
Appeal Decision

Site visit made on 15 January 2020

by Mr J P Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2020

Appeal Ref: APP/J1535/W/19/3239214

11 Kendal Avenue, Epping CM16 4PW

- 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 Martin Shipp against the decision of Epping Forest District Council.
 - The application Ref EPF/1055/19, dated 23 April 2019, was refused by notice dated 7 August 2019.
 - The development proposed is a new detached 4-bedroomed house to the rear of the site, including a raised driveway and a detached garage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Shipp against the Council. That application is the subject of a separate decision.

Main Issues

3. The main issues in this case are
 - a) the effect of the development on the character and appearance of the area;
 - b) the impact on the living conditions of neighbouring residents and
 - c) whether the development would be likely to affect the integrity of the Epping Forest Special Area of Conservation (the SAC).

Policy

4. I consider there is a reasonable likelihood that Policy DM9(H) in the emerging *Epping Forest District Local Plan* will be adopted in the form similar to that before me and so I afford it significant weight. However, the policies from the emerging Local Plan concerning issue (c) relate to some of the Actions suggested by the Inspector examining that plan and so could well change in the future in response to those Actions. The weight I have given them is therefore limited.

Reasons

Character and appearance

5. Kendal Avenue is a mature residential road that comprises a mix of dwellings and apartments of various ages and styles. The streetscape has quite a spacious feel

- due to the set back of buildings, the established planting, and the fact that many properties, including No 11, sit in large plots.
6. The proposed house would be behind the existing dwelling, and to gain access a driveway would be formed along the western boundary. In order to safeguard the protected trees in that area and to account for the varied land levels, this driveway would be on supports.
 7. The drive would not be apparent when coming from the north-west as it would be concealed by the solid fence separating the front garden of No 11 from the property next door.
 8. It could be seen though when in front of No 11 and when coming from the south-east. However, a number of driveways that serve properties behind already exist on Kendal Avenue, for example at No 18A, to access No 3A & 3B, or to approach Whitebeams and others to the east of the appeal site. Each of these have a different appearance as they respond to the specific circumstances of their sites. However, they nonetheless mean that driveways running to the rear of frontage development are not alien in the streetscape.
 9. The driveway would be on supports, but these would not be particularly high or prominent and so would not be visually incongruous. Moreover, I see no reason why its route between the boundary and the side of the dwelling would mean it appeared cramped as it would be set well back from the road at that point and the closest part of the house is not tall.
 10. On the evidence before me I consider that, with the use of supports and suitable conditions requiring the agreement of details, the driveway would not damage the protected trees on this side of the appellant's front garden. In particular I note that the crowns of the trees to be retained appear high enough to allow traffic to pass underneath. It was said that service runs to the proposal could harm the roots, but again this could be controlled, and other routes, such as along the south-eastern boundary, may be possible.
 11. A further concern was about how construction traffic would access the site of the proposed dwelling. That in itself is not a matter that affects the planning merits of this appeal. Clearly though if the building cannot be physically built then any permission would, in due course, lapse.
 12. The new house would be behind the dwelling fronting the road, but from my appreciation of the area that is not an uncommon situation and would not be discordant. Moreover, as the proposal would be 1½ storeys high and would sit in relatively spacious grounds, it would not be cramped or dominate No 11.
 13. Accordingly, I conclude that the development would not detract unacceptably from the character and appearance of the area, and so in this regard would not conflict with Policies CP2 and DBE1 in the *Epping Forest District Local Plan* (as altered in 2007) that seek to ensure development respects its setting and protects the quality of the built environment.

Living conditions

14. The new house would be to the north-west of Whitebeams, a 2-storey dwelling that sits at a slightly lower level with its rear elevation some 2-3m from the boundary.
15. At ground floor level Whitebeams appears to have 2 windows to habitable rooms looking towards the development. However, given the closeness to the boundary, the effect of the height difference, the presence of the 2m solid fence, and the fact

that they would be adjacent to the hipped roof garage, I consider the development would affect neither the outlook from nor daylight to those windows. There are also windows on the side elevation of Whitebeams facing north-eastwards, but the new dwelling would only project a limited distance beyond this elevation, and, once the height difference, the fence and the separation are taken into account, there would be no harm to the living conditions provided by these windows.

