The Planning Inspectorate

Appeal Decision

Inquiry held on 26-28 February, 1 March and 3 September 2019

Site visit made on 1 March 2019

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 4 October 2019

Appeal Ref: APP/J1535/W/18/3203410
13-15a Alderton Hill, Loughton, Essex IG10 3JD

- 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 Elysian Loughton Site Limited against the decision of Epping Forest District Council.
- The application Ref EPF/2499/17, dated 13 September 2017, was refused by notice dated 18 April 2018.
- The development proposed is the demolition of houses at 13, 15 and 15a Alderton Hill and the erection of linked blocks of elderly persons apartments with integrated care facilities (Use Class C2) with supporting amenity facilities, landscaping, 64 car spaces in undercroft parking at the rear and south side of the block and associated ground works.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the application is taken from the decision notice and appeal form in the interests of clarity.

3. One of the reasons for refusal was withdrawn by the Council well before the inquiry. It is now accepted that the proposal could not viably support a financial contribution towards the provision of affordable housing off-site. This is on the basis that the scheme falls within Use Class C2 which has now been established by the appellant entering into a suitable planning obligation.

4. Although not a reason for refusal, the effect of the proposal on the Epping Forest Special Area of Conservation (SAC) emerged as a further potentially determinative issue prior to the inquiry. As agreed by both parties, the inquiry was adjourned on 1 March 2019 in order that work to inform an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (the H Regs) could be undertaken and, if necessary, mitigation measures identified to avoid any adverse effect on the integrity of the SAC. Following the completion of this work and formal consultation with Natural England the inquiry resumed for a final day on 3 September 2019.

Main Issues

5. The main issues therefore are:

   - the effect of the proposal on the character and appearance of the street scene;

- whether any harm in this respect would be outweighed by the benefits of the proposal; and
- whether the proposal, including if necessary any associated mitigation measures, would adversely affect the integrity of the Epping Forest SAC.

Reasons

Character and appearance of the street scene

6. The proposal is for a series of linked blocks to provide an extra care residential scheme of 105 elderly persons apartments with integrated community and health care facilities on a roughly square shaped site on the southern side of Alderton Hill where Brook Road joins from the north. The site, currently occupied by a bungalow and two detached houses, lies between Poets Place, a sheltered housing scheme on the corner of Roding Road to the west and the large pre and post war detached houses with extensive rear gardens which line both sides of Alderton Hill to the east. The eastern side of Brook Road is similarly residential in character but to the west and on the far side of Roding Road lie the buildings of Roding Valley High School. An underground railway line on an embankment runs along the southern boundary of the site.

7. The site thus lies between larger scale institutional uses on one side and an attractive well-established residential area on the other. The three properties on the site previously formed part of the latter but two are now unoccupied and run down and in this state they detract from the character of the area. The single bungalow in an area characterised by detached houses is an anomaly. The site therefore presents an opportunity for a higher density redevelopment and in support of this principle the Council allocate the site of Nos 13-19 for 33 dwellings in the emerging Epping Forest District Local Plan (EFDLP) which is currently under examination. It has since become clear that Nos 17 and 19 are not available for development and as a result the allocation is likely to be amended to 19 dwellings on the appeal site only, a pro-rata reduction.

8. The site therefore offers an agreed opportunity to make more effective use of previously developed land close to the town centre. Whilst the low density residential area would then begin further up Alderton Hill its overall character would not be harmed by an incremental change to its boundary. There are no conservation area or listed building constraints in the vicinity. Providing a scheme is well designed for this particular location it would quickly become an accepted part of the street scene. The proposal would also enable the existing five vehicle crossovers which fragment the street frontage to be consolidated into just two, enabling an attractive green verge and hedge to be established along the road in keeping with the more attractive properties in the area.

9. The scheme aims to take advantage of a sloping site with up to six storeys of accommodation including a lower ground floor of communal facilities, upper ground floor and three further floors of residential apartments and a fourth floor of apartments in the roof space of the rear block alongside the railway line. The linked blocks would form a C shape around a central courtyard, with undercroft car parking beneath the rear block accessed by a driveway running along the western boundary with Poets Place.

