
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: 20th February 2020

Appeal Ref: APP/J1535/W/19/3237700
2 Danbury Road, Loughton, Essex IG10 3AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Paul Prior against Epping Forest District Council.
 - The application Ref EPF/0758/19, is dated 22 March 2019.
 - The development proposed is conversion of existing property to 3 flats.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Paul Prior against Epping Forest District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council did not determine the application within the prescribed period. Following submission of the appeal, the Council prepared an appeal statement. This advises that had the Council determined the application, planning permission would have been refused. Putative reasons for refusal are given and identify concerns over the effect of the proposal on the integrity of the Epping Forest Special Area of Conservation (SAC).
4. A second area of concern relates to harm to the living conditions of the occupiers of the proposed development. The suggested reason for refusal refers to a loss of privacy for occupiers, but the statement also highlights concern over the provision of internal space and access to the proposed external space for future occupiers. As the appellant has had an opportunity to comment on the Council's evidence, I am satisfied that prejudice would not be caused by my taking this into account.
5. The main parties refer to planning permission which has previously been given for the demolition of a single storey extension to the side of 2 Danbury Road and construction of 2 one-bedroom flats and one studio¹, and I saw on my visit that construction works are ongoing, ostensibly to implement these proposals. The site of this development is not included within the red-line boundary of the

¹ Application reference EPF/2707.17

appeal site, although it is identified as land within the ownership of the appellant by its inclusion within a blue-line boundary.

6. As part of the appeal, the appellant has submitted an amended site location plan which would extend the red-line boundary of the appeal site to include the site of the ongoing development to the side of 2 Danbury Road. This would be a significant change to the appeal site boundary and is material to an aspect of dispute in this appeal. Were I to take it into account, I consider that prejudice could occur to interested parties who have not had an opportunity to comment on the amended plan. I have therefore determined the appeal on the basis of the plans and the red-line boundary originally submitted with the application.

Main Issues

7. The main issues in this appeal are:
 - i) whether or not the proposed development would provide acceptable living conditions for occupiers of the proposed dwellings; and
 - ii) the effect of the proposed development on the integrity of the Epping Forest SAC.

Reasons

Living Conditions

8. The proposed development would provide 3 flats in place of the existing dwelling at 2 Danbury Road. The submitted plans indicate that the single storey extension under construction to the rear of the dwelling would be demolished, and communal amenity space would be provided to the rear of the building.
9. The Council have suggested that 2 of the proposed flats would not meet standards for internal space set out within the Nationally Described Space Standards (NDSS). However, I have not been referred to any requirement for adherence to these standards within the adopted development plan. Although I note that there is reference to use of the NDSS within the emerging Local Plan Submission Version 2017 (LPSV), this is not adopted and is subject to change. Moreover, I have not been provided with details of whether there are unresolved objections and this limits the weight I afford the LPSV.
10. In this context, although the proposed flats would not necessarily be spacious, given the shape and layout of the building, the flats would nevertheless provide a usable and functional area for future occupiers. In my view, the flats would therefore provide comfortable living accommodation and would not result in a cramped internal environment for future occupiers in accordance with the aims of the Framework and adopted and emerging development plan policies.
11. Turning to the provision of external space, the Council indicate that provision of 77sqm amenity space as is shown to the rear of the building would satisfy the requirement for 25sqm amenity space per flat referred to in the supporting text to Policy DBE8 of the Local Plan with Alterations 2008 (LP). I note however that third parties have raised concerns that the area of the proposed amenity space has been overstated.
12. Nevertheless, the LP recognises that there will be circumstances where the standards may be relaxed. The examples of circumstances given are not provided as a closed list, and in this case I am satisfied that the size and layout of the space shown would provide adequate area for activities such as sitting

out, children's play and drying washing. Accordingly, a modest shortfall in area of the scale suggested by third parties would not have a meaningful effect on the use or enjoyment of the proposed amenity space.

13. However, while there is a door to the rear of the proposed ground floor flat providing access onto this space, there is no access shown for future occupiers of the flats at the first and second floors within the appeal site. I note that the submitted plans illustrate that the flats would be accessed internally via the adjacent development, but I do not have full details of the adjoining layout before me and this is outside of the appeal site boundary. Accordingly, it is not clear how access would be provided or maintained for occupiers of the proposed development to external space within the site, and I cannot be sure that there would be easy access to this space which is a requirement of LP Policy DBE8.
14. The submitted plans do not illustrate boundary treatment around the proposed amenity space to distinguish it from communal space serving the adjacent development. Although the amenity space extends up to the rear elevation of the proposed ground floor flat, this is not an unusual situation for flatted developments. I see no reason that it would not be possible to provide suitable levels of privacy for future occupiers of this flat through implementation of a suitable landscaping scheme. Were I minded to allow the appeal, this is a matter that could be addressed by a condition.
15. Drawing these matters together, while I have found that the provision of internal space and privacy for future occupiers would be adequate, it has not been demonstrated that future occupiers of the flats at first and second floor level would have suitable access to external amenity space. For this reason, I conclude that there would be unacceptable harm to the living conditions of the occupiers of these flats and there would be conflict with LP Policy DBE8. The Council have also referred to LP Policy DBE9, but this relates to the living conditions of occupiers of neighbouring properties and seems to me to be of more limited relevance here.

Epping Forest Special Area of Conservation

16. 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).
17. While this responsibility would fall to me as the competent authority, I am dismissing the appeal on other grounds and so it is not necessary for me to consider the development within the framework of an AA. However, the Council have advised that the effect of the development on the SAC would have formed reasons for the refusal of permission, and I have therefore considered this matter as part of my decision.
18. 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). The conservation objectives of the SAC are to ensure

that the integrity of the site is maintained or restored and that the site contributes 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.

19. From the information before me, 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 a net gain of 2 dwellings. The site is located within 3km of the SAC and is therefore within the zone where 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 through impacts on air quality from vehicular movements associated with the additional dwellings.
20. I acknowledge that the scale of development means that any such increases in recreational activity and air pollution 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 adverse effect on the flora and fauna of the SAC and its overall integrity as a result of this proposal, either alone or in combination with other plans and projects.
21. 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 towards strategic access and management measures in the SAC, an approach agreed between the Council and Natural England to mitigate the effects of increased levels of visitors. Although the appellant has indicated a willingness to enter into a planning obligation to secure the necessary mitigation under this approach, there is no completed obligation before me. In the absence of evidence to demonstrate that necessary mitigation would be secured and effective, I cannot be satisfied that there would not be an effect on the SAC through recreational impacts. In addition, I note that there is currently no agreed approach to mitigate or avoid harm to the SAC through air quality impacts.
22. While I am in any case dismissing the appeal on other grounds, in the absence of appropriate mitigation, I can only conclude that the proposed development would lead to a likely significant adverse effect on the integrity of the Epping Forest SAC. This would fail to comply with the requirements of the Regulations, and the objectives of the Framework to secure the protection of biodiversity and conservation of the natural environment. There would also be conflict with policies CP1 and CP6 of the LP which require consideration of the impacts of development on the environment.

Conclusion

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

J Bowyer

INSPECTOR