



Appeal Decision

Site visit made on 7 January 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2020

Appeal Ref: APP/J1535/W/19/3238169

76 Algers Road, Loughton, Essex IG10 4NF

- 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 Islandbridge Algers Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/2881/18, dated 23 October 2018, was refused by notice dated 3 July 2019.
 - The development proposed was originally described as 'removal of the existing derelict building and replacement with a new building consisting of 7 apartments'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the application form. However, prior to the determination of the application, the proposal was amended including alteration to the mix and number of dwellings. In line with the amended plans, the description of development was revised by the Council to 'demolition of existing dwelling and replacement with a new building consisting of 3 x 1 bed and 3 x 2 bed apartments', and this is the description entered on the appeal form. I have determined the appeal on the basis of this description, and the amended plans which are listed on the Council's decision notice.
3. I have been referred to policies within the Council's emerging Local Plan Submission Version 2017 (LPSV). The LPSV has been through examination, but is yet to be adopted, and in their evidence, the Council refer to advice from the examining Inspector on actions required to address issues of soundness with the plan. The LPSV is therefore subject to change, and this limits the weight that I afford these policies.
4. The effect of the development on the Epping Forest Special Area of Conservation (SAC) did not form part of the Council's reasons for refusing permission. However, Epping Forest SAC is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. This imposes a duty on the decision-maker to consider whether a proposed development may have a significant effect on the conservation objectives of such sites either alone, or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). The main parties have been afforded an opportunity to comment on the potential for the development to impact on the SAC through an effect on air quality, and I am satisfied that no

party would be unfairly prejudiced as a result of me fulfilling my duty in this regard within my decision.

Main Issues

5. The main issues in this appeal are:

- i) the effect of the proposed development on the integrity of the Epping Forest SAC;
- ii) whether or not the development would provide acceptable living conditions for occupiers of the proposed dwellings with particular regard to the provision of external amenity space; and
- iii) the effect of the proposed development on the character and appearance of the area, including with regard to the loss of the existing building.

Reasons

Epping Forest SAC

6. The duty under the Conservation of Habitats and Species Regulations 2017 (the Regulations) to consider whether the proposed development may have a significant effect on the conservation objectives of the Epping Forest SAC either alone, or in combination with other plans and projects within the framework of an AA now falls to me as the competent authority. In this context, I am mindful of the advice within the Planning Practice Guidance (PPG) including that an AA must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project.
7. The designation of Epping Forest SAC reflects the presence of 3 qualifying habitats (Atlantic Beech forests on acid soils, European dry heaths and Northern Atlantic wet heaths with cross-leaved heath) as well as one qualifying species (Stag beetle). Conservation objectives identified for the SAC include ensuring that the integrity of the site is maintained or restored. The site should also contribute to achieving the favourable conservation status of its qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats and the habitats of qualifying species; the supporting processes on which these rely; and the population and distribution of the qualifying species.
8. From the information before me, the SAC is vulnerable to impacts arising from visitors to the Forest as well as air pollution impacts. The appeal site is located within 3km of the SAC and is therefore within the zone of influence where the evidence points to an impact on the SAC through future occupiers visiting for recreation purposes, and the evidence does not suggest that there is any similar spatial limitation on air quality impacts.
9. The appellant indicates that the appeal site provides for 2 studio flats in addition to the main two-storey dwelling; one within part of the ground floor level and a second within the detached outbuilding at the rear of the site although third parties have commented that these 'studio flats' do not benefit from any grant of planning permission. It is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 whether or not the 'studio flats' have become lawful by reason of the passage of time. Moreover, at the time of my visit, the site was

unoccupied and it is not clear from the evidence before me whether or not any flats on the site have been occupied independently from the main dwelling. In any event though, the proposed development would result in 7 separate households living on the site, and a net gain of at least 4 dwellings over the existing situation, supporting an overall increase in the potential level of occupation on the appeal site.