10. Inevitably an extra care scheme by its very nature would involve larger scale buildings and an increased built footprint on the site compared to the existing

detached dwellings with large rear gardens. The different form of development reflecting the new use would be readily apparent to passers-by but would not be inappropriate given the new use. A suitable scheme would simply be seen as properly reflecting its function and thus an incremental extension of the institutional uses to the west – Poets Place and the High School – with the existing low-density residential character of Alderton Hill to the east and opposite the site retained as now. However, to be suitable a scheme still needs to be informed by and to respect the character of the area.

11. The site is visually well contained on three sides from public view. To the east the site adjoins the rear gardens of No 17 and its neighbours, with the large detached houses and only limited gaps between precluding oblique views of the proposed buildings from the road. To the west, the buildings of Poets Place turn the corner to run along Roding Road without a break and then again alongside the railway line to screen any public views into the site from that direction. Thirdly, whilst large scale and visible from the railway line to the south, the rear block would be screened by a tree belt and only seen briefly by passengers in the context of the built development on either side.

12. The site however presents an important public frontage to Alderton Hill which is busy with passers-by. Seen from this direction, the development would occupy a prominent transitional position between the low density housing on one side and Poets Place, the beginning of the larger scale institutional uses on the other. Importantly, passers-by will also see the proposal in the context of a steeply sloping road frontage with a level difference of about 4 m across the appeal site, with No 17 on higher ground and Poets Place on lower.

13. The width of the frontage buildings has been informed by an analysis of the large detached houses to the east along Alderton Hill. These are of 2-2½ storeys, range from some 18 m to 35 m in width and extend across most of the width of each plot. Responding to this, the proposal involves the fragmentation of the building fronting Alderton Hill into two blocks about 30 m and 25 m wide, joined by a glazed link 6.6 m wide. This link, essential for circulation purposes, would be set back 12 m behind the main façade and would be designed to be as transparent as possible giving views through to the courtyard behind and thus an impression of two buildings.

14. The Council is concerned that the glazed link would not be fully see through and thus the building would appear a full 62 m or so wide, particularly in the view along Brook Road. However, the deep 12 m set back would mean in views up and down Alderton Hill the proposal would be seen as two buildings except when passing immediately in front of the scheme, and from here and Brook Road the link would be sufficiently transparent to separate the two buildings visually. The glazed link, with its finer details controlled by condition, would therefore successfully break up the width of the main frontage buildings and form an acceptable and effective feature of the scheme.

15. Another key characteristic of the detached houses on the south side of Alderton Hill is the way in which they step down the slope. There are a wide variety of individual house designs with a mixture of pitched roof forms and projecting gables, giving a complex roofscape, but overall with some localised variation the eaves and ridgelines step down broadly in tandem with the gradient of the road. However, in the case of the proposal, the ridge of the 30 m wide eastern block would be only 1 cm lower than that of No 17 next door, an imperceptible

amount, and beyond the glazed link the ridge of the 25 m wide western block would be 0.82 m lower ending in a gable just 0.46 m lower. The relationship of the eaves heights, for which no comparative figures are available, would be similar. As the gradient of the road steepens, dropping 4.94 m between No 17 and the gable, the effect of moving west would be a relative height increase of 4.48 m over the 62 m frontage, and thus a building growing in size compared to the human scale. The height of the western block would not step down in line with either the brick plinth or the topography compared to the eastern block and this would result in a significant increase in the scale of the building along the road and a departure from the character of the road elsewhere. The ridgeline of the western block would be 4.29 m and 4.24 m higher than the existing roofs of Nos 15 and 13 respectively. The increased height towards the western end of the frontage would then culminate and be compounded by the large gable feature proposed next to Poets Place[1].

16. The gables and dormer window features proposed for the eastern block would successfully articulate its front elevation, with three adjacent gables of domestic scale next to No 17 and a larger gable of a similar size to that at Poets Place at the other end. However, the western block would be dominated by an excessively large full height and wide gable feature at the west end of the frontage facing down Brook Road. Set forward from the façade by nearly 2 m, thus increasing its prominence, the gable would be 15.2 m high from road level compared to about 11.5 m in the case of the gable at Poets Place and the domestic scale gable of No 17 which is about 8.7 m high. It would be both closer to the road and 4.6 m higher than the ridge of No 13 currently on the site. The gable would also be exceptionally wide at about 12 m compared to that at Poets Place which is about 8.5 m wide and the domestic gables along the road which are on average about 6 m wide.

