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## 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: 17<sup>th</sup> February 2020**

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**Appeal Ref: APP/J1535/W/19/3237269**

**23 Chapel Road, Epping, Essex CM16 5DS**

- 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 & Mrs Terry Newland against the decision of Epping Forest District Council.
  - The application Ref EPF/1035/19, dated 23 March 2019, was refused by notice dated 10 July 2019.
  - The development proposed is described as 'the proposal is for the removal of a particularly poorly designed extension which is now suffering from the poor construction. The proposal offers the potential for this building to be removed and replaced with a new built form more in keeping with the surrounding style and character of the area. The height will follow that of the surrounding houses and the use retained as residential. The scale and appearance of the built form will be such that it will neither overpower its surroundings or infringe any further on the setting. The placement will be such that it improves the setting of the retained built form. All materials used will be in keeping with the houses attached and adjacent.'
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The proposed development is described on the Council's decision notice as 'proposed removal of existing extension and replacement enlarged extension to form attached new dwelling'. This accurately describes the proposed development more simply than the longer and more detailed description given on the application form and used in the banner heading above, and I have determined the appeal on that basis.
3. I have been referred to policies within the Council's emerging Local Plan Submission Version 2017 (LPSV). Whilst the plan has been through examination, it 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 Council's first reason for refusal refers to Policy DBE4 of the Local Plan with Alterations 2006 (LP). Policy DBE4 relates to development within the Green Belt, circumstances which do not apply to the appeal proposal. The Council's evidence refers instead to Policy LP DBE3. The appellant has had an opportunity to comment on this evidence, and I have determined the appeal on that basis.

## **Main Issues**

5. The main issues in this appeal are:
- i) the effect of the proposed development on the character and appearance of the area;
  - ii) the effect of the proposed development on the living conditions of the occupiers of 25 Chapel Road with particular regard to outlook, light and whether or not it would be overbearing; and
  - iii) the effect of the proposed development on the integrity of the Epping Forest Special Area of Conservation (SAC).

## **Reasons**

### *Character and Appearance*

6. Chapel Road is a residential cul-de-sac characterised by a mixture of two-storey detached, semi-detached and terraced dwellings, although towards the head of the road as it backs onto Bodley Close are low-rise flats. Dwellings are typically positioned relatively close to the street within a traditional layout of linear plots which provides a strong sense of rhythm to the street scene. Further distinctiveness arises from the attractive canted front bay windows, decorative gables, brick external finishes with banding courses and recessed entrances which are common features to many of the dwellings, although these are not universal and there are also more modern design elements within the street scene.
7. As well as the detailed design of dwellings, further variation results from the spacing provided between dwellings as well as their height which adds visual interest to the street. Extensions or alterations of assorted scale and design are also apparent to a number of the dwellings, including to their rear where these are visible from the street scene across corner plots. Moreover, within the overall building line, some dwellings incorporate stepped front elevations with set back sections of differing degrees which in a number of cases allows for off-street parking to occur.
8. The appeal site is opposite the junction of Ashlyns Road with Chapel Road and accommodates a semi-detached dwelling. This is of similar design to the attached neighbour at 21 Chapel Road, but includes a wide extension to its side. Land levels fall towards the rear of the site, and there is a partial basement level which is visible to the rear of the dwelling and extension.
9. It is proposed to demolish the extension to the side of 23 Chapel Road and replace it with a new dwelling. The Council have raised no concern over the design of the proposed dwelling, and I note that its roof form and design aspects including the canted front bay feature with gable above would be sympathetic to characteristic features of the area. Moreover, its width and overall scale would not be out of keeping with other dwellings in the street.
10. The dwelling would be set towards the rear of 23 Chapel Road and behind the typical building line. However, while it would be visible, including in views from Ashlyns Road opposite the site, its set back nature means that it would not disrupt the rhythm or pattern in views along the street scene of Chapel Road, and would reduce the prominence of the development. In addition, I saw set back sections to the sides of a number of other dwellings along Chapel Road, and while these may not be separate dwellings, the visual impact of this in

terms of contributing diversity to the overall layout of the area is nevertheless similar, with further irregularity arising from the varying heights of dwellings

