
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

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 exceptions¹, 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 it².
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)³, 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.

¹ Paragraph 149 b) of the Framework

² Paragraph 138 of the Framework

³ 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 drawing⁴, 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 areas⁵.
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 permanence⁶.
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

⁴ 2485 01/01 (revised January 2022)

⁵ 2485 01/02 (revised January 2022)

⁶ 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 interment 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 provided⁷ 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 Statement⁸ 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)⁹ 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 Addendum¹⁰ 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

⁷ Dover District Council v CPRE Kent [2017] UKSC 79

⁸ Ref. 192120-04C

⁹ Conservation of Habitats and Species Regulations 2017 (the Regulations)

¹⁰ Ref. WIE.18614.100.R.4.1.3.TS Addendum

required¹¹. 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.

¹¹ 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 proposal¹². 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) report¹³ 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

¹² Email dated 19 May 2020

¹³ 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

Appeal Decision

Site visit made on 17 April 2023

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2023

Appeal Ref: APP/J1535/D/22/3309484
23 Millwell Crescent, Chigwell IG7 5HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Amar Patel against the decision of Epping Forest District Council.
 - The application ref. EPF/1149/22, dated 17 May 2022, was refused by notice dated 28 September 2022.
 - The application sought planning permission for "Proposed single storey side & rear extension with associated internal alterations" without complying with a condition attached to planning permission ref. EPF/1110/20, dated 5 August 2020.
 - The condition in dispute is No. 2 which states that: "The development hereby permitted will be completed and retained strictly in accordance with the approved drawings numbers: RSD2428-100-A. RSD2428-001".
 - The reason given for the condition is: "To ensure the proposal is built in accordance with the approved drawings".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The Epping Forest District Local Plan 2011-2033 (LP) was adopted on 6 March 2023. It was at a very advanced stage in its route to adoption when the Council's decision to refuse planning permission was made and the appeal was lodged. Policy DM 9 (part H) of the LP Submission Version December 2017 is now redundant and I note that virtually the same section on privacy and amenity that was in Policy DM 9 (part H) now falls within LP Policy DM9 (part I) which is, at this moment, the principal development plan policy relevant to this appeal. The Local Plan (1998) and the Local Plan Alterations (2006) will be revoked once the period for a legal challenge into the adopted LP has expired.

Background and main issue

3. Planning permission has been granted for an extension and alterations to the appeal property which, as I saw at my site visit, have been carried out. That original planning permission will continue to exist whatever the outcome of this appeal. This appeal seeks permission to carry out the development without
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complying with condition 2. This condition requires the development to follow the approved plans.

4. The appellant has increased the width, height and depth of the approved rear raised patio and altered the approved position of the steps from it that lead down to the garden. The intention is for the submitted plans to be followed instead of those previously approved. Various changes to the fenestration in the ground floor rear extension are also shown on those new plans but the Council appears to accept, as I do, that these would be inconsequential. The Council's concern is not with the design of the scheme as a whole or its impact on the character and appearance of the locality.
5. There is no dispute that the rear patio has been built somewhat higher than that which was shown in the approved scheme. Estimates of the increase in height vary. I noted that the patio surface is now about 1.24 m above the level of the lawn at the rear and about 35 cm higher than the side alley where there are steps leading up to the patio that are not recorded on any plans. The existing ground floor plan of the property showing the situation at the site before any works in the approved scheme were carried out records that the former patio stood 0.71 m above the level of the lawn below.
6. The sole main issue is the effect of the raised patio upon the amenity and living conditions of the neighbours at the adjacent houses on Millwell Crescent (nos 21 and 25) with regard to the potential for overlooking and loss of privacy.

Reasons

7. No. 23 is a 2-storey detached house. It stands on a part of Millwell Crescent which slopes down from north to south. Nos 21 and 25 are the adjacent houses. The former is on the upper side of no. 23 and the latter is on the lower side. The layout of these detached houses can be fairly described as close-knit.
8. I have based my assessment on the assumption that the users of the raised patio would adopt reasonable patterns of behaviour. Even so, at my site visit, I was able to see that the users of the raised patio as built, standing, or even sitting, close to its northern and southern edges, would readily have commanding views from an elevated level down into the rear gardens and patios of 21 and 25 Millwell Crescent. This results in an invasive sense of overlooking, distinct from the mutual and modest intervisibility that might have persisted between the properties before the development took place.
9. Some of that overlooking would be across short distances and could be for sustained periods given that the sizeable raised patio would be large enough for sitting out and entertaining guests and may become preferable to the rather lower outdoor space occupied by the rear lawn. On warm days and evenings, such use would be likely to coincide with when neighbours are also attempting to enjoy their rear gardens, thereby exacerbating the overlooking I have found.
10. The raised patio reaches well up each of the side boundary fences. Whilst users are unlikely to trip and fall into the adjacent gardens over the fences, such hazards cannot be ruled out entirely. More importantly, the views over the boundary fence to no. 25 also take in the rear ground floor window and rear conservatory of that property. In the other direction, there is a clear line of sight back towards the rear patio door of no. 21. The shed in the garden of no.