10. With higher levels of occupation, potential vehicle usage would also increase in comparison to the existing situation. In determining the planning application, the Council suggested that there would be no impact on air quality as the proposal would be 'car-free'. However, the Council have advised that since the application was determined, there has been a change to a more precautionary approach to the impact of car-free proposals on air quality and the SAC as there is no mechanism to prevent car ownership in new dwellings.
11. I have not been provided with detailed evidence to support the appellant's assertion that car ownership rates in the London conurbation have fallen in recent years, and cannot come to any firm view on the relevance of this to the specific circumstances of the appeal site. I have no reason though to doubt that the proximity of the appeal site to Loughton Station and facilities within the town may be attractive to occupiers who choose to live without a car. Nevertheless, while the accessibility of the location may encourage occupiers to travel by modes other than private vehicle, there is no guarantee that future occupiers would actually choose to travel by these means.
12. No parking is proposed on the appeal site, and I saw that there are parking controls nearby which include a restriction on parking between the hours of 1400 and 1500 Monday to Friday, and which limit parking on Algers Road to permit holders only between the hours of 1000 and 1600 Monday to Friday. However, there is no persuasive evidence before me to demonstrate that future occupiers would be unable to acquire a permit, or that it would be otherwise impossible for occupiers to own or use a private motor vehicle, particularly with regard to the relatively limited hours of operation of the parking restrictions nearby which do not apply in the evenings or at weekends. Indeed, this possibility is supported by representations from local residents who have raised concerns that there would be additional parking on nearby roads.
13. For these reasons, I cannot be certain that the proposal would not result in an increase in motor vehicle use by future occupiers over that associated with the existing dwelling, and thus an impact on air quality.
14. The increased occupation of the site would also result in a greater demand for recreation by future residents in comparison to the existing situation and the proximity of Epping Forest to the site would encourage the use of this space for recreation; a premise supported by the appellant's suggestion that access to Epping Forest would offer some alternative to on-site provision of amenity space for future occupiers of the development.
15. I accept that in all probability, the harm arising from the proposal itself in comparison to the existing development on the site would be small. Nevertheless, the impacts of additional motor vehicle usage on air quality and increased recreational use of the SAC would be adverse, and the cumulative effect with other similar scale developments would be significant. In exercising my duty to protect the European Site, I must adopt a precautionary approach,

and overall, I am unable to conclude beyond reasonable scientific doubt that the proposal would not have a significant effect on the integrity of the SAC.

16. There is currently no agreed strategy to mitigate air quality impacts of development. I note the suggested timetable for publication of the Council's planned approach to mitigation in May 2020 as part of the Local Plan Examination, but I cannot be sure that the Council's approach will be found to be appropriate. Moreover, I do not know the likely timescales for the implementation of any approach once it has been agreed, and it has not been shown that there are exceptional circumstances to justify deferring determination of the appeal.
17. The appellant has suggested that a payment up to a maximum amount could be secured through a planning obligation or payment made up front to address air pollution impacts. However, in the absence of an agreed mitigation strategy or other evidence to provide information on the mitigation measures required and how these would be delivered including consideration for the level of any financial contributions, I am not satisfied beyond reasonable doubt that any such financial contribution would be an effective means of mitigating the effect of the development on the SAC by reason of air quality impacts.
18. The appellant has also proposed that it would be possible for a 'Grampian' style condition to prevent development occurring unless appropriate provision for mitigation is made, although I have no details of any suggested condition before me. In addition, it is likely that any mitigation measures would need to be secured by a planning obligation or other agreement to provide the necessary confidence that they would be effective. I acknowledge the difficulty of the situation with no currently agreed mitigation strategy, but the PPG advises that use of a negatively worded condition to require an applicant to enter into a planning obligation or other agreement is unlikely to be appropriate except in exceptional circumstances. There is no compelling evidence of unique or exceptional circumstances which might justify the use of such a condition in this case.
19. Turning to recreational impacts, the appellant provided a completed Unilateral Undertaking which was updated following the receipt of comments made by the Council. This provides for a financial contribution towards the maintenance, improvement, management, access management and monitoring of the SAC to mitigate the recreational impact of the development in accordance with the Council's interim mitigation strategy adopted in October 2018.
20. It would typically be necessary for me to seek additional information from the parties and Natural England to enable me to undertake the AA and to assess the effectiveness of the proposed mitigation for recreational impacts within the Unilateral Undertaking. However, in view of my findings above, as the competent authority, I can only conclude that the proposed development, alone and in combination with other plans and projects, would have a likely adverse effect on the integrity of the SAC as a consequence of air quality impacts and the lack of effective and appropriately secured mitigation for these impacts. Accordingly, the development would conflict with the requirements of the Regulations, as well as objectives within the National Planning Policy Framework (the Framework) for the protection of biodiversity and the conservation of the natural environment.

