



Appeal Decision

Site visit made on 7 January 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st January 2020

Appeal Ref: APP/J1535/W/19/3239786

Wyldingtree, 66 The Plain, Epping CM16 6TW

- 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 Manor Properties (Bishop Stortford) Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/1111/19, dated 25 March 2019, was refused by notice dated 4 September 2019.
 - The development proposed is demolition of existing bungalow and construction of 2 x pairs of semi-detached houses with associated parking and gardens.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Although not a reason for refusal, the effect of the proposal on the Epping Forest Special Area of Conservation (SAC) is potentially a determinative issue. Therefore I have elevated this matter as a Main Issue.

Main Issues

3. The main issues are the effect of the development on:
 - the Epping Forest Special Area of Conservation;
 - the character and appearance of the area;
 - the supply of housing for older residents.

Reasons

Epping Forest Special Area of Conservation

1. The appeal site comprises a detached chalet bungalow located on the eastern side of the private road, The Plain, which serves a block of flats and five dwellings. The site is adjacent to New Kingswood Park Estate, with the rear elevation of the properties facing towards the appeal site.
2. The appeal site lies within the 3 km zone identified by Natural England as being likely to result in harm to the Epping Forest Special Area of Conservation (SAC) due to increased leisure use and an increase in traffic impacting on air pollution. The area was designated due to the presence of 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.

3. Given that the proposal is for 3 additional houses, and its proximity to the SAC there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a significant effect on the habitats site.
4. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that 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. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
5. The Council has agreed with Natural England that developments should contribute £325 per dwelling to mitigate against the harm the proposal will bring to recreational receptors within the SAC and the parties have agreed a financial sum. Natural England has identified that there is an agreed project that would address the effects associated with the proposed development and relieve pressure on the SAC. Whilst the appellant has indicated that they are willing to pay this contribution I have not been provided with a signed and dated Unilateral Undertaking making provision for the required contribution.
6. In terms of air pollution, Natural England has advised that all new development in the district has the potential to increase air pollution unless appropriate mitigation is provided. The Council is working with Natural England and other neighbouring authorities towards establishing a mechanism for collecting contributions that would be used to offset any potential impact because of air pollution on the SAC, and a Mitigation Strategy which would identify specific measures or projects.
7. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives. However, in the absence of an agreed mitigation strategy to overcome the in-combination effects that have been identified in respect to air quality and the lack of a mechanism to secure the contribution to mitigate the impacts of recreational pressure, I cannot be satisfied that the appeal proposal would not result in significant adverse effect to the integrity of the SAC. Had such mitigation been in place, I would have sought clarification from the main parties on this matter and, if necessary, undertaken an Appropriate Assessment in order to consider the implications of the development on conservation objectives. However, this avenue is not available to me.
8. Based on a precautionary approach and the evidence before me, I conclude that the appeal scheme would be likely to have a significant adverse effect on the integrity of the SAC due to the potential increased disturbance through recreational activity and increase in air pollution. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraph 175(a) of the Framework which states that where significant harm to

biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused. Moreover, it would also fail to comply with policy NC1 of the Epping Forest District Local Plan 1998/2006 (LP) and policies DM2 and DM22 of the Epping Forest District Local Plan Submission Version (LPSV) which together seek to ensure that development does not adversely affect Special Areas of Conservation.

9. However, I am not aware of the status of any unresolved objections to the LPSV and therefore having regard to paragraph 48 of National Planning Policy Framework (the Framework), I afford the emerging policy only limited weight in my assessment.

Character and Appearance

10. From the frontage of the appeal site it is possible to see the blocks of flats which are at the entrance to The Plain and are an imposing feature visible from several vantage points along the road. The Plain is characterised by a mix of dwelling types and styles, including both single and two storey. As such, the group of dwellings are not uniform or symmetrical, and this contributes to the overall variety of the street scene.
11. The proposal would result in the replacement of the existing bungalow with two pairs of semi-detached two storey development, with rooms in the roof. Having regard to the mixed character and scale of development within The Plain, I consider the introduction of two storey development on the appeal site would not be out of character with the existing street scene. The introduction of semi-detached development with its narrow vertical profile, emphasised by the inclusion of dormer windows in the roof space would not appear overly dominant or bulky and would represent a transition between the scale of the existing three storey flats and the detached two and a half storey dwelling, The Gable which is located at the northern end of The Plain beyond the appeal site.
12. In conclusion, the proposal would not result in harm to the character and appearance of the area. It would therefore comply with Policies DBE1, DBE2 and CP3 of the LP which require that new development respects the character of the locality and setting in terms of scale, proportion and massing and effect upon surrounding properties.
13. In addition, the Council's decision notice refers to emerging policy DM9 of the LPSV. Amongst other things this seeks to promote high quality design. However, I am not aware of the status of any unresolved objections to the LPSV and therefore having regard to paragraph 48 of National Planning Policy Framework (the Framework), I afford the emerging policy only limited weight in my assessment.

Supply of housing for older residents

14. The evidence before me indicates that the profile of the population within the District is getting older and that there has been an erosion of the Council's stock of bungalows, which play an important role in meeting the housing needs of such residents. This evidence is not disputed by the appellant. Policy H1 of the LPSV specifically seeks to resist the loss of bungalows in order to ensure an appropriate mix of accommodation types is maintained. This is consistent with the Framework's aim of delivering housing of differing sizes and types to meet the needs of different groups of the community, including older people.

15. However, the dwelling to be demolished is a large dwelling which has accommodation over two floors. Therefore, whilst bedrooms are provided on the ground and first floor, the scale of the accommodation with 7 bedrooms is unlikely to be appropriate to meet the needs of an ageing population.
16. The layout of the proposed dwellings includes separate living rooms on the ground floor which could provide bedroom accommodation on the ground floor if required. Policy H1 of the LPSV also requires new homes to be accessible and adaptable as defined by Building Regulations, therefore I consider the proposed dwellings would still provide a level of accommodation which would be appropriate to meet the needs of an aging population.
17. Therefore, whilst there is some conflict with parts of emerging Policy H1, I am not aware of the status of any unresolved objections to the emerging plan and therefore with regard to paragraph 48 of the Framework, I afford the conflict with these emerging policies only limited weight in my assessment.
18. In conclusion, the development would not be detrimental to the supply of housing for older residents and would comply with paragraph 127 of the Framework which requires development to optimise the potential of the site to accommodate and sustain an appropriate mix of development and would function well for the lifetime of the development.

Other matters

19. A further issue is that the Council cannot demonstrate a 5-year housing land supply. This means that in line with paragraph 11 of the Framework, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing planning permission. In this case, with the current absence of agreed mitigation measures to protect the SAC, these Framework policies indicate that planning permission should be refused.

Conclusion

20. In conclusion, whilst I have found that the development would not be detrimental to the character and appearance of the area nor would it reduce the supply of housing for older people, I cannot be satisfied that the appeal proposal would not cause harm to the integrity of the SAC. Therefore, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

G. Pannell

INSPECTOR