



Appeal Decision

Site visit made on 28 January 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2020

Appeal Ref: APP/J1535/W/19/3240245

2 River Road, Buckhurst Hill IG9 6BS

- 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 Rodney Vitalis against the decision of Epping Forest District Council.
 - The application Ref EPF/0281/19, dated 1 February 2019, was refused by notice dated 22 May 2019.
 - The development proposed is the creation of a new 3 storey dwelling in the land to the side of the existing dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The submitted plans show differing elevational and roof plans for the proposed development. However, I have based my decision on the drawings as identified within the Council's decision notice.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of the occupants of surrounding properties, with particular regard to outlook, direct and perceived overlooking and access to suitable external amenity space; and
 - whether or not the proposal would provide satisfactory living conditions for future occupants, with particular regard to outlook.

Reasons

Character and Appearance

4. No 2 is a two storey, end-of-terrace, property located within a residential area. The terrace to which it belongs terminates with hipped roofs. In addition, both end-of-terrace properties have front facing gable features which are set in from their respective side elevations. Such features give this terrace a sense of rhythm and balance. No 2 is positioned on a broadly triangular plot. Its garden extends to the side and tapers as it is bound to the north by the rear gardens of properties that front Loughton Way and by River Road to the south. This side

garden is largely undeveloped and gives this part of the streetscene an open and spacious feel.

5. This proposal seeks permission to erect a new dwelling which would adjoin the side elevation of No 2. This would be constructed under a pitched roof to match the height of the existing property. I appreciate that the proposed dwelling would retain the distinction between public and private spaces. Nevertheless, its footprint would occupy a significant proportion of the appeal site. The introduction of a dwelling of this size and mass would therefore erode the sense of openness. In addition, the proposal would be sited close to part of its northern boundary and there would be limited garden space to its rear. In this context, I find that it would appear unduly cramped upon its plot in relation to its size.
6. The proposal would also introduce a gable end to the terrace in which it would be located. Furthermore, whilst it would have a front facing gable feature, this would not be sufficiently set in from the side elevation to match the gable at the opposite end of the terrace. I therefore find that the scheme would disrupt the rhythm and balance of this terrace. Such harm would be exacerbated by the removal of the top portion of the existing front facing gable feature at No 2.
7. Taking all of the above into account, I am not persuaded that the proposal would form an acceptable 'book end' to the terrace. On the contrary, it would introduce an inappropriately cramped feature to it that would fail to integrate effectively with its balanced rhythm. The proposal's harmful impact would be readily apparent from the public domain and would not be sufficiently diminished by the use of suitable materials.
8. For the reasons given, I conclude that the proposal would harm the character and appearance of the area. It would therefore conflict with Policy DBE1 of the Epping Forest Local Plan Alterations (LP) insofar as it requires that new buildings respect their setting in terms of scale, proportion and detailing. In addition, I have been referred to Policy DM9 of the Epping Forest District Local Plan Submission Version (LPSV) which has similar objectives. There would therefore be conflict with this emerging policy. Furthermore, the scheme would also conflict with the advice of the National Planning Policy Framework (the Framework) which seeks to ensure that developments add to the quality of areas.

Living Conditions – Surrounding Properties

Outlook

9. Having visited the site, I am satisfied that the positioning and scale of the proposal would not significantly harm the outlook from No 2. However, whilst the terrace to which No 2 belongs is clearly visible from neighbouring properties at Loughton Way, the proposal would draw this terrace closer towards the rear boundaries of some of these properties. In particular, the new dwelling would be sited close to the rear boundary of No 37 Loughton Way and would extend along the full width of this boundary. Taking this into account, I find that the proposal's scale and positioning would be visually dominant when viewed from rear ground floor habitable rooms at this neighbouring dwelling. It would also appear visually oppressive from the rear garden of this property, which would make this space a less pleasant place to be.