17. The result would be an excessively bulky and large scale gable feature in the street scene, both tall in relation to road level compared with others along the road and unusually wide. The extra-large top window, other fenestration, diaper pattern tile hanging and brick plinth would not fully mitigate this visual impact, indeed they would draw attention to the gable. The result would be an incongruous and overbearing feature when passing in front of the scheme and an over dominant building ending the vista along Brook Road.

18. The scheme has been deliberately designed with the western block having a more relaxed scale with less articulation and detail than the eastern and this culminates in the large gable. The appellant argues it would be a 'bookend' scheme, acting as a transition between the residential uses to the east and institutional uses to the west. However, this would supplant the role of Poets Place which is actually in the bookend position on the corner of Roding Road opposite the larger scale school buildings. This 2-3½ storey scheme may not be a particularly strong landmark building on its corner site but it steps down along Alderton Hill with a lower wing towards No 13 and must be visually respected by any scheme on the appeal site.

19. Including the drop in the road, the large gable feature fronting Alderton Hill would be a full 5.67 m higher (and wider) than the gable on Poets Place and both forward of and 8.34 m higher than the lower wing which extends towards No 13. The building would be 13 m away, but the substantial height difference

[1] Heights taken or calculated from drawing 16074 SK-901 dated 08/16/19

with Poets Place would appear excessive to those passing by who would read the two buildings together. The result would be an awkward, discordant relationship between rival bookend buildings. When approaching up Alderton Hill, a significant section of the west elevation of the scheme (which would run alongside the inner courtyard of Poets Place) would also be clearly visible, with its three rows of windows and a further storey with a fourth row of windows starting further along. This projecting north west corner of the scheme would be bulky and overdominant in the street scene, particularly in close up views and oblique views into the gap between it and Poets Place if the tree planting alongside the access road fails to be fully effective. Mr Stewart's evidence did not address this critical part of the scheme.

20. The buildings would be set back behind a well-stocked and landscaped frontage with substantial new tree planting but this would take time to become fully established and would not fully screen the development, particularly in winter. There would also be a conflict with the objective of providing an active outlook for residents. However, the innovative, modern, vernacular design approach eschewing any pastiche and the use of brickwork, detailing and texture are both suitable and appropriate for the site.

21. ColladoCollins are a well respected and award winning architectural practice with many successful schemes to their credit. However, in this instance the proposal would not comprise a suitable transitional building given its context.

22. For these reasons the proposal would cause significant harm to the character and appearance of the street scene in relation to both Alderton Hill and Brook Road. This would be contrary to Policies CP2(iv), CP7 and DBE1 of the adopted Epping Forest District Local Plan 1988 as altered in 2006. Whilst encouraging the fullest use of existing urban areas these seek to safeguard the character and townscape of the urban environment, avoid unsympathetic change, and require new buildings to respect their setting in terms of scale, proportion, massing, height and roofline. There are other policies with which the proposal complies, but these are the most relevant for the determination of this appeal.

The benefits of the proposal and the planning balance

23. Loughton town centre with its extensive range of services and facilities is only about 400m to the north west and an underground station about 400m to the west, both within easy walking distance. The appeal site therefore offers a convenient, accessible and sustainable location for an extra care facility. A facility in this position within the town would be well placed to meet the needs of less mobile elderly residents and would add a vibrant new use to contribute to the vitality and prosperity of the town centre.

24. One of the main benefits of the scheme would be the delivery of 105 additional dwellings (102 net of losses) in an area with a significant and serious shortage of housing land and many constraints limiting the scope for development including Green Belt. The Council accepts (for the purposes of this inquiry) that it cannot demonstrate a five year supply of deliverable housing sites, and in a recent appeal decision[2] the supply is put at just 1.35 years. The housing delivery test shows only 49% of the requirement for new housing has been achieved over the last three years. The Council is seeking to rectify the position through the allocation of various sites in the EFDLP but this is currently

[2] APP/J1535/W/17/3188509

under examination with the allocations the subject of significant objection. The plan is some way off adoption (not least due to the Epping Forest SAC issue) and thus can only be given limited weight at this stage.