25 next to the boundary and the higher level of no. 21 offer little by way of defence against such overlooking and the invasion of privacy that is associated with it. The situation at no. 25 may change if the extension approved there were to be constructed but I have to consider the site context as I find it.

11. More generally, overlooking from a raised patio is of a different character to that from a window to a room. Sizeable and elevated viewing platforms like this, in a situation where they are not common features, and the presence of people outside, regardless of where they might be actually looking, combine to create a much more intrusive feel and the disturbing psychological perception of being overlooked. The actual and perceived loss of privacy for the occupiers of the 2 adjacent dwellings would be unacceptable and harmful to their amenities.
12. I have given some thought to whether a condition could be imposed requiring a scheme of privacy screening to be submitted to the Council for approval, followed by its subsequent implementation. I have reservations about such an approach.
13. This is not a situation where the overlooking can be properly addressed through screen planting or the use of planters. Such planting can take a long time to establish and may fail. Planters can be easily moved around. The hedges and vegetation the appellant points to in nearby gardens at appendices 2 and 3 of his statement will have taken a considerable amount of time to get to the mature state they are in. To require fully effective panel screening of the type shown in appendix 1 or adjustments to the position of the raised patio and main staircase (appendices 4 and 5) would result in a material change to what is proposed which interested parties may wish to comment upon. There is also the concern, alluded to in the officer's report, that such panel screens, if they are to be effective in preventing overlooking, may have an overbearing visual impact as viewed from the adjacent properties or other possible consequences. Any such revised or other alternative proposals would need to be the subject of a fresh planning application which would be determined by the Council in the first instance.
14. The representations that were lodged at the application stage by the occupiers of nos 21 and 25 add some weight to the decision I have reached in this case. I can well understand how the development that has taken place is of great concern to them. I recognise that the patio now provides for level access from the rear extension to avoid a trip hazard for the appellant's young children and that the approved scheme for a sunken lounge and a far lower patio towards no. 25 was aborted due to the unexpected costs of construction. However, these factors are not sufficient to outweigh the harm I have described.
15. I find on the main issue that the raised patio, by reason of its height and extent, is harmful to the amenity and living conditions of the neighbours at the adjacent houses on Millwell Crescent (nos 21 and 25) with regard to overlooking and loss of privacy. This places the scheme in conflict with the aims of LP Policy DM9 (part I) which expects proposals to avoid overlooking and loss of privacy detrimental to the living conditions of neighbouring occupiers.
16. For the avoidance of doubt, I also find conflict with the policies from the Local Plan (1998) and the Local Plan Alterations (2006) that are listed in the decision notice. There would not be respect for the National Planning Policy Framework

because the scheme does not create a place which promotes health and well-being, with a high standard of amenity for existing and future users.

Conclusion

17. My finding on the main issue is decisive to the outcome of this appeal. There is conflict with the development plan. The harm cannot be properly mitigated by the imposition of planning conditions and it is not outweighed by other material considerations. For the reasons given above and taking into account all other matters raised, I conclude that this appeal should not succeed.

Andrew Dale

INSPECTOR

Our Ref: EPF/0635/20

TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning (Development Management
Procedure) Order 2010
PLANNING DECISION NOTICE



Planning Services Directorate
Civic Offices,
323 High Street,
Epping,
Essex CM16 4BZ

An electronic version of this
decision notice is available
on our website:
www.eppingforestdc.gov.uk/iplan

Case Officer was:
Direct Line:
Email:

To: KG Creative Consultancy
Birdhurst Lodge
77 Wray Park Road
REIGATE
RH2 0EQ

Appendix 4

Proposal: Demolition of all buildings & erection of one single storey house, parking and provision of garden space

Location: Former MOD Site, Roding lane, Chigwell,

In pursuance of the powers exercised by the Local Planning Authority this Council do hereby give notice of their decision to **GRANT PERMISSION** for the development described above, subject to compliance with the conditions listed below.

NB: THIS PERMISSION IS SUBJECT TO A LEGAL AGREEMENT SIGNED 17 March 2022

Signed

A handwritten signature in black ink, appearing to read 'N. Richardson'.

N. Richardson
Planning Services Director.

Date: 18 March 2022

Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

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- 2 The development hereby permitted shall be carried out and retained strictly in accordance with the following approved plans: (01)001 Rev P2, (01)002 Rev P2, (01)003 Rev P2, (01)004 Rev P2, (02)001 Rev P3, (02)002 Rev P2, (02)003 Rev P1, (04)001 Rev P1, (04)002 Rev P1, (04)010 Rev P2 and (04)011 Rev P2.