Direct and Perceived Overlooking

10. There would only be some limited, relatively long distance, oblique views from the proposal's first floor windows towards No 31 Loughton Way. Taking this into account, I am satisfied that it would not create the perception of overlooking towards this neighbouring property. In addition, the angle at which the proposal would be sited would ensure that there would be no unacceptable direct views towards Nos 33 and 35 Loughton Way.
11. However, whilst I accept that there is some mutual overlooking in the area, the positioning of the proposal would afford close distance and direct views from a first floor bedroom window towards the rear of Nos 37 and 39 Loughton Way. In my view, this would unacceptably diminish the privacy within these neighbouring properties as well as their rear gardens.

External Amenity Space

12. From the evidence, the proposal would reduce the rear garden area of No 2 to approximately 34sq.m in size. However, the shape and size of the resulting garden would still provide a sitting out area and would be suitable for the combination of activities associated with a dwelling of this size, such as leisure and the drying of clothes. On this basis, and as I have no evidence to show that the proposal would breach any prescriptive policy standards for the size of external amenity areas, I find that a suitable garden would remain at No 2.

Overall Findings – Living Conditions at Surrounding Properties

13. I have found that the occupants at No 2 would have access to suitable external amenity space and that the scheme would not result in unacceptable levels of perceived overlooking at No 31. Nevertheless, for the reasons given, I conclude that the proposal would harm the living conditions at identified surrounding properties in terms of outlook and direct overlooking. It would therefore conflict with Policy DBE2 of the LP insofar as it seeks to ensure that proposals do not have an unacceptable impact upon living conditions at surrounding properties. It would also conflict with emerging Policy DM9 of the LPSV insofar as it seeks to ensure that proposals avoid overlooking and do not result in an over-bearing form of development. Furthermore, the scheme would conflict with the Framework which seeks to secure a good standard of amenity for current users.

Living Conditions – Future Occupants

14. Two of the proposal's ground floor rear windows would be close to the site's northern boundary. However, the open plan ground floor living space served by these windows would also benefit from other light sources. This includes large glazed patio doors within the proposal's flank elevation. I am therefore satisfied that there would be suitable outlook for future occupants within the dwelling. I also find that a sufficient amount of its side garden would not feel unduly enclosed.
15. For these reasons, I conclude that the proposal would afford satisfactory living conditions for future occupants in terms of outlook. It would therefore accord with Policy DBE8 of the LP which seeks to ensure new developments provide suitable external amenity space that is of a size, shape and nature which enables reasonable use. It would also accord with emerging Policy DM10 of the

LPSV and the Framework insofar as they seek to secure a good standard of amenity for future users.

Other Matter

16. The appeal site is within a zone identified by Natural England (NE) as being likely to harm the Epping Forest Special Area of Conservation (SAC), a European designated site. NE has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. It would appear that the Council is seeking a financial contribution of £352 for each new dwelling within 3km of the SAC. However, it is awaiting instruction from NE as to how to appropriately address the impact on the SAC in terms of air quality.
17. In any event, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. As the competent authority, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties to seek further information in order to undertake an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Planning Balance

18. The Government is seeking to significantly boost the supply of housing. However, although in an accessible location and acceptable in principle, the proposal for a single dwelling would make only a minimal contribution to the Council's housing stock. Similarly, the economic benefits of the proposal would also be minimal and would primarily relate to short-term employment during the construction period. In this context, I give limited weight to these social and economic benefits.
19. I have found that the proposal would not harm the living conditions of the occupants at surrounding properties in terms of perceived overlooking and access to suitable external amenity space. I have also found that it would afford suitable living conditions for future occupants in terms of outlook. In addition, the scheme would be acceptable in other respects. For example, it would not harm a historic environment and would not increase the risk of flooding. However, these are requirements of the development plan and are therefore neutral factors in the overall balance.
20. On the other hand, the scheme would result in harm to the character and appearance of the area and would harm living conditions at surrounding properties in terms of direct overlooking and outlook. These are matters which collectively attract significant weight.
21. In my view, the adverse effects would outweigh the benefits associated with the provision of one dwelling. The proposal conflicts with the development plan and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

Conclusion

22. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

M Heron

INSPECTOR