25. The proposal would also have the important benefit of delivering 105 extra care residential units for the elderly, one of four different types of specialist housing for older people recognised in national policy[3] and supported in principle in the EFDLP[4]. The Council argue there is above average provision of bedspaces in registered care homes, but these provide an intensive level of care and (whilst there is some overlap) are a separate category of need. With high levels of owner occupation and an ageing population, more extra care accommodation is required in the district to provide for those who wish to maintain owner occupation as their tenure of choice whilst having care needs met. The Contact Consulting report prepared for the appellant argues there is five times more elderly housing in the district available for those who rent, and with just 60 extra care units for sale at present there is an existing shortfall of about 300 units and a need for nearly 600 by 2035. There is no reason to dispute this level of need which the appeal scheme would go some way to address.

26. By providing a suitable accommodation choice for elderly residents typically under-occupying larger properties the scheme would also free up additional housing for family use. The proposal could be expected to 'release' up to about 90 dwellings into the local housing market in this way, with between 35 and 50 of these being in the district.

27. Extra care housing of this type would bring significant social benefits for the area by enabling elderly residents to purchase good quality accommodation that meets their needs locally, ensuring personal independence for longer with availability of community activities and a flexible care package. Overall such schemes have been shown to enhance the health and wellbeing of residents.

28. Finally, the scheme would have significant economic benefits. There would be increased local expenditure and job creation, with the workforce on site during construction generating perhaps £275,000 pa locally, and about 18 full time equivalent jobs (plus 7 indirectly) when the scheme is operational. There is also extensive evidence that overall pressure on local health services would be reduced through the delivery of health and social care within the scheme and it has been estimated this may save the NHS £240,000 per year.

29. Taken together, these undoubted benefits amount to a strong argument in favour of the proposal. However, the benefits of the scheme are outweighed by the harm to the character and appearance of the street scene that has been identified under the first main issue. The provisions of the development plan are not therefore outweighed by other material considerations in this instance. The presumption in favour of sustainable development which would otherwise have applied due to the shortfall in housing land does not apply as explained in paragraph 57 below.

The integrity of Epping Forest SAC

30. The appeal site lies within the built-up area of Loughton about 900 m from the boundary of the Epping Forest SAC, one of the last areas of large scale wood-pasture in southern England. The area was designated due to the presence of

[3] Planning Practice Guidance Reference ID 63-010-20190626
[4] Paragraph 3.6

three qualifying habitats and one species, namely Atlantic beech forest, European dry heaths, Northern Atlantic wet heaths and the Stag beetle. The conservation objectives are to achieve the favourable conservation status of these qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats, the population and distribution of the qualifying species and the supporting processes on which it relies.

31. The development of the appeal site, albeit as part of a larger 33 dwelling scheme rather than 105 apartments, is one of the plans and projects envisaged for the district in the EFDLP and as such is included in the Habitat Regulation Assessment of that plan (the LPHRA) produced by Aecom in January 2019. The screening stage of the LPHRA concludes that there are two pathways whereby housing growth is likely to result in significant effects on the SAC, namely disturbance from recreational activities as a result of additional nearby residents and atmospheric pollution as a result of increased traffic. As a result of this finding, the appeal scheme must be the subject of an appropriate assessment (AA) under the H Regs as it must be considered both alone and in combination with other plans and projects, in this case those in the EFDLP[5].

32. The appellant accepted this during the first stage of the inquiry and accordingly it falls to me to carry out an AA for the appeal scheme as competent authority under H Reg 63(1). During the adjournment in accordance with Reg 63(2) the appellant provided the information necessary for the purposes of the AA in the report 'Information towards an AA – Impacts on Epping Forest SAC' dated July 2019 (the WSP report). This was the subject of consultation with Natural England (NE) under Reg 63(3) and their response, dated 14 August 2019, was thus available to the resumed inquiry. NE are not satisfied that an adverse effect on integrity can be ruled out in relation to air quality.

33. In relation to recreational activities, Epping Forest is a popular visitor attraction and suffers disturbance in various ways such as trampling, erosion, litter, dog waste and vandalism which adversely affects the quality of its habitats. Visitor surveys have shown that about half of all visits to the forest are made by those living within 3 km of the boundary and consequently residents of the appeal proposal are likely to add to the existing level of visitor disturbance.