11. Accordingly, although the layout would differ from the predominant building line on this side of the street, in my view the positioning of the dwelling within the site would not result in a jarring feature, and I see no reason that the failure to follow the existing building line would be inappropriate or incompatible with the existing character of Chapel Road.
12. In addition, although the proposed development would extend deeper towards the rear of the site than neighbouring dwellings, there is little consistency in the rear building line of buildings on Chapel Road, with rear projections of varying depths evident in views including from Crows Road to the rear of the site as well as from within the rear gardens of dwellings. The proposed basement level would extend some way beyond the rear of the proposed dwelling, but the lower level of this element would limit views from outside of the appeal site. These factors mean that the projection of the dwelling beyond the rear of 23 Chapel Road would not be incongruous or unduly intrusive.
13. For these reasons, I conclude on this main issue that the proposed development would respect its setting, and would not cause harm to the character or appearance of the area. I therefore find no conflict with Policies CP7, DBE1 or DBE3 of the LP. Broadly, these policies together require development that is sympathetic to its context and which protects and enhances the existing urban fabric where this provides for high quality in design and the local environment. In this regard, these policies accord with the National Planning Policy Framework (the Framework) which seeks well designed places which are sympathetic to local character and the surrounding built environment.

#### *Living Conditions*

14. The neighbouring dwelling at 25 Chapel Road has a number of clear-glazed windows within its side facing towards the appeal site at ground and first floor levels. From the evidence before me, these include windows serving a dining room and a kitchen, as well as the sole window serving a bedroom.
15. These windows to the side of 25 Chapel Road are positioned towards the rear of the dwelling and within the single storey projection to its rear. As a result, they are for the most part set behind the extension to the front part of 23 Chapel Road, with greater separation to the remainder of the dwelling as it is set away from the common boundary and these windows. Although the proposed dwelling would be set a similar distance from 25 Chapel Road as the existing extension, it would project significantly beyond the rear elevation of this neighbour and so would bring development much closer to the windows towards its rear.
16. Notwithstanding the spacing that would remain between the development and 25 Chapel Road, the height and bulk of the proposed dwelling in such close proximity would significantly restrict the outlook available from the windows to the side of this neighbour, dominating views and reducing the amount of daylight received. The existing screening present to the boundary would do little to mitigate this.

17. I note the appellant's suggestion that the proposal would offer improved outlook for 25 Chapel Road towards the front than would be the case under proposals from 2012 that have been granted permission<sup>1</sup> on the site previously. However, I do not have full details of that scheme before me or the relevant considerations that applied and so cannot make a direct comparison. In any case, I have determined the appeal on its own merits.
18. There is a detached outbuilding at the rear of 25 Chapel Road which is set close to the boundary of the appeal site. This provides for separation between the development and the main garden area of the neighbouring dwelling and in view of the relationship I am satisfied that the development would not be overbearing or otherwise detract from the use of this garden. It would also be possible to require via a condition the use of obscure glazing to windows to the side of the proposed dwelling which would avoid overlooking to 25 Chapel Road. Given the scale and layout of the development and spacing provided, I am also satisfied that the proposal would not cause harm to the living conditions of the occupiers of dwellings to the rear of the site or of 21 Chapel Road including through overlooking or loss of light.
19. Nevertheless, these factors do not outweigh the unacceptable harm that the proposed dwelling would cause to the living conditions of the occupiers of 25 Chapel Road through loss of light and outlook and an overbearing effect. I therefore conclude on this main issue that the proposal would conflict with Policy DBE9 of the LP which requires that development does not result in an excessive loss of amenity for neighbouring properties.

#### *Epping Forest SAC*

20. The Epping Forest SAC is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Regulations impose a duty on the competent authority 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).
21. This responsibility would fall to me as the competent authority, but as I am dismissing the appeal on other grounds, it is not necessary for me to consider the proposal within the framework of an AA. However, the effect of the development on the SAC formed a reason for the Council's refusal of permission, and I have therefore considered this matter as part of my decision.
22. The information before me indicates that the SAC is vulnerable to pressure from increased levels of visitors using the Forest for recreation, as well as from air pollution generated by increased motor vehicle use affecting the health of habitats and flora species. The proposal would result in an additional dwelling on the site. The site is located within the zone of influence within which the evidence points to an impact on the SAC through recreational use. The development would therefore be likely to increase pressures on the SAC from people visiting for walks or other recreational pursuits, as well as air quality impacts through vehicular movements associated with the additional dwelling.

