up this section of Orchard Way.
7. The proposed development involves the construction of a pair of semi-detached, three storey properties. The evidence shows that the built form of these properties would not be within the Green Belt, with the Green Belt boundary being roughly at the halfway point of the site in an east-west direction.
8. For this reason, the Council do not consider that the built form of the dwellings to be inappropriate development in the Green Belt. I have no reason to form a different view.
9. The proposed rear gardens of the property would however be within the Green Belt and would extend northwards to broadly align with the boundary of the rear gardens of the adjacent terrace.

### *Whether or not inappropriate development and the effect on openness*

10. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework also outlines, at paragraph 150 that certain forms of development, other than new buildings, are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Such forms of development include, as outlined in 150 e), the material change of use of land, such as for outdoor sport or recreation, or for cemeteries or burial grounds. Whilst the change of use to residential garden land is not explicitly mentioned, the list is not exhaustive and as such I am satisfied that it would constitute a form of development which would fall within paragraph 150 e). Policy DM4 of the Epping Forest Local Plan (2023) is consistent with the Green Belt aims of the Framework.

11. The Courts have held that rather than treating any change as having a greater impact on the openness of the Green Belt, the correct approach is to consider the impact or harm, if any, wrought by the change. Whether or not a change will have an adverse impact, and so cause harm to openness, might depend on factors such as the scale of the development, its locational context, and its spatial and/or visual implications.
12. The Framework outlines that one of the essential characteristics of Green Belts is their openness. Openness has a spatial aspect as well as a visual aspect. The proposed development does not include any structures or operational development in the Green Belt. I note the Council's concern regarding the siting of domestic paraphernalia, such as furniture or play equipment in connection with the use of the land as garden, which would be more difficult to control. Nonetheless, in the event that this does occur, any such paraphernalia would be likely to be small scale and would not be permanent fixtures.
13. Due to its size and position between the existing residential properties the appeal site benefits from a high degree of enclosure. Moreover, as a consequence of the proposed dwellings, there would be limited visibility of that part of the site which forms Green Belt land, where it would be viewed within the context of the adjoining residential properties and their gardens, rather than perceived as part of the open agricultural land beyond.
14. Therefore, by reason of its locational context, the scale and nature of the development proposed, the use of the land as gardens would not cause harm to, and would thereby preserve, the openness of the Green Belt in both spatial and visual terms.
15. Permitted development rights for the extensions to the properties and the erection of incidental buildings, as well as walls, fences and other means of enclosure could be controlled by a planning condition. Therefore, subject to a suitably worded condition to remove permitted development rights for extensions, incidental buildings and means of enclosure, the openness of the Green Belt would be preserved.
16. The purposes of the Green Belt are set out at paragraph 138 of the Framework and include safeguarding the countryside from encroachment. The appeal site is largely contained by the carriageway of Orchard Way and is sandwiched between residential curtilages of properties on Orchard Way and Whitehall Close, with only the rear and part of the side boundary being coterminous with the adjoining agricultural land to the rear of the site. As such the proposed change of use of the land would not give rise to any significant degree of impingement into the wider rural landscape.
17. Whilst it is possible that the change of use of the land would increase the potential for manicuring of the land, due to the location of the site between two residential properties, its limited size and the fact that it is not discernible as part of the open countryside beyond due to its existing appearance, this would not have a significant effect on the countryside in terms of encroachment.
18. In light of the above considerations, I find that the proposal would not result in unacceptable encroachment into the countryside. I therefore conclude that the proposal would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. As such it would constitute a type of development that is not inappropriate in the Green Belt. In that regard the

proposed development would accord with Policy DM4 of the Epping Forest District Local Plan (2023) and the Framework in relation to the protection of Green Belt land.

*Epping Forest Special Area of Conservation*

19. The evidence before me indicates that the site is located within the zone of influence for the Epping Forest Special Area of Conservation (SAC) which is a European protected site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) requires the Competent Authority to ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of European designated sites.
20. The supporting text to Policy DM2 of the Epping Forest District Local Plan (2023) states that the SAC has particular importance as a bird habitat and was identified primarily for its value in respect of beech trees, wet and dry heaths, and its population of stag beetle. It also states that the SAC is currently assessed as being of 'unfavourable conservation status', in part because of the effects of air-borne pollutants, including from traffic.
21. In its Local Plan Habitats Regulations Assessment (HRA), the Council has identified two pathways from residential development that may lead to significant adverse effects on the SAC. The pathways are Air Quality, as a result of emissions from more people driving vehicles within and in the vicinity of the SAC; and, Recreational Pressures, as a result of more people using the SAC for recreational purposes such as walking.
22. The proposed development would create an additional two dwellings within the zone of influence. Occupants of these dwellings would create additional recreational pressures on the SAC. There would also be an increase in traffic using the road network through the SAC and an increase in emissions as a result. I find that the evidence is that in combination with other projects the proposal would likely have significant environmental effects on the European protected site.
23. Owing to recreational pressure on the SAC and likely pollution arising from the use of vehicles when visiting the SAC, I find that the development would have an adverse effect on the integrity of the SAC.
24. Policy DM2 sets out that in designing mitigation measures, regard should be had to the Air Pollution Mitigation Strategy for the Epping Forest, the District's Green Infrastructure Strategy and Epping Forest Strategic Access Management and Monitoring Strategy (SAMMs). Contributions towards off-site measures to mitigate the likely impacts on air pollution and adverse recreational effects arising from a development will be sought where these are necessary to make the development acceptable, are directly related to the development and are fairly and reasonably related in scale to the development.
25. In the overarching standard advice for development applications within Epping Forest District, Natural England state that they support the SAMM Strategy and the collection of a SAMMs contribution from development. They also state that air quality should not be considered an impediment to the determination of applications provided that the mitigation detailed in the Air Pollution Mitigation Strategy is considered secured and certain to proceed. In their consultation