Reason: For the avoidance of doubt and to ensure the proposal is built in accordance with the approved plans.

- 3 No development or preliminary ground works shall take place until a programme of archaeological trial trenching and excavation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved by the local planning authority.

Reason: The site is an Archaeological site where any remains are irreplaceable and are an interest of acknowledged importance which may be highly vulnerable to damage or destruction. Unless the Authority is satisfied that a proper scheme for investigation has been agreed the remains should be left undisturbed, in accordance with policy HC1 of the adopted Local Plan 1998 & 2006, Policy DM of the Local Plan Submission Version 2017, and the NPPF 2021.

- 4 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.

Reason: To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990, and to enable full and proper consideration be given to the impact of the proposed development on existing trees / hedges, so as to safeguard and enhance the visual amenities of the area and to ensure a satisfactory appearance to the development in accordance with policy LL10 of the adopted Local Plan and Alterations 1998 & 2006, policies DM3 and DM5 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 5 No preliminary ground works shall take place until a flood risk assessment and management and maintenance plan shall be submitted to and approved by the Local Planning Authority prior to commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using WinDes or other similar best practice tools. The approved measures shall be carried out prior to the substantial completion of the development and shall be adequately maintained in accordance with the management and maintenance plan.

Reason:- The development is of a size where it is likely to result in increased surface water run-off, in accordance with policy U2B of the adopted Local Plan and Alterations 1998 & 2006, and policy T1 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 6 A) No work on any phase of the development (with the exception of demolition works where this is for the reason of making areas of the site available for site investigation), shall commence until an assessment of the risks posed by any contamination within that

phase shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of Potentially Contaminated Sites - Code of Practice and the Environment Agency's Guidelines for the Land Contamination: Risk Management (LCRM 2020) (or equivalent if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The development shall only be carried out in accordance with the approved details unless the Local Planning Authority gives its written consent to any variation. The assessment shall include: (1) A survey of the extent, scale and nature of contamination and (2) An assessment of the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes; adjoining land; groundwater and surface waters; ecological systems; and archaeological sites and ancient monuments.

B) If following the risk assessment unacceptable risks are identified from land affected by contamination in that phase, no work on any phase of the development shall take place, until a detailed land remediation scheme has been completed. The scheme will be submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. (The remediation scheme shall be sufficiently detailed and thorough to ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990). The development shall only be carried out in accordance with the approved scheme. Following the completion of the remediation works and prior to the first occupation of the development, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.

Reason:- To ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with policy RP4 of the adopted Local Plan and Alterations 1998 & 2006, policy DM21 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 7 Prior to preliminary ground works taking place, details of foul and 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.

Reason: To ensure satisfactory provision and disposal of foul and surface water in the interests of Land Drainage, in accordance with policy RP3 of the adopted Local Plan and Alterations 1998 & 2006, policies DM16 and DM18 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 8 Prior to any above ground works, full details of 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 soft landscaping to boundaries of the site

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shall consist of a planting strip of a minimum width of 3metres with garden fences on the inside edge. The landscaping shall consist of trees / hedges of native species. If any plant dies, becomes diseased or fails to thrive within a period of 5 years from the date of planting, or is removed, uprooted or destroyed, it must be replaced by another plant of the same kind and size and at the same place, unless the Local Planning Authority agrees to a variation beforehand in writing through an appropriate application. 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.

Reason:- To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990 so as to ensure that the details of the development of the landscaping are complementary, and to ensure a satisfactory appearance to the development, in accordance with policy LL10 of the adopted Local Plan 1998 & 2006, policies DM3 and DM5 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 9 Prior to any above ground works, documentary and photographic details of the type 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 carried out in accordance with the approved details.

Reason: To ensure a satisfactory appearance in the interests of visual amenity, in accordance with policy DBE1 and DBE4 when located in the Green Belt of the adopted Local Plan and Alterations 1998 & 2006, policy DM9 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 10 Prior to first occupation of the development, a scheme to enhance the ecological value of the site shall be submitted to and agreed in writing by the Local Planning Authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator (BIAC) where appropriate. The scheme shall be implemented in full prior to the occupation of the development hereby approved.

Reason: To maintain and improve the biodiversity of the site and to mitigate any impact from the development hereby approved, in accordance with policy DM1 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 11 No deliveries, external running of plant and equipment or demolition and 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.

Reason: To ensure that the proposed construction work does not cause undue nuisance and disturbance to neighbouring properties at unreasonable hours and in accordance with policies RP5A and DBE9 of the adopted Local Plan 1998 & 2006, and policies DM9 and DM 21 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 12 Wheel washing or other cleaning facilities for vehicles leaving the site during construction works shall be installed and utilised to clean vehicles immediately before

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leaving the site. Any mud or other material deposited on nearby roads as a result of the development shall be removed.