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<sup>1</sup> Application reference EPF/2270/12

23. I acknowledge that the scale of development means that any such increase may be small. Nevertheless, in exercising my duty to protect the European Site, I must adopt a precautionary approach. From the evidence before me I cannot be certain that there would not be a significant effect on the integrity of the SAC as a result of this proposal through an increase in recreational activity as well as increased levels of air pollution, either alone or in combination with other plans and projects.
24. I note that there is currently no agreed approach to mitigate or avoid harm to the SAC through air quality impacts. Although the appellant suggests that a condition or planning obligation could be used to address harmful impacts of pollution during construction, any such measures would not effectively mitigate the impacts of the proposal arising through the increased pressure on the SAC from additional vehicular movements.
25. In addition, although the effect of increased visitor pressure is not specifically highlighted within the Council's reason for refusal, it is clear from the Council's report on the application that mitigation would be required to address this impact. The Council have an adopted 'Interim Approach to Managing Recreational Pressure on the Epping Forest Special Area of Conservation' which identifies a requirement for financial contributions contribution towards strategic access and management measures in the SAC, an approach which is agreed between the Council and Natural England to mitigate the effects of increased levels of visitors. There is no evidence before me which demonstrates that the necessary mitigation in line with this approach would be secured, and I cannot therefore be satisfied that there would not also be an effect on the SAC through recreational impacts.
26. While I am in any case dismissing the appeal on other grounds, in the absence of suitable mitigation, I conclude that the proposed development would lead to a likely significant adverse effect on the integrity of the SAC. This would fail to comply with the requirements of the Regulations and objectives for protection of biodiversity and conservation of the natural environment within the Framework. There would also be conflict with policies CP1 and CP6 of the LP which require consideration of the impact of development on the environment.

### **Other Matters and Planning Balance**

27. In support of the appeal, my attention has been drawn to examples of other developments that have been permitted in the area. However, from the information before me, none are directly comparable to the current proposal in terms of their relationship with neighbouring sites and I do not have details of the policy circumstances or relevant considerations which were applicable to those developments. I have in any case reached my own conclusions on the appeal proposal on the basis of the evidence before me.
28. I have had regard to matters raised by third parties, including comments relating to provision for parking, loss of garden habitat, the proximity of the development to a watercourse and the effect of the development on trees and on local services. However, none of the matters raised either collectively or individually alter my conclusions on the main issues.
29. The Council indicate that they are unable to demonstrate a 5 year supply of housing. This 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. In this case, I have found that policies within the Framework relating to habitat sites indicate clearly that development should be restricted in this case. Accordingly, and with regard to paragraph 11(d) (ii) of the Framework, the presumption in favour of sustainable development does not apply.

30. Nevertheless, I note that the proposal would contribute an additional dwelling and that it would make effective use of the previously developed site within Epping, and that these are aspects which are strongly supported by the Framework. I note the existing extension to the dwelling, but in my view this does not detract to any significant degree from the character or appearance of the area. While I have found that the proposed development would not cause harm to the character or appearance of the area, it would not offer a clear enhancement so as to weigh significantly in favour of the proposal.
31. The appellant has also stated that the existing extension is suffering from its poor construction and that the proposal is to improve the health and living conditions of his family, but no detail has been provided on these factors to illustrate needs that would be met by the development, limiting the weight I afford to this factor. I also note representations from an interested party in support of the proposal and commenting that it would provide parking and enhance the character of the road, but the absence of an objection from the Town Council is a neutral factor in the planning balance.
32. Drawing these matters together, I find that even taken together, the benefits of the proposal are insufficient to outweigh the harm that I have identified in relation to the main issues and the resulting conflict with the development plan as a whole.

### **Conclusion**

33. For the reasons given above, I conclude that the appeal should be dismissed.

*J Bowyer*

INSPECTOR