16. At first floor level there appears to be a further window to a habitable room on the rear elevation. That would look over the roof of the garage, and so any effect on outlook and day light would be extremely limited.
17. No windows are on the part of the proposal that is closest to Whitebeams and so those neighbours would suffer no loss of privacy.
18. The development would also be set at a lower level than the dwellings to the north. Given this, and mindful of the separation and its 1½ storey height, the proposal would not unreasonably affect the living conditions of those residents.
19. Accordingly, the development would not cause unacceptable harm to the living conditions of neighbouring residents. Whilst the Council has cited Local plan Policy DBE1 in its reason for refusal that does not appear to be relevant to this issue. However, I consider there would be no conflict with Policy DM9(H) of the emerging Local Plan, which seeks to protect neighbours' living conditions, or with the Framework.

The likely effect on the integrity of the SAC

20. The need to protect and safeguard Special Areas of Conservation arises not from the development plan framework but from national and European legislation. Any development proposals are therefore considered in the light of the *Conservation of Habitats and Species Regulations 2017* (the Regulations), with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species. Before deciding to give permission for a plan or project that is likely to have a significant effect on a European site, the decision-maker (competent authority) must make an appropriate assessment of the implications for the site in view of the site's conservation objectives. The competent authority can then only permit the plan or project after having ascertained there would be no adverse effect on the integrity of the site.
21. This SAC is one of the last areas of large-scale woodland pasture in the south of the country. Its designation is because of the presence of 3 qualifying habitats (Atlantic beech forest, European dry heaths and Northern Atlantic wet heaths), as well as one species (the stag beetle). The conservation objectives of the SAC are to ensure the integrity of the site is maintained or restored as appropriate and to ensure it contributes to achieving favourable conservation status of its qualifying features.
22. On the evidence before me, there are 2 ways in which residential development could impact the SAC. The first of these is through disturbance and damage from increased recreational activity by the visitors. The SAC is a popular place to walk and exercise, yet this can result in a pressure that causes harm to habitat and species through trampling, erosion, dog waste, general plant destruction and so on.
23. The second pathway that could result in effects on the SAC is from atmospheric pollution arising from increased car traffic, especially through the SAC and at the road junctions within the SAC. The qualifying features of the SAC are sensitive to atmospheric change as certain pollutants could accelerate or damage plant growth.

24. Surveys have shown that about half the visits to the SAC are made by those living within 3km of the boundary, and this would include the residents of the appeal site. Similarly, the closeness to the SAC and the importance of its roads in relation to Epping mean there is a strong probability that the traffic associated with this scheme would use them and so contribute to the atmospheric pollution. The development is therefore likely to contribute to further damage to the SAC.
25. In assessing these impacts, I appreciate that only one extra dwelling is proposed. However, under the Regulations the impact must be considered both alone and in combination with other plans and projects. Therefore, whilst the impact of this one house, by itself, may be slight, when taken with other similar proposals across the District there could be a cumulative harm to the integrity of the SAC.
26. No mitigation to address this has been put forward. Whilst a legal agreement has been suggested by the appellant one has not been forthcoming and in any event it is unclear as to how that would resolve the impact on each of these pathways. I have also considered a 'Grampian' condition to require development to commence only after this matter has been addressed. However, the need for off-site payments and an unspecified timescale to mitigate the harm through atmospheric pollution would render this course inappropriate.
27. I therefore conclude that, when considered in combination with other plans and projects, the development would adversely affect the integrity of the SAC and in the absence of mitigation I cannot conclude the proposal would not be likely to affect the integrity of the SAC. It would therefore be in conflict with the Regulations and the Framework.

Other matters

28. There may be a shortfall in housing land supply in the District. However, as the application of policies in the Framework provide a clear reason for refusing the development then the balance in favour of granting planning permission found in paragraph 11(d) of the Framework is not engaged. Moreover, although near to Epping town centre, under paragraph 177 of the Framework the presumption in favour of sustainable development does not apply.

Conclusions

29. Whilst I consider the effect on the character and appearance of the area and the neighbours' living conditions would not be unacceptable, the failure to find it would not be likely to affect the integrity of the SAC means I conclude the appeal should be dismissed.

Jeremy Sargent

INSPECTOR