34. To address this issue the Council, working with the Conservators who manage the forest, have identified a series of mitigation measures to manage visitor pressure costing £2.6 m over the EFDLP plan period or £352 per new dwelling. The Council, supported by NE, adopted this interim strategy on 18 October 2018 and the appellant has offered the necessary financial contribution in a unilateral planning obligation. NE confirm that this approach is still appropriate and accordingly an adverse effect on the integrity of the SAC as a result of increased recreational pressure from the appeal proposal can be ruled out.

35. In the case of atmospheric pollution as a result of increased traffic generated by the proposal the situation is more complex. Due to the relationship of Loughton with the surrounding road network an estimated 20% of this traffic is likely to travel to and from the north via the A121 to the Wake Arms roundabout. This traffic passes through the Epping Forest SAC and thus within 200 m of the designated site. The route is heavily trafficked with queuing at

[5] Agreed by the appellant in the August 2019 Statement of Common Ground with the Council paragraph 5.9.

the roundabout leading to congestion and a consequential reduction in air quality due to vehicle emissions. NE advise that the qualifying features of the SAC are sensitive to changes in air quality as certain pollutants above a critical level may modify the substrate, accelerate or damage plant growth, thus altering the vegetation structure and composition of the habitats concerned causing the loss of sensitive species including epiphytic lichens.

36. The LPHRA and WSP report both model the concentration of nitrogen oxides (NO_x) and ammonia (NH_3) arising from vehicle emissions and the resulting level of nitrogen deposition (N) as these could lead to adverse effects on Epping Forest SAC. The critical level or load, below which harmful effects on sensitive habitats are unlikely to be significant on the basis of current scientific knowledge, are 30 µg/m³ for NO_x, 1 µg/m³ for NH_3 and 10 kg/ha/yr for N. These amounts are widely exceeded at present up to 200 m from the roads through the forest and are used in both the LPHRA and WSP report to assess possible effects on the SAC from future development. The LPHRA assesses the effect of the proposals in the EFDLP (including the 33 dwelling allocation) as at 2033, with and without mitigation, and compares this to the 2014 baseline. The WSP report updates this modelling to a 2017 baseline, uses higher N deposition rates[6] and considers the proposal alone as well as in combination with the EFDLP, again with and without mitigation[7]. The findings of this latest modelling are used for the purposes of this decision letter.

37. Taking the modelling for the A121 approach to the Wakes Arms roundabout, where the proposal would have the greatest impact[8], the WSP report confirms that the level of NO_x is due to decrease due to the gradual replacement of the current vehicle fleet with lower emission vehicles[9]. The effect of development in the EFDLP is therefore to slow the projected improvement rather than lead to an absolute deterioration in NO_x and N deposition. In the case of NO_x this also means that in 2033 the critical level will be exceeded for a greater distance from the roadside than would otherwise be the case.

38. Compared to the position without the EFDLP and appeal scheme the level of NO_x would increase by 17.58 µg/m³ nearest the road, 58.6% of the critical level. 0.2% of this is contributed by the appeal scheme. This figure decreases rapidly away from the roadside. At present the critical level is reached 120 m from the road, in 2033 without the EFDLP and appeal proposal it would be reached 40 m away, whilst with these the distance would be 60 m. Whether considered as a delay in the achievement of the critical level or slower progress in reducing the area of forest affected, these are significant effects. However, with the mitigation assumed in the EFDLP there would be a healthy reduction in the level of NO_x at all distances from the roadside and the critical level would be reached just 20 m away from the roadside. The mitigation assumed in the EFDLP is therefore essential to avoid significant delays in achieving the critical level of NO_x for certain parts of the forest.

39. In relation to NH_3, the critical level is already exceeded even 200 m from the roadside, primarily due to background levels but with vehicle emissions also

[6] Those for forest rather than grassland, more appropriate given the habitats involved and now recommended by the EFDLP Inspector.
[7] The in-combination modelling involves double counting of the appeal scheme and 33 dwelling allocation.
[8] Transect C1, used as the worst case in this decision letter.
[9] Modelled as at 2033 using DEFRA emission factors for 2023 which is a suitably precautionary approach.

being a factor near to the road. With no improvement expected over time in either these exceedances will continue with or without the EFDLP and appeal proposal. Closest to the road these will add 0.01 µg/m³, 0.8% of the critical level, of which 0.05% is contributed by the appeal scheme.