response to the application, Natural England have recommended that the overarching standard advice be followed.

26. The appellant has submitted with the appeal a completed Unilateral Undertaking (UU) to provide the appropriate contributions in terms of mitigating the air quality and recreational impacts on the SAC.
27. I am satisfied that the planning obligations contained within the UU are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. They meet the tests set out within Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.
28. The contributions would address any adverse effects associated with the proposed development and in respect of the development proposal would ensure that the integrity of the SAC was not harmed. In this regard, the development would therefore accord with the nature conservation requirements of the Habitats Regulations, and Policies DM2 and DM22 of the Epping Forest District Local Plan (2023). Collectively, these policies permit development only where it is possible to conclude there is no adverse effect on the integrity of the SAC, alone or in combination with other plans or projects, and require consideration of air pollution risks and adequate mitigation to ensure sensitive receptors are not adversely impacted.

### **Other Matters**

29. I note representation was received in relation to the highways impacts of the proposed development, particularly in relation to parking. Each property would have one parking space, with the additional option of utilising the proposed garage. There is no substantive evidence that the development would lead to unacceptable highway safety conditions, and I note that this view was shared by the Council in its consideration and determination and that no objection was received to the proposed development from the Highways Authority.
30. Comment has been made that the original planning permission for Orchard Way contains a proviso that its rural character be preserved, and that the proposed development is contrary to preserving this rural character and would breach the Green Belt GB1-GB preservation order. I do not have any details of the original planning permission before me to give this weight in the appeal, nor do I have any such Green Belt preservation order. I have considered the impact on the Green Belt in my decision.
31. Reference has been made to land contamination and the possible presence of a gas pipeline. The Council have commented that the site has no acknowledged potentially contaminated land. I am satisfied that, as the evidence suggests, any land contamination implications can be dealt with by suitably worded planning conditions. The evidence shows gas infrastructure outside the site boundary beneath Orchard Way. Any implications of the development on this infrastructure would be covered by other legislation.
32. I note comments in relation to the appeal site providing possible access to properties on Gravel Close. I am not aware of any specific allocation of the appeal site for such a purpose, and this would not be a reason to dismiss the appeal.

33. The development would not trigger a requirement for affordable housing, and the presence of other sites that may be developed would not be a reason to dismiss the appeal.
34. The construction phase would cause some minor disruption, but this would be temporary and could be mitigated by imposing a condition to restrict the working hours.
35. Due to the separation from surrounding residential properties, the proposed development would not cause harm to the living conditions of the occupants of existing residential properties in terms of daylight, sunlight, outlook or privacy. It is generally held that the loss of a view is not a material planning consideration, and I have no reason to take a different view in relation to the proposed development.
36. Additionally, the design of the proposed dwellings would broadly follow the existing properties in this part of Orchard Way. Like the Council, I find that they would not appear out of character in this context and would not harm the character and appearance of the area.
37. In terms of the biodiversity implications, I have considered those in relation to the SAC above. In terms of more localised ecological considerations, the appellant has submitted two ecology reports which the Council have considered and found that, subject to the imposition of conditions, there would be no harm to local biodiversity. There is no substantive evidence to the contrary and I have no reason to form a different view.
38. There is no evidence that the proposed development would result in an increase in anti-social behaviour.
39. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, no directly similar/comparable sites to which this might apply were put forward. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.
40. The issue of impact on property values has also been raised. It is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.
41. I note comments received in relation to the ability of GP surgeries to cope with additional residents. There is no substantive evidence before me to conclude that the proposed development would have an unacceptable impact. Given the quantum of development and the lack of evidence, this would also not be a reason to dismiss the appeal.

### **Conditions**

42. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is for the avoidance of doubt and in the interests of certainty.
43. The Council has suggested several conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency, clarity and omitted others.