Reason:- To avoid the deposit of material on the public highway in the interests of highway safety, in accordance with policy ST4 of the adopted Local Plan and Alterations 1998 & 2006, policy T1 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 13 All material excavated from the below ground works hereby approved shall be removed from the site.

Reason: In order to ensure that levels are not altered across the site as a result of deposited materials, in the interests of amenity, in accordance with Policies CP2, DBE1 and DBE9 of the adopted Local Plan 1998 & 2006, Policies DM9 & DM21 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 14 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.

Reason: To help support improvements to air quality in accordance with policies T1 and DM22 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 15 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.

Reason: The District is classed as being in an area of severe water stress and the reduction of water use is therefore required in the interests of sustainability and in accordance with policy CP2 of the adopted Local Plan and Alterations 1998 & 2006, policy DM19 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 16 The parking area shown on the approved plan shall be provided prior to the first occupation of the development and shall be retained free of obstruction for the parking of residents and visitors vehicles.

Reason:- In the interests of highway safety, in accordance with policies ST4 and ST6 of the adopted Local Plan and Alterations 1998 & 2006, policy T1 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 17 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 Class A and B of Part 1 to Schedule 2 shall be undertaken, without the prior written agreement of the Local Planning Authority.

Reason: The ensure further consideration is given with regards to the effect on the character and appearance of the Green Belt in accordance with policies GB2 and GB7 of the adopted Local Plan 1998 & 2006, Policy DM4 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 18 No increase in the residential curtilage beyond the area shown on the drawing (02)001

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Rev P2 shall take place without express approval from the local planning authority through an appropriate application.

Reason: In order to protect the character and openness of the Green belt, in accordance with policy GB2A of the adopted Local Plan and Alterations, policy DM4 of the Local Plan Submission Version 2017, and the NPPF 2021.

- 19 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 (LPA). 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 LPA 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.

Reason: To ensure the development contributes to supporting improved digital connectivity throughout the District and supports the wider aims and objectives for reducing car-led air pollution, improving the health and wellbeing of residents and visitors including the EFSAC, in accordance with policy CP1 of the adopted Local Plan 1998 & 2006, Policies D5, DM2, DM9, DM10 & DM22 of the Local Plan Submission Version 2017, and the NPPF 2021.

Informatives:

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

NOTE: This permission is also subject to conditions and/or covenants of an accompanying Section 106 Agreement.

Notes:-

- a. **This permission is for planning purposes only and for no other purpose including Building Regulations. Separate approval may be required for these works.** Any departure from the approved plans, including any required to comply with Building Regulations, must be notified to the Planning Officer.
- b. Applicants must satisfy themselves that **all further consents** have been obtained including, where appropriate, those regarding listed buildings, advertisements, site licences for caravans, vehicular accesses to the highway, Environmental Health legislation, and Public Rights-of-Way.

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- c. Applications relating to **Council-owned or former Council-owned dwellings** must meet the requirements of covenants of their lease or deeds by obtaining consent for any works from the Housing Directorate.
- d. If this application is for a new domestic or commercial premises then it is a legal requirement that the property address is registered by our street numbering and naming section. Please see the Council's Website for further details.
- e. The Council's recommended **hours of construction work** are:
 - 7.30am – 6.30pm Monday to Friday
 - 8.00am – 1.00pm Saturday
 - No noisy work on Sundays and Bank/Public Holidays
- f. The Council encourages all developers to follow the principles of **Sustainable Drainage Systems (SuDS)** in designing facilities for the handling of rainwater run-off. Furthermore, if storm drainage discharges to an existing ditch or watercourse and/or if any works are to take place to, or within 8 metres of, any open or piped watercourse, then Land Drainage Consent is required from the Council under its byelaws.
- g. Applicants are advised **not to store building materials** on the highway and not to damage highway verges, so please avoid parking construction vehicles and machinery on verges. If any damage occurs, the Council will require verges to be restored at the applicant's expense. Please be aware that highway damage is easily reported through the Council's website and will be investigated by County Council officers.

NOTES RELATING TO PLANNING APPLICATIONS TOWN AND COUNTRY PLANNING ACT 1990

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, he may appeal to the Secretary of State for Communities and Local Government, in accordance with Section 78 of the Town and Country Planning Act 1990. If an Enforcement Notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against the Local Planning Authority's decision on your application, then you must do so within 28 days of the date of the Enforcement Notice or within 6 months of the date of this notice, whichever period expires earlier. In all other cases, if you want to appeal then you must do so within 6 months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Tel: 0303 444 5000, or online at the following website: www.planningportal.gov.uk/pes) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of any development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him. There is no time limit for appealing against a decision relating to a Certificate of Lawful Use or Development.
2. If permission to develop land is refused, or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for Communities and Local Government and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the County District in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
3. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of an application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning

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Act 1990.