Living Conditions of Future Occupiers

21. The proposed development would provide for 7 flats on the site within a new building with a broadly 'L-shaped' footprint fronting Algers Road and Lower Park Road. Policy DBE8 of the Local Plan with Alterations 2006 (LP) establishes a requirement for private amenity space as part of development and stipulates, amongst other things, that this space should usually be easily accessible from the relevant building; be of a size, shape and nature which enables reasonable use; and achieve privacy on a continuing basis. The supporting text to the policy goes on to indicate a requirement for 25sqm of amenity space per flat which would generate a requirement for 150sqm to serve the proposed development.
22. Space provided to the frontages of the building, and forward of the proposed side gate and cycle store between the building and the adjacent garage next to 53 Lower Park Road would be open to the street. These areas would not therefore offer privacy for users. The very narrow width of the space between the side of the building and the neighbour at 74 Algers Road would preclude the reasonable use of this area as amenity space. Similarly, while the proposed cycle store would be a facility to the benefit of occupiers, the structure would prevent other usage of this part of the site as amenity space. With regard to the criteria set out within Policy DBE8, I therefore find that these areas would not offer usable amenity space on the site and the quantum of provision is likely to be closer to the approximately 100sqm figure suggested by the Council, rather than the approximately 200sqm advised by the appellant.
23. I note that in order to access the area remaining to provide amenity space, occupiers of the upper floor flats would need to exit the building and pass along one of its frontages to reach one of the two gates onto this space. However, given the small distances involved and the location of the site within a residential area, I am not convinced that this would result in any significant inconvenience or present a barrier to access of this space. The broadly rectangular layout of the communal garden would also be practical.
24. Nevertheless, in light of my findings above, the provision of amenity space on the site would fall some way short of the suggested requirement. In addition, while the appellant comments that light levels to the space have been assessed and show 50.3% of the gardens receive at least 2 hours of sun on 21 March, complying with BRE guidance; I have not been provided with details of the area considered or methodology and this limits the weight I can afford this statement. In my view, while the space closest to 53 Lower Park Road would have a more open aspect, the height and overall scale of the proposed building would be a dominant feature to users of much of the space and would cause shading to the closest parts likely to limit its attractiveness to future occupiers and therefore its use.
25. The reference to a requirement for 25sqm amenity space per flat is part of the supporting text to Policy DBE8 rather than an absolute policy requirement, and the LP also recognises that there will be circumstances where standards may be relaxed. Examples of such circumstances are given but these are not presented as a closed list and so situations falling outside of these examples may also justify a lower standard of provision. Consequently, I accept that the quantum of provision in itself may not be determinative.

26. However, with regard to the overall size and nature of the amenity space that would be provided on the site, including the attractiveness of a significant part of this space, and the 6 flats proposed here, I find that there would be insufficient usable provision to allow for reasonable use by future occupiers for a range of activities such as sitting out, children's play or drying washing.
27. I accept that occupiers may be able to access alternative amenity space outside of the site, including Epping Forest. There is dispute between the main parties over the attractiveness and length of the route to this space but even taking the best case, it is still a little way from the site. Moreover, this public space, or indeed the accessibility of the site to town centre services and Loughton Station, would not provide an adequate substitute for private amenity space for the exclusive enjoyment of residents on the appeal site to meet the needs that Policy DBE8 sets out to address.
28. The appellant has also drawn my attention to an appeal decision¹ where the Inspector found that provision of amenity space below the LP standards would still be adequate for future occupiers. However, on the basis of the limited details presented, I can draw little comparison with the proposal before me.
29. I therefore conclude on this main issue that there would be unsatisfactory provision of external amenity space resulting in unacceptable harm to the living conditions of future occupiers of the site. This would conflict with Policy DBE8 of the LP which requires the provision of amenity space. While not specifying a quantum of amenity space provision, Policy DM 9 of the LPSV requires that proposals take account of the amenity of the development's users, although as this is not an adopted part of the development plan and is subject to change, I afford conflict with this policy less weight.

Character and Appearance

30. The appeal site is located at the corner of the four-arm junction of Algers Road with Lower Park Road. For the most part, these streets are lined with detached and semi-detached dwellings together with some terraces facing the street. These dwellings are set on linear plots behind frontages providing for parking or landscaping, and tend to be relatively close-set, with dwellings appearing large on their plots from the streets. This provides a sense of enclosure to the street scene, and limits views of the more generous garden backdrops. However, there is a more irregular building line and layout to the dwellings where these are positioned on bends of the road or at corners. Additional diversity results from the flatted blocks at the junctions of both Algers Road and Lower Park Road with High Road, as well as from maisonettes present on Lower Park Road.
31. Canted bay windows with gables above, porches and contrasting brick detailing are common to dwellings on Algers Road and Lower Park Road and make a positive contribution to the character and appearance of the area. However, these features are not universal, and there is variation in the scale, form, appearance and the external materials of individual dwellings which add visual interest and diversity to the area overall.
32. The detached dwelling currently on the appeal site is Edwardian in style with prominent gables facing both Algers Road and Lower Park Road, a Flemish-

¹ APP/J1535/A/13/2191936

bond exterior at ground floor level and roughcast render above. It has been extended with a porch between the ranges of the building and a flat roofed extension at ground level, and there is a single-storey outbuilding towards the rear of the site.

