
Appeal Decision

Site visit made on 15 September 2016

by Jane Miles BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 October 2016

Appeal Ref: APP/J1535/W/16/3152795

Land adjacent to Warren Hill, Loughton, Essex, IG10 4RA

- 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 M Hagger of Oaklands School against the decision of Epping Forest District Council.
 - The application ref: EPF/2774/15, dated 20 October 2015, was refused by notice dated 2 March 2016.
 - The development proposed is provision of 34 space car park and dropping off area for use by Oaklands School only, formation of related vehicular access from Warren Hill and provision of associated landscaping.
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Decision

1. *The appeal is allowed and planning permission is granted for provision of 34 space car park and dropping off area for use by Oaklands School only, formation of related vehicular access from Warren Hill and provision of associated landscaping on Land adjacent to Warren Hill, Loughton, Essex IG10 4RA, in accordance with the terms of the application, ref: EPF/2774/15, dated 20 October 2015, subject to the conditions listed at the end of this decision.*

Procedural Matters

2. A planning statement accompanying the application explains that, since 1983, pupil numbers at the school have been restricted to 243 by means of legal agreements negotiated in association with previous planning applications¹. In association with the current planning application for a car park and drop-off facility the school requested that any grant of permission be subject to a new s106 agreement limiting pupil numbers to 273. The Council amended the description of development to include the increase of 30 pupils. However, although an increase in pupil numbers, as requested, is a matter to take into account, it is not itself development for which planning permission is required. I have therefore determined the appeal on the basis that it relates to a scheme for a car park and dropping off area, as originally described on the planning application form and set out in full in the banner heading to this decision.

¹ Initially a Section 52 agreement under the Town and Country Planning Act 1971 and subsequently (in 2010) a Section 106 (s106) agreement under the Town and Country Planning Act 1990

3. A complete signed and dated unilateral undertaking pursuant to s106 of the 1990 Act has been submitted by the appellant during the appeal process and the Council has had an opportunity to comment on it. It contains planning obligations including the limitation in pupil numbers described and a revised Green Travel Plan. However the previous s106 agreement is a binding legal document and there is no provision in the legislation for it to be revoked unilaterally by just one party. Thus clause 10 of the unilateral undertaking (which specifies that on the grant of planning permission for the appeal scheme the 2010 agreement shall be of no more effect) can have no legal force. The s106 agreement made in 2010 will remain in force unless and until it is modified or discharged through the appropriate process². I shall however refer to the unilateral undertaking again in the reasoning which follows.
4. An application for costs, made by the appellant against the Council, is the subject of a separate decision.

Reasons

5. The **first main issue** in this case is the effect of the proposed development on the character and appearance of the surrounding area. Having regard to officers' advice at the pre-application stage, information in the planning and transport statements submitted with the application, the structure of the officers' report to the Planning Committee and the refusal reason as it appears on the decision notice, the **second main issue** is the effect of the proposed development in relation to car parking and highway safety.

Character and appearance

6. Oaklands School occupies an extensive, sloping site with boundaries to Albion Hill, the High Road and Warren Hill. Its principal buildings, close to Albion Hill, are on the highest part of the site and sit between residential property curtilages. The larger part of the overall site (to the south and west) is mainly open, comprising playing field and other 'green' areas. It excludes an adjoining and roughly triangular open area at the junction of the High Road and Warren Hill (the corner site) which includes trees, a pond and grassed areas. The appeal site is part of a 'green' area at the lower end of the school grounds, currently fenced off from the more manicured areas. It fronts onto Warren Hill, and is currently separated from that highway and from the corner site by close-boarded fencing. Various mature trees along those boundaries are protected by a Tree Preservation Order (TPO).
7. A private residential driveway runs alongside the western appeal site boundary and to the south, on the opposite side of Warren Hill, there is mature woodland which is part of Epping Forest. An extract from the LP³ Proposals Map, in the appellant's statement of case, indicates that the forest and the corner site are designated as Green Belt, but that all of the school grounds including the appeal site are outside that designation. The south east side of the High Road, opposite the corner site and continuing a short distance southwards, is mainly characterised by relatively low density residential development.
8. Thus, in the approach to Loughton along the High Road from the south, the forest on the west side of the road and then the corner site with its trees create

² As set out in The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

³ In full, the Epping Forest District Local Plan Alterations (2006)

an attractive sylvan and verdant character which contributes positively to the overall character of the locality. The trees and greenery in the school grounds form a backdrop to the corner site, reinforcing that sylvan and verdant character, albeit set well back from the main road. The combination of the setback, boundary trees and fencing is such that very little of the enclosed appeal site is readily discernible from the High Road, even when trees are not in leaf. Such views, where they do exist, are at relatively short range.