40. In relation to N deposition, a function of NO_x and NH_3 levels, the critical load is also already exceeded up to 200 m from the roadside. Although the reduction in NO_x levels over time will lead to some improvement, this will continue to be the case. Adjacent to the A121 road the EFDLP and appeal proposal will add 2.12 kg/ha/yr, 21.2% of the critical load, of which 0.09% is contributed by the appeal scheme. The mitigation assumed in the EFDLP however would reduce the load by 4.47 kg/ha/yr, a healthy reduction, although the remaining load at 25.59 kg/ha/yr would still be well above the critical figure.

41. Considering the impact of the appeal scheme in combination with the EFDLP in terms of the delay to improving air quality, the WSP report puts the delay at up to ten years closest to the roadside (of which the appeal scheme contributes less than two weeks) decreasing to less than 3 years 100 m away.

42. These delays are of a similar order to those modelled in the LPHRA where the conclusion is reached that mitigation is required[10]. NE support this view. The mitigation measures included in the EFDLP, modelled as scenario DS5, involve a variety of sustainable transport initiatives including the promotion of public transport, cycling and walking, more stringent parking standards, requiring electric vehicle charging points in all developments and improved broadband. However, there is no scientific basis for assuming these measures would have an equivalent effect as using the DEFRA emission factors for 2030 which is the proxy measure used by the LPHRA for modelling purposes. The LPHRA is thus not robust in this respect.

43. For this among other reasons the EFDLP Inspector in her advice after hearings issued on 2 August is unable to conclude beyond reasonable scientific doubt that the plan would not have an adverse effect on the integrity of the SAC. Further work is therefore required in order to produce a satisfactory LPHRA to demonstrate the soundness of the EFDLP and three actions are recommended. These include the possibility that the spatial pattern or quantum of growth in the plan may need to be altered to avoid an adverse effect on the SAC and this might involve the removal of the allocations with most impact.

44. In parallel with this, the Council are working with NE to prepare an Air Quality Mitigation Strategy to provide the necessary mitigation to reduce the air quality impact of EFDLP growth in order to avoid an adverse effect on Epping Forest. However, this is a work in progress with nothing as yet in the public domain and no firm timetable for its completion.

45. The LPHRA thus does not satisfactorily rule out an adverse effect on the SAC and the WSP report, as it uses the same methodology, does not do so either.

46. In response it is argued that the impact of the proposal alone (as opposed to in combination with the EFDLP) is immeasurably small, does not add to the in combination impact in any meaningful way and is therefore scientifically and

[10] LPHRA paragraph 6.10, then assumed in 6.24.

legally de minimis. As seen above, in terms of the air quality modelling, which itself involves precautionary assumptions at every stage, the increases in NO_x, NH_3 and N deposition as a result of the scheme would be at worst 0.2%, 0.05% and 0.09% of the critical levels or load respectively, and these amounts would decrease rapidly from the roadside. In the absence of existing background levels or an in combination effect, it is clear that the proposal alone would not adversely affect the SAC. So does the de minimis argument apply in this case?

47. The appellant cites the Wealden judgement in support of the de minimis argument[11]. The judgement includes de minimis as a principle in paragraphs 50 and 53, but the thrust of the judgement is to ensure separate plans and projects are added together to ensure potential in combination effects are properly taken into account. Indeed, in paragraph 95 the judgement discerns no distinction between minuscule effects which can be ignored, even in combination, and effects which are capable of being non-neutral once combined. Using the example given the other way round, 50 small plans or projects generating 20 vehicle movements a day each may together trigger the relevant threshold so long as those schemes are likely to come forward as a matter of planning judgement. In this case the EFDLP contains numerous schemes, large and small, which are likely to come forward during the plan period. The appeal scheme should not therefore be treated as de minimis but assessed in combination with the EFDLP as it will make a contribution, however small, to vehicle emissions through the forest in addition to the EFDLP.

48. The modelled air quality impacts of the proposal assume unmitigated vehicle emissions from the scheme, but the appellant proposes a series of measures to reduce both traffic flows and emissions. The traffic assessment submitted with the application estimated 102 two-way vehicle movements would be generated daily including residents, visitors, deliveries/servicing and employees. 23 trips are generated by the three existing dwellings so there would be a net increase of 79, 20% of which are likely to travel through the forest, i.e. about 16.

