



Appeal Decision

Site visit made on 27 November 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/J1535/W/19/3236064

Fairmead, 48 Church Lane, Loughton IG10 1PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Gail Abbot against the decision of Epping Forest District Council.
 - The application Ref EPF/3277/18, dated 7 December 2018, was refused by notice dated 7 June 2019.
 - The development proposed is removal of the existing two storey garage/annex and replace with an individually designed Arts and Crafts influenced home.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council are in the process of developing the Epping Forest District Council Local Plan (Submission Version) (2017) (the Emerging Plan). The plan has now been through examination and the Council consider that it is at a very advanced stage. However, it is yet to be adopted, and therefore I only attach a moderate degree of weight to the policies in the emerging plan.

Main Issues

3. The main issues are the effect of the proposal on:
 - i) the Epping Forest Special Area of Conservation (SAC); and
 - ii) the character and appearance of the surrounding area.

Reasons

Effect on SAC

4. The appeal site is located within 3km of the Epping Forest SAC, and based on the evidence that I have before me, the SAC is vulnerable to increased levels of visitors using the Forest for recreation, as well as from air pollution generated by increased motor vehicle use.
5. Due to the location of the appeal site, the requirements of the Conservation of Habitat and Species Regulations 2017 apply (the Regulations). The regulations require that I, as the competent authority, must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the

SAC. Although the proposal would only create a single dwelling, when combined with other development within the area, and taking a precautionary approach, I am satisfied that the proposal would result in an increase in recreational activity as well as increasing levels of air pollution which would lead to a likely significant effect on the integrity of the SAC.

6. Due to the effect of the proposal, the Regulations place a duty on competent authorities to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives. In this respect, the appeal has been accompanied by a draft Unilateral Undertaking (UU). The UU has been prepared in accordance with the Council's mitigation strategy which has been endorsed by Natural England. It therefore seeks to provide a financial contribution per dwelling to mitigate against the impact of recreational activity. Whilst the UU may well provide suitable mitigation, it is only in draft form. Accordingly, I cannot give it any weight in relation to the effect of the proposal on the integrity of the SAC.
7. In relation to air quality, no such mitigation strategy has been agreed between the Council and Natural England. I note that the draft UU also seeks to address this matter. However, because the necessary mitigation is unknown at this stage, and because the UU is only in draft form, again, I cannot attach any weight to the potential mitigation in my assessment of the appeal.
8. In the absence of necessary mitigation, I conclude that the proposal would lead to a likely significant adverse effect on the integrity of the SAC. Accordingly, the proposal would fail to comply with Policies CP1 and CP6 of the Epping Forest District Local Plan Alterations (2006) (LP) and emerging Policies DM2 and DM22 of the Emerging Plan. Taken together, and amongst other things, these seek to assist in the conservation and enhancement of the biodiversity, character, appearance and landscape setting of the SAC, ensure that the SAC is protected from the impacts of air pollution, and accommodate development in a sustainable manner which avoids impacts of development upon the environment.

Character and appearance

9. The appeal site is located towards the junction of Church Lane and Wellfields. The road has a narrow carriageway and is lined by large, mature trees and well-established landscaping. Within the area, there is an inherent variety in the scale, form and appearance of the surrounding houses, however, they are generally set back from the highway. The combination of the large trees, the mature landscaping, and the space to the front of the buildings provides the area with a verdant and pleasing semi-rural character and appearance and I note that the submitted Character Appraisal, provided by a neighbouring resident, makes similar observations.
10. The appeal site, and its immediate neighbour, 42 Church Lane, are larger than most of the sites along the road. The site is currently occupied by a large dwelling and a separate two storey annexe building which is proposed to be demolished. The buildings are set back from the road and the site also hosts a number of large and mature trees and well-established landscaping. Due to the size of the site, the dominance of the large trees, and the space to the front of the buildings, the site including the existing annex, makes a positive contribution to the character and appearance of the area.

11. The proposed dwelling would be a substantially larger structure than the building which it would replace. However, it would maintain a gap between the existing building, and the proposed dwelling would also be set back from the highway in a comparable manner to the existing buildings in the area. In addition, although the proposal would introduce a larger element of built form closer to the north west boundary of the site, No 42 is set away from the shared side boundary. As a consequence, the proposal would have space about it. Moreover, although the resultant plot width would be narrower than those to either side of the building, due to the space between the buildings, I am satisfied that the proposal would not appear cramped in its surroundings and would not represent an overdevelopment of the site.
12. The proposal would see the loss of some trees. However, the majority of the substantial trees on the site, as well as those adjacent to it, would be retained. As a consequence, I am satisfied that the verdant character of the appeal site would be maintained as a result of the development. Moreover, when this is combined with the space about the proposed and existing buildings, I am satisfied that the proposal would be complementary to the prevailing characteristics of the area.
13. Therefore, for the reasons identified above, I conclude that the proposal would not harm the character and appearance of the area. Accordingly, it would comply with Policies CP2, CP7, and DBE1 of the LP and Policy DM9 of the emerging plan. Taken together and amongst other things, these policies resist unsympathetic change, and seek development which respects its setting, and protects the quality of the rural and built environment.

Other Matters

14. Due to the space between the proposal and the presence of mature trees, I am satisfied that the proposal would not have an adverse effect on the levels of light received by the adjacent neighbour at No 42. In addition, although there may be a covenant on the site to restrict development, this is not a matter that affects my assessment in relation to the planning merits of the case.
15. Within the evidence, it is asserted that the Council cannot provide a 5 year supply of deliverable housing sites, a matter that has not been disputed by the Council through the course of the appeal. Due to the lack of rebuttal on this point, I cannot be certain of the housing supply of the Council. However, if I were to conclude that the Council could not provide a 5 year supply of deliverable housing sites, the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, would be engaged.
16. This states that where the policies which are most important for determining the proposal are out-of-date, permission should be granted unless one of two exceptions apply. The first exception relates to the application of policies in the Framework that protect areas or assets of particular importance and which provide a clear reason for refusing the development proposed.
17. Footnote 6 to Paragraph 11 confirms that the policies referred to include those which relate to habitats sites. For the reasons identified above, I have concluded that the proposal would result in a likely significant adverse effect on the integrity of the SAC. Accordingly, regardless of the housing supply position of the Council, and other benefits that the proposal may bring, including the efficient use of land, the creation of construction jobs, and providing

accommodation for potential older future occupants, I am satisfied that this matter provides a clear reason for refusing the development proposed, in accordance with Paragraph 11 of the Framework.

Conclusion

18. Although the proposal would not harm the character and appearance of the surrounding area, it would be likely to have a significant adverse effect on the integrity of the SAC. This is a matter of overriding concern and, as a consequence, the appeal should be dismissed.

Martin Chandler

INSPECTOR