9. A similar situation applies along Warren Hill, where the forest is on one side of the road and the appeal site on the other is largely hidden by boundary trees and fencing. Moreover, in many instances, views along the High Road or when travelling up or down Warren Hill also include existing housing, associated built development and, more often than not, vehicles.
10. The appeal scheme would retain most of the mature boundary trees⁴ and measures to protect those trees could be secured by condition, such that they would continue to contribute to the area's character. A 6m wide opening into the car park area means vehicles would be visible to some extent from Warren Hill. However such views would only be possible from a very short length of the road, not least because there is no footpath on the opposite side of it. A grassed finish to the car park surface and landscaping within the site, around the parking bays, would help to minimise the visual impacts of the two rows of parked vehicles. Moreover it would seem unlikely that all the parking spaces would be occupied all the time, all year round.
11. The submitted plans also indicate more substantial landscape screening to the car park's north-east and north-west boundaries. Although not indicated on the plans, there also appears to be some scope for additional tree or shrub planting on the south-east side. Additional planting in that location would be beneficial in filtering views from the south-east, including when trees are not in leaf. In those views, across the corner site and above the existing fencing, ground levels are such that parked vehicles might be visible to some extent.
12. Without the benefit of any more detailed explanation I take the reference in the Council's refusal reason to an 'absence of landscaping proposals' to mean the absence of a fully detailed planting scheme. However many different species of trees, hedging plants and other shrubs are commonly available, in varying sizes, such that attractive landscape screening can become effective within relatively short timescales. Given also advice on appropriate species in the results and recommendations of the Extended Phase 1 Habitat Survey, I cannot find any compelling grounds to conclude that the absence of detailed landscaping proposals supports the Council's case to any significant degree.
13. The scheme would of course change the character and appearance of the appeal site itself but, not least because Warren Hill is already used by all those driving up it to then travel down Albion Hill, I am not persuaded it would detract from the character and tranquillity of Epping Forest to any significant degree. Some limited views of parked vehicles from around the site could potentially have some limited adverse impacts on the immediate locality's sylvan and verdant character. However, appropriate landscaping (to be secured by planning condition) would adequately address those potential adverse visual impacts. I therefore conclude the appeal scheme would neither

⁴ The Arboricultural Impact Assessment submitted with the application indicates that three trees (with structural flaws) would need to be removed at the proposed access point from Warren Hill

result in material harm to the area's character and appearance nor materially conflict with LP Policy CP2 which seeks to protect the quality of the rural and built environment.

Car parking and highway safety

14. Largely due to factors such as the positions of the principal buildings and the site topography the school currently has only a very limited on-site parking area and no on-site drop-off/collection facility, despite the overall size of the grounds. Unsurprisingly this creates various problems, most notably at peak morning arrival times and to a lesser extent in the afternoon (because leaving times are staggered), notwithstanding the various measures adopted by the school to minimise them. This is especially evident on Albion Hill, a narrow lane with a footpath on one side only which serves both the school's main entrance and numerous residential properties. The school promotes a one-way system for people dropping-off children via this route, and provides a staff member at the access point to assist children out of one car at a time and into the school grounds as quickly and safely as possible.
15. I was able to observe this procedure during the morning peak period on the day of my visit: I recognise that it represents just one 'snapshot' but my observations were consistent with the findings in the appellant's transport statement. I saw that the drop-off process operates reasonably efficiently, with relatively short queues of vehicles waiting either to drop-off children or just to drive down to the main road, thereby helping to minimise inconvenience for all drivers as much as possible.
16. However it was also apparent that a not insignificant number of people were using this route to escort children into school themselves, resulting in cars stopping to park on the footpath side of Albion Hill or in Albion Park. The narrowness of the road, drivers searching for a space, vehicle manoeuvring, car doors opening, obstruction of the pavement and people with small children walking in and/or crossing the road together create significant safety hazards.
17. The appellant's transport statement provides further details of various matters, including the proportion of pupils who are siblings⁵, the numbers of staff and pupils arriving by different transport modes and locations where staff park their vehicles. I had no means of knowing whether vehicles parked on Albion Hill and other nearby streets throughout my visit were school staff cars, but I did see that streets including Warren Hill and Spring Grove are used for short term parking by people who then walk children to school, entering by a gate on the High Road. For those using Spring Grove and other roads on the opposite side of the High Road that involves crossing a busy road and, although there is assistance to do so, that too is less than desirable in safety terms.
18. The car park scheme would provide staff parking spaces, some short term parking spaces and a well planned dropping-off/collection facility that could accommodate up to fifteen vehicles clear of the highway and entrance point on Warren Hill. It would provide a very much safer place within the school grounds for dropping-off and collecting children, thereby also reducing hazards more generally on Albion Hill, the High Road and, to a lesser extent, other nearby streets. That would be the case even though it is likely that some of the youngest children would still be dropped off in Albion Hill. Any queuing at