49. The appellant proposes to reduce the number of vehicle movements causing air pollution by implementing a series of initiatives including an electric communal minibus, a car club with electric vehicle, electric vehicle charging points, concierge parcel collection, travel planning and so on. Secured by planning obligation or condition, these would certainly be helpful in securing more non-polluting and sustainable travel but none are guaranteed to be fully effective and their effects cannot be scientifically quantified.

50. The appellant proposes a requirement that only electric vehicles can be parked on site but this would not prevent residents parking elsewhere and may affect the marketability of the scheme. A staff travel plan is also proposed to prevent staff travelling to work in non-electric vehicles but again they may park nearby and this may affect recruitment. Thirdly a delivery and servicing plan to control the type and/or routing of such vehicles is proposed but this would limit potential suppliers and not cover incidental deliveries. These proposals, whilst well intentioned, may not be fully effective and I agree with the Council that ultimately they are unreasonable and unenforceable.

[11] [2017] EWHC 351 (Admin)

51. The claim that only some visitors to the scheme would use polluting vehicles, and thus the net increase in such vehicles across the forest would be as few as 2.4 trips per day, is therefore not made out. A higher figure is more likely. In any event, unless the scheme can be shown to be completely emissions free, any figure would make some contribution, however small, towards air pollution.

52. Finally the appellant argues that permission should be granted because a Grampian condition could be imposed precluding any development until the Air Quality Mitigation Strategy to be prepared alongside the EFDLP has been adopted at which point any of its requirements relevant to the scheme would be implemented. These might include a financial contribution towards strategic measures or any site-specific implications. A possible condition has been drawn up between the appellant and Council. There is a good prospect that such a strategy will be adopted during the lifetime of a permission and I have thus had regard to the proposal for such a condition under H Reg 63(6).

53. However, notwithstanding the Council witnesses' acceptance that the condition would preclude any harm to the SAC, in my planning judgement it is not an acceptable solution to allow a positive conclusion to this AA. At this stage there is no information as to what the strategy may contain, and whilst a financial contribution towards strategic solutions would be simple to deliver (and is included in a unilateral undertaking) any implications for the scheme itself may cut across the permission, for example a reduction in car parking standards may require changes to the undercroft parking. Furthermore the proposed condition would not require compliance with any changed policies in the EFDLP itself, for example if the spatial pattern of growth is amended in the plan in order to achieve a satisfactory LPHRA.

54. In addition, use of a Grampian condition would set a clear precedent for over 70 embargoed schemes in the district as at 28 August which have resolutions to grant planning permission subject to the Air Quality Mitigation Strategy. These include single dwellings as far away from the forest as Roydon and Matching. There would be no arguable reason to resist issuing these and further permissions with the same condition which would prevent the Council having the ability to review their merits when the EFDLP is finally adopted and the air quality strategy put in place. This could prejudice the planning of the district in the light of the need to protect the integrity of Epping Forest SAC.

55. It is recognised this is a deeply frustrating position that can only delay much needed development in the district given the serious five-year housing land supply position. With the obvious difficulties in securing truly 'emissions free' development, strategic solutions need to be identified urgently. However, this is not a matter that can be resolved through a Section 78 appeal.

56. For these reasons it is not possible to conclude that the appeal proposal, in combination with other plans and projects, taking account of the mitigation and other restrictions proposed, would not have an adverse effect on the integrity of Epping Forest SAC in relation to air quality. This concurs with the view of NE set out in their consultation response dated 14 August 2019. Consequently, in accordance with H Reg 63(5), permission cannot be granted.

57. In relation to planning legislation, the proposal conflicts with Policies RP5A, HC5 and NC1 of the adopted Epping Forest District Local Plan 1988 as altered in

2006. These preclude development which could cause excessive air pollution for neighbouring protected wildlife species and habitats, prejudice the wildlife value of Epping Forest, or adversely affect a SAC. In addition, by virtue of paragraph 177 of the National Planning Policy Framework, the presumption in favour of sustainable development does not apply in this case.

Other matters

58. The Council raised in evidence that about 20 units within the scheme would be north facing single aspect units which would not receive much direct sunlight. However, this is of limited significance in the case of an extra care scheme where more time is spent in communal areas and an outlook onto active street and courtyard spaces has greater importance.

59. In relation to direct sunlight in communal spaces, the appellant's Daylight and Sunlight report shows that just 17% of the central communal courtyard would have 2 hours or more sunlight on March 21st each year. This is well below the 50% recommended by the BRE for a garden or amenity area to be adequately sunlit throughout the year[12]. It is recognised this figure is not mandatory, and that other parts of the scheme, notably the rooftop garden, would have unrestricted sunlight. Whilst not a determining issue, in essentially suburban (rather than urban) Loughton this is a disadvantage of the proposal as the courtyard would be a well-used central focus for the scheme and its residents.

60. A planning application for a revised scheme proposing 89 units on the site has been submitted to the Council and remains undetermined. The design merits or otherwise of this revised proposal are not before me and have no bearing on this decision.

Overall Conclusions

61. It is appreciated that officers recommended approval of the application, but the Council is not bound to accept the advice of its officers and evidence has been produced to substantiate the reason for refusal concerned. The timing of the emergence of Epping Forest SAC as a critical issue in this case was certainly unfortunate but has unavoidably added a second determining factor.

62. For the reasons explained above, the benefits of the proposal are outweighed by the harm to the character and appearance of the street scene that has been identified. The proposal conflicts with the provisions of the development plan taken as a whole and these are not outweighed by material considerations. Furthermore the proposal, in combination with other plans and projects, may have an adverse effect on the integrity of Epping Forest SAC in relation to air quality. The H Regs thus preclude permission.

63. In the light of these findings the appeal should be dismissed.

David Reed

INSPECTOR

[12] 'Site layout planning for daylight and sunlight' Building Research Establishment 2011.

APPEARANCES

FOR THE APPELLANT:

Russell Harris QC	of Queens Counsel, instructed by Elysian Loughton Site Limited

He called

Roy Collado RIBA ARB MBA	Founding Partner, ColladoCollins LLP
Kevin Murphy BArch MUBC RIBA IHBC	Principal, KM Heritage
Chris Goddard BA BPL MRTPI MRICS	Board Director, DP9
Bethan Tuckett-Jones PhD BSc CENV	Head of Air Quality, WSP
Philip Davidson BSc CENV	Associate Director, Ecology, WSP
David Brimmer BSc MICE	Director, Transport, WSP
Katharine Bramson BSc MSc MRTPI	Planner, DP9

FOR THE LOCAL PLANNING AUTHORITY:

Megan Thomas	of Counsel, instructed by EFDC

She called

Ione Braddick MA MArch ARB	Urban Design Officer, EFDC
Sukhi Dhadwar BA DipTP MRTPI	Senior Planning Officer, EFDC
Nicky Linihan BA DMS MRTPI	Director, NJL Solutions
Louise Humphreys BA DipLG ARTPI	Principal Solicitor, Peyto Law
Michael Johnson BSc	Implementation Manager, EFDC

INTERESTED PERSONS:

Jill Angold-Stephens	Chairman of Loughton Town Council Planning & Licensing Committee
Michael Benbow	Local Resident representing the 'Alderton Group'
David Linnell	Chairman, Loughton Residents Association Plans Group
Peter Page	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

Between 26 February – 1 March:

Signed but not dated Unilateral Undertaking

Opening submissions for the Appellant

Opening speech for EFDC

List of names and addresses of the 'Alderton Group' submitted by Mr Benbow

Epping Forest Local Plan Housing Implementation Strategy Update January 2019

List from EFDC of schemes with resolution to grant or delegated permission subject to embargo relating to the Epping Forest SAC

Draft Inquiry Note on Epping SAC Issues submitted by appellant

Attendance sheets

On 3 September:

Consideration of Natural England's formal consultation reply by EFDC

Technical note by WSP re traffic generation scenarios

EFDC comments on WSP technical note

Submission handed in by Mr Page

Updated list from EFDC of schemes with resolution to grant or delegated permission subject to embargo relating to the Epping Forest SAC as at 28 August

Draft list of agreed planning conditions

Outline of closing submissions on behalf of EFDC and legal authorities annex

Closing submissions for the Appellant

Attendance sheets