44. In the interests of public safety, a condition requiring the submission of an assessment of potential land contamination is necessary. It is required to be submitted prior to the commencement of development to ensure that any remediation that may be necessary is carried out prior to commencement. Following completion of these measures, conditions are necessary for the submission of a verification report, and the reporting of any unexpected contamination.
45. In the interests of the character and appearance of the area, conditions requiring the submission of details of materials, hard and soft landscaping, and the implementation of tree protection measures as outlined, are necessary.
46. A condition removing permitted development rights should only be imposed in exceptional circumstances. I consider that given the Green Belt location of part of the appeal site, such a condition is necessary in this instance.
47. In order to ensure the development is not at risk from flooding or increase the risk of flooding elsewhere, conditions requiring the development to be carried out in accordance with the submitted flood risk assessment and that details for the disposal of surface water are necessary.
48. In the interests of achieving a sustainable form of development a condition relating to water efficiency is necessary. It is not necessary to impose a condition requiring the installation of electric vehicle charging points as this is covered by other legislation<sup>1</sup>.
49. In the interests of biodiversity, a condition requiring the submission of details of biodiversity enhancements (as per the submitted ecological reports) and their monitoring and management is necessary.
50. In the interests of living conditions, a condition restricting the hours of construction is necessary. In the interests of highway safety, a condition requiring wheel washing of construction vehicles is necessary.
51. In the interests of preserving the openness of the Green Belt and avoid the need for ancillary out buildings, and in the interests of highway safety, a condition is necessary to restrict the use of the garages to parking and or storage incidental to the use of the dwellinghouse. It is not necessary, as the Council suggest, to impose a condition restricting any use for commercial or industrial purposes as these would require permission in their own right.
52. I have also, in the interests of securing high quality communications, imposed a condition requiring the installation of super-fast broadband to the proposed dwellings.
53. The Council have suggested that the appellant is informed that the existing streetlight in the vicinity of the appeal site may need to be removed/relocated as part of the access work, at their cost, with the siting of it to be agreed with the Highway Authority. Additionally, all work within or affecting the adopted highway is subject to the agreement of the Highway Authority.

## **Conclusion**

54. I have found that the proposal would not represent inappropriate development in the Green Belt. As such it is not necessary for very special circumstances to

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<sup>1</sup> Building Regulations 2010 Approved Document S, 2021 edition

exist. The development would also provide the necessary mitigation measures to ensure that there would be no adverse harm caused to the integrity of the SAC.

55. For the reasons set out above, and having had regard to all other matters raised, I therefore conclude that the appeal should be allowed.

*A M Nilsson*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan – Drawing Number 3938/1; Proposed Site Layout – Drawing Number 3938/3; Proposed Site Plan – Drawing Number 2761.2; Proposed Ground and First Floor Plans – Drawing Number 2761.3; Proposed Second Floor Plan – Drawing Number 2761.4; Proposed Elevations – Drawing Number 2761.5.
- 3) 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.
- 4) 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.

- 5) 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.
- 6) No external materials shall be used in the construction of the development hereby permitted until samples of those materials have been submitted to, and approved by, the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 7) 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.
- 8) Tree protection shall be installed as shown on the Tracy Clarke Tree Consultancy 'Tree Protection Plan' drawing number TCTC-17574-PL-03 (dated February 2020) prior to the commencement of development activities (including any demolition). The methodology for development (including Arboricultural supervision) shall be undertaken in accordance with the submitted Tree Survey/ Arboricultural Method Statement reports.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking and re-enacting that order) no development permitted by virtue of Classes A to E of Part 1 and Class A of Part 2, Schedule 2 shall be undertaken, without the prior consent of the local planning authority.
- 10) The development shall be carried out in accordance with the findings and recommendations of the flood risk assessment (Ref 3563-ORCH-ICS-XX-RP-C07.001, June 2019).
- 11) 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 the approved details and shall be provided on site prior to the first occupation and shall be retained for the lifetime of the development.

- 12) Prior to first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 13) Prior to first occupation of the development, a scheme showing the biodiversity enhancements and for the monitoring and management of the ecological assets on the site, where present, as outlined in the submitted ecological reports, shall be submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in full prior to the occupation of the development and retained as such at all times thereafter.
- 14) No deliveries, external running of plant and equipment or construction works, other than internal works not audible outside the site boundary, shall take place on the site other than between the hours of 07:30 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays.
- 15) No construction vehicles shall leave the site during the construction phase of the development until any mud or other debris has been washed and removed from the wheels of the vehicle.
- 16) The garages, forming part of the development hereby approved, shall be used only for the purposes of parking vehicles, and/or storage incidental to the use of the host dwellinghouse.
- 17) Prior to any above groundworks, a strategy to facilitate super-fast broadband for future occupants of the site shall have been submitted to and approved in writing by the local planning authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway, unless evidence is put forward and agreed in writing by the local planning authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure. The development of the site shall be carried out in accordance with the approved strategy.

----- end of conditions schedule -----