Loss of the Existing Building

33. The Framework defines a heritage asset as 'a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).' The existing dwelling is not statutorily listed or located within a conservation area and therefore does not have status a designated heritage asset, although the Council have referred to it as a 'non-designated heritage asset'.
34. The PPG advises that a substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets; only a minority have enough heritage significance to merit identification as non-designated heritage assets². It goes on to note that it is important that all non-designated heritage assets are identified as such, and local planning authorities are encouraged to keep a local list of non-designated heritage assets³. From the information before me, the Council have a 'local list' but this does not include 76 Algers Road.
35. The PPG goes on to recognise that non-designated heritage assets may also be identified as part of the decision-making process on planning applications and so inclusion on a local list is not a prerequisite to consider a building a non-designated heritage asset. Nevertheless, it guides that irrespective of how they are identified, the decision to identify a non-designated heritage asset should be based on sound evidence.
36. I note the prominent location of the site and do not disagree with the Council that the façade of the existing building with its contrasting detailing and fenestration is attractive. However, while it may form part of the evolution of Loughton, there is no clear evidence before me to support the Council's suggestion that it was originally built as a 'landmark' building close to the former main entrance to Loughton Station from Algers Road. It has also not been put forward that there is interest resulting from any notable historical associations, or that the building was designed by a well-known architect.
37. As part of the appeal, the appellant has provided a Heritage Assessment. This recognises the Edwardian provenance of the dwelling, but points to a number of such buildings that exist nearby, in some cases exhibiting representative detailing to a greater extent than 76 Algers Road. Moreover, I agree with the Heritage Assessment that alterations to the building including the extension to its rear, use of some modern windows and other additions dilute its interest.
38. For these reasons, I am not persuaded on the basis of the evidence before me that 76 Algers Road is of notable architectural merit, or that it is remarkable within its context as an example of Edwardian suburban development. I therefore find that the heritage interest of the building is of insufficient significance to merit consideration in planning decisions or to warrant its

² Paragraph: 039 Reference ID: 18a-039-20190723

³ Paragraph: 040 Reference ID: 18a-040-20190723

consideration as a non-designated heritage asset. Accordingly, there is no presumption against the loss of the existing building.

Proposed Development

39. Turning to consider the proposed development, the building would be larger than the existing dwelling on the site but would be similar in height to the adjacent building at 74 Algers Road. The stepped roof line would also provide for a gradual transition between the higher part of the building closest to the corner and the lower roof to 53 Lower Park Road. It would be of greater height than 78 Algers Road, but the width of the intervening road means that the difference in height would not be striking.
40. The building would have an 'L-shaped' footprint, and its elevations facing the street would be wider than the existing dwelling, particularly along Lower Park Road. Views of both street frontages would also be possible given the position of the site at the junction. However, it would be set further from the boundary with 74 Algers Road than the existing dwelling, and there would remain separation to the boundary with the adjacent garage on Lower Park Road. This spacing around the building would enable it to sit comfortably within its plot.
41. Furthermore, there is no consistency in the scale of buildings nearby and I note that the flatted blocks at the corners of Algers Road with Lower Park Road similarly wrap around those corners with frontages of greater width than buildings in their immediate vicinity. Maisonettes on Lower Park Road are also visible from the appeal site and present frontages of similar or greater width to the street. The scale of the building on the site would not therefore be inappropriate or dominant.
42. Although there are strong building lines present along much of Algers Road and Lower Park Road, there is a more irregular layout close to the appeal site given the junction and nearby bends in both roads. Along Algers Road, the building would align broadly with the front of 74 Algers Road closest to this neighbour, and while it would step forward towards the corner this would provide for a gradual transition, integrating the frontage with the adjacent development.
43. There would be a greater difference between the building line to Lower Park Road and the closest part of 53 Lower Park Road, but this would reflect the relationship opposite the site where the side of 78 Algers Road is set noticeably forward of the front of 68 Lower Park Road. The bend in the road beyond 53 Lower Road further means that the development would not disrupt any continuous building line. While more limited than frontages typically afforded to dwellings nearby, in view of the relatively close-knit character and appearance of the street scene, I do not find that this would harmfully erode any distinctive attribute of the area's character or appearance and sufficient space would be provided between the building and the streets to provide it with a setting.
44. In my view the stepped elevations and roof form of the building together with the proposed detailing would provide for articulation and successfully break up the building, lessening its visual impact. The street scene is not uniform and includes dwellings of differing scales, forms and heights, as well as examples of stepped ridgelines to individual dwellings such as to the side of 55 Algers Road along Lower Park Road opposite the site. Consequently, I have no reason to think that a different approach to the design of the building on the appeal site would be incompatible with or harmful to the overall character of the area.