⁵ And thus likely to travel together, thereby reducing vehicle numbers

the car park at the staggered collection times is unlikely to be any more problematic than currently occurs in the school environs.

19. Some local residents' responses suggest the distance between car park and school buildings, and/or adverse weather would discourage use of the drop-off facility. However I find that unlikely, given the improved safety, the distances children already walk from cars parked in nearby streets and the school's well-organised approach to managing arrivals and departures. With regard to concerns about traffic movements in Warren Hill, this road is part of the route already used to drop children off in Albion Hill. Moreover, as the Highway Authority noted in its consultation response, Warren Hill is wider than Albion Hill and has better capacity, and there is nothing of substance to indicate that the Warren Hill/High Road junction is inadequate in any way.
20. In the light of all the above points, I concur with the Highway Authority's conclusion that the scheme "will be highly beneficial to highway safety and efficiency on Albion Hill and will not cause any detriment to highway safety or efficiency on Warren Hill". I find also that it is likely to be beneficial to safety on the High Road and other local streets and to reduce the demand for parking associated with the school in streets around the school.

Increase in pupil numbers and the unilateral undertaking

21. It appears this is also a matter of concern to local residents, amenity societies and the Council. The Council's refusal reason asserts that the car park scheme does not justify the proposed increase because it "does not properly address the component of parking stress in the locality generated by Oaklands School". However the Council has neither provided any analysis of 'parking stress' nor explained how any existing highway safety problems might change as a result of an additional 30 pupils at the school. Nor has it disputed the findings of the Highway Authority or the appellant's transport statement, or cited any development plan policy to support its case on this point.
22. In any event and firstly, for the reasons given in my paragraph 3, it is not possible to vary the previous s106 agreement by means of a unilateral undertaking to allow for the requested increase in pupil numbers. Secondly, if planning obligations in a unilateral undertaking are to be taken into account, they must meet all three statutory tests⁶. One of those tests is that the obligations must be necessary to make the development acceptable in planning terms. The proposed car park and dropping-off area is a freestanding development and none of the obligations in the unilateral undertaking are necessary to make it acceptable in planning terms. It follows therefore that I cannot take it into account in determining this appeal.

Other matters, overall conclusions and conditions

23. I have taken account of all other matters raised in responses to the application and appeal, including in particular local concerns about possible further expansion of the school. A covenant restricting buildings on the site because it is 'buffer land' to Epping Forest is not a material planning consideration and, in any event, the City of London (as Conservators of Epping Forest) have confirmed that a car park would not be a breach of that covenant. A

⁶ Regulation 122 of the *Community Infrastructure Levy Regulations 2010*

consultation response from the County Council's Historic Environment section advises that any archaeological interest could be addressed by condition.

24. The comprehensive Extended Phase 1 Habitat Survey report submitted with the application considers the potential for impacts on protected species and habitats, including on locally, nationally and internationally designated sites. It found negligible potential for ecologically significant adverse impacts on any statutorily designated sites in the wider locality or on the features for which they were designated. In particular, given the nature and small scale of the proposed scheme the report concludes, and I agree, that there will be no likely significant effect on Epping Forest Special Area of Conservation (SAC) which is a site of European importance for nature conservation. In relation to the appeal site and adjoining land, including the nearby pond, the report includes various recommendations to ensure that all necessary measures are taken to identify the presence/absence of protected species and to mitigate any impacts on them and their habitats. Implementation of the recommendations could be secured by condition.
25. Neither the above matters nor any other matter raised is sufficient to alter or outweigh my conclusions on the two main issues, which indicate the appeal should succeed and planning permission should be granted subject to conditions.
26. A condition specifying the approved plans is needed for the avoidance of doubt and in the interests of proper planning. I have already mentioned conditions addressing tree protection, landscaping, archaeological and ecological matters. These are necessary, respectively, to: ensure the health and well-being of trees that contribute positively to the area's visual amenity; to integrate the development into its setting, in the interests of visual amenity; to ensure matters of archaeological interest are properly investigated and recorded; to understand and mitigate the scheme's impacts on any protected species and their habitats. A condition relating to any future lighting is also reasonable in the interests of visual amenity. It is reasonable to restrict use of the car park facility until its key features (as shown on the submitted plans) are in place, in the interests of highway safety. However, given the site topography and the intentions for surfacing the suggested condition relating to surface water drainage is not necessary.
27. The Loughton Residents Association has suggested restricting use of the car park. However, as this is private land it is unlikely to be available to anyone unconnected with the school and limiting the hours of use as suggested would be unnecessarily restrictive. The conditions which follow are based on those in the Council officers' report recommending approval of the application, with some variation and consolidation in the interests of clarity and precision.
28. *Planning permission is therefore granted subject to the following conditions:*
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos. 3519/1 and SK06 REV B.
 - 3) No other works on the site shall commence until the following surveys have been carried out in accordance with the recommendations in the Extended Phase 1 Habitat Survey report (by D F Clark Bionomique Ltd

and dated 13th July 2015) and the results have been submitted to and approved in writing by the local planning authority:

- a) a reptile presence/likely absence survey;
 - b) a fish presence/likely absence survey (on the pond to the east of the application site);
 - c) if no fish or only a minor population of fish are found in the survey under (b), full surveys of the pond for great crested newts.
- 4) No other works on the site shall commence until a reptile mitigation strategy, informed by the results of the survey pursuant to condition 3(a) above, has been submitted to and approved in writing by the local planning authority. All works shall be carried out in accordance with the approved strategy.
 - 5) If surveys pursuant to condition 3(c) above find great crested newts to be present then, before any other works begin on site, a detailed mitigation and compensation strategy shall be submitted to and approved in writing by the local planning authority including, if required, an application for a European Protected Species licence. All works shall be carried out in accordance with the approved strategy.
 - 6) No other works on the site shall commence until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority.
 - 7) No other works on the site shall commence until a detailed, site-specific arboricultural method statement, based on the tree protection plan included in the Arboricultural Impact Assessment (by D F Clark Bionomique Ltd and dated 23.07.2015), together with provisions for site monitoring, has been submitted to and approved in writing by the local planning authority. All works shall be carried out in accordance with the approved arboricultural method statement.
 - 8) No development shall take place until a landscaping scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include details of: surfacing materials for the access, car park and footpath link to the school buildings; finished levels or contours; any new boundary treatments or other means of enclosure; specifications and schedules of new planting, to include a 2m margin of wildflower and rough grass as recommended in the Extended Phase 1 Habitat Survey report, together with details of species, sizes at planting and numbers and/or density for all new planting; an implementation programme. All hard and soft landscaping works shall be carried out in accordance with the approved scheme.

Any trees or shrubs which within a period of 5 years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise approved in writing by the local planning authority.

- 9) No development shall take place until a construction management plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of provisions for the parking of vehicles of site operatives and visitors; loading, unloading and storage of

plant and materials; wheel washing facilities. Development shall be carried out at all times in accordance with the approved plan.

- 10) No removal of vegetation shall take place between 1 March and 31 August inclusive unless a competent ecologist has confirmed in writing to the local planning authority, following a detailed check for active birds' nests immediately before any such removal, that no birds will be harmed and/or that appropriate measures are in place to protect any nesting birds on the site.
- 11) The car park and dropping-off facility hereby permitted shall not be brought into use for those purposes until the access, visibility splays, parking bays and circulation routes have been provided and made available for use in accordance with the layout indicated on the approved plan, drawing no. SK06 REV B.
- 12) No external lighting of the car park and dropping-off facility or the footpath link to the school buildings shall be provided other than in accordance with details that have first been submitted to and approved in writing by the local planning authority.

Jane Miles

INSPECTOR