Moreover, the materials, fenestration and details such as the arched entrances and mock timber gable proposed would reflect others in the locality, integrating the building with its surroundings.

45. For all of the above reasons, I see no reason the proposed development would be unsympathetic to its location or that it would fail to harmonise with or enhance the varied street scenes of Algers Road and Lower Park Road and the character and appearance of the area and there is no compelling reason to resist the loss of the existing building on the site. Accordingly, on this main issue, I find no conflict with LP Policies CP2, CP7 or DBE1. Together, these policies broadly seek to maintain or improve the setting, character, townscape and urban quality of the built environment, including through the protection and enhancement of buildings or architectural or historic interest. The proposal would also comply with the principles of the Framework which seeks good design that is sympathetic to local character.

Planning Balance

46. The appellant has indicated that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, and has provided an extract of the Council's Housing Implementation Strategy dated January 2019 which indicates a supply of 4.2 years. I do not have full details of the assessment of supply, but this position has not been disputed by the Council.
47. The lack of housing land supply triggers the presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework. This states that where the policies which are most important for determining the proposal are out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
48. However, I have found that policies within the Framework relating to habitat sites indicate clearly that development should be restricted. Accordingly, and with regard to paragraph 11(d) (ii) of the Framework, the presumption in favour of sustainable development does not apply in this case.
49. Notwithstanding this, I note that the proposal would deliver additional dwellings which would be a benefit. It would make effective use of this site which is previously developed. The site is also close to public transport links, employment opportunities and local facilities and amenities within Loughton which would encourage travel by occupiers by modes other than private vehicle and would support economic growth. These are facets which are strongly supported by the Framework. However, from the information before me, I am unable to determine that in the absence of the proposed development on the site there would be no alternative to further development on Green Belt land.
50. Additional windows serving habitable rooms would be provided facing onto the street and would increase natural surveillance around the site, although I have not been provided with substantive evidence of a particular safety or security concern in this location that would be addressed. Some biodiversity enhancements are proposed as part of development which would offer a benefit, albeit that this is qualified by the absence of firm details on the scope

of enhancements. The absence of an objection on grounds of the impact of development on trees is a neutral factor in the planning balance.

51. Drawing these matters together, even taken together, I find that the benefits of the proposal are insufficient to outweigh the harm to the integrity of the Epping Forest SAC together with the harm to the living conditions of future occupiers, and the resulting conflict with the development plan and the Framework.

Other Matters

52. I have noted representations from interested parties, but none of the matters raised, either individually or collectively, alter my conclusions on the main issues. There is no firm evidence to suggest that the absence of provision for parking on the site would result in harm, or that the development would adversely affect pedestrian or highway safety. Nor is there firm evidence that there would be insufficient capacity within local services or infrastructure to meet needs generated by development.
53. Separation to 53 Lower Park Road would be sufficient to avoid harm to this neighbour, and the use of obscure glazing to upper floor windows and rooflights at high level could avoid unacceptable overlooking towards 74 Algers Road. The proposed development would also be set further from the boundary with this neighbour than the existing building and while it would be of increased scale and depth, I note the results of the Daylight and Sunlight Assessment for Planning submitted by the appellant. Given this and the separation provided to the deeper section of the proposed building, I am satisfied that there would not be unacceptable loss of light or an overbearing effect to this dwelling. There is also no substantive evidence to indicate that the development would cause harm to neighbouring occupiers through noise, disturbance or odour.

Conclusion

54. Notwithstanding my findings that the loss of the existing building and proposed development would not cause harm to the character or appearance of the area, the proposal would result in harm to the living conditions of future occupiers, and would lead to significant harm to the integrity of the Epping Forest SAC which is a matter of overriding concern.
55. The proposal would therefore conflict with the development plan as a whole and the Framework, and for the reasons given above I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR