



---

## Appeal Decision

Site visit made on 18 May 2020

**by M Chalk BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 June 2020**

---

**Appeal Ref: APP/J1535/W/20/3246315**

**Junction of Potters Close and York Hill, Loughton IG10 1JA**

- 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 Gaffney against the decision of Epping Forest District Council.
  - The application Ref EPF/1635/19, dated 26 June 2019, was refused by notice dated 23 August 2019.
  - The development proposed is “erection of a detached x 2 no. bedroom cottage”.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have taken the description of development from the appeal form as I consider that it is the most accurate description of the development proposed.
3. The appellant submitted amended plans with the appeal with the intent of addressing the Council’s third and fourth reasons for refusal, which relate to highway safety and the provision of off-street parking. The amended plans include significant alterations to the site access and parking arrangements.
4. I have considered whether the amended plans should be acceptable, taking account of the principle established in *Wheatcroft*<sup>1</sup>. In this instance the revised proposals would materially alter the nature of the scheme. I therefore conclude that the interests of interested parties would be prejudiced if I were to determine this appeal on the basis of the amended plans. Accordingly, I have determined this appeal on the basis of the original plans.
5. Both parties have referred in their submissions to the emerging Epping Forest District Local Plan, which has been subject to initial examination. The examining Inspector has identified modifications considered necessary before the emerging Plan can be adopted. Accordingly, I consider that the Plan is some way from adoption and I have therefore given its policies limited weight in determining this appeal.

---

<sup>1</sup> *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

## Main Issues

6. The main issues are:

- Whether the development proposed would preserve or enhance the character or appearance of the York Hill Conservation Area,
- The effect of the development proposed on the living conditions of neighbouring occupiers, with specific regard to the occupiers of 98 York Hill,
- The effect of the development proposed on highway safety, with particular regard to the provision of visibility splays,
- Whether the development proposed would make sufficient provision for off-street parking,
- The effect of the development proposed on the Epping Forest Special Area for Conservation

## Reasons

### *York Hill Conservation Area*

7. The appeal site falls within the York Hill Conservation Area (the CA). Paragraph 193 of the National Planning Policy Framework (the Framework) sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The Framework defines significance as being archaeological, architectural, artistic or historic.
8. During my site visit I saw that the street scene in the vicinity of the appeal site comprised a range of properties of varied character that contribute to the overall architectural interest of the CA. This character is complemented by open greens and well-established trees on both public and private land. The appeal site is host to established trees that are a prominent part of the street scene in both Potters Close and York Hill. I also saw during my visit that the tallest of these trees are visible for some distance along York Hill. As a group they make a significant contribution to the overall pleasant character of the area both in the immediate vicinity of the appeal site on both streets and from longer distances along York Hill and together with trees on the other side of the junction they create a tree-lined entrance into Potters Close.
9. The trees on the appeal site are protected by virtue of lying within the CA. Twenty of the twenty-four individual trees on the site would be removed as part of the development proposed. The arboricultural report provided by the appellant concludes that thirteen of the trees are in such poor condition that any existing value will be lost in the next ten years and they should, for reasons of sound arboricultural management, be removed. However, the appeal proposal would involve the loss of more trees from the site than recommended. While the tallest of the trees would be retained, and some new planting is proposed, the loss of so many trees from the site to accommodate the house, parking area and garden would result in significant harm to its character and appearance and the contribution that it makes to the wider CA, both through the loss of trees and the introduction of built form and the subsequent urbanising effect through the loss of green space on this prominent corner site.

10. The appeal site is a corner plot, and the development proposed would be visible both in York Hill and Potters Close. The proposed house would be two storeys in height and, while set back from York Hill behind retained trees, would still be visible on the site. Within the context of the wider street scene I consider that the house would appear as an appropriately scaled development on the plot that would not detract from its general residential character. The development proposed would benefit from replacement planting and the retention of some of the existing trees on the site, which I am satisfied could be secured by an appropriately worded condition, were I minded to allow the appeal.
11. The appellant argues that the site is privately owned and should not be assessed in the same way as public green space. However, the site and the trees on it make an important contribution to the pleasant character of the Conservation Area, and this contribution would be significantly diminished as a result of the development proposed.
12. As the appeal proposal would fail to preserve or enhance the character or appearance of the CA, it is necessary to determine whether this amounts to substantial or less than substantial harm. Having regard to paragraph 194 of the Framework, the harm to the character and appearance of the CA would be experienced primarily in the immediate vicinity of the site, resulting from the loss of the great majority of the trees on the site, although the largest trees would be retained with some replacement planting proposed. The harm to the CA would therefore be less than substantial, when weighed against the significance of the CA as a whole.
13. I recognise that the development would deliver an additional dwellinghouse. There would be modest ongoing benefits for local services and facilities from its occupation. There would be also temporary economic benefits arising from the construction of the development proposed. I have accorded these benefits some weight in determining this appeal, but I am required to give great weight to the conservation of the character and appearance of the CA, in accordance with paragraph 193 of the Framework, and I do not consider that the public benefits of the appeal proposal would outweigh the harm.
14. Having regard to all the above considerations I accordingly conclude that the appeal proposal would fail to preserve or enhance the character or appearance of the CA. The development would therefore conflict with the requirements of Policies DBE1, DBE2, HC6 and LL10 of the Epping Forest District Adopted Local Plan January 1998 (the LP) which amongst other things state that planning permission will not be granted for any development, or consent for works to trees, which could be detrimental to the character, appearance or setting of a CA.

#### *Living Conditions*

15. The appeal site is at a higher ground level than the nearest neighbouring property, No 98 York Hill, which I saw on my site visit has windows facing the shared boundary. The proposed house would be set off the boundary, and at its highest point would present a two-storey gable wall towards No 98. While the appearance of the wall would be broken up by a window in this elevation and the house would be partly screened by the retained hedgerow on the boundary, I consider that the proposed house would be a dominant and overbearing feature when viewed from the windows of No 98, or from within the garden along the shared boundary.

16. The development proposed would not cause an unacceptable loss of light to the occupiers of No 98 due to the separation between and orientation of the existing and proposed houses. Were I minded to allow the appeal, I am satisfied that obscure glazing to the first-floor window facing No 98 could be secured by a suitably-worded condition to prevent undue overlooking and loss of privacy. As it would be a secondary window then the living conditions of future occupiers would not suffer unacceptable harm from this. I also consider that the proposed patio area and access from Potters Close would not cause overlooking or loss of privacy, subject to securing an appropriate boundary treatment, which could also be controlled by condition.
17. Having considered these matters I conclude that overall the development proposed would have an unacceptably harmful effect on the living conditions of the occupiers of No 98 York Hill. It would therefore conflict with the criteria of Policy DBE9 of the LP which requires that new development not result in an excessive loss of amenity for neighbouring properties.

#### *Highway Safety*

18. The plans as originally seen by the Council include a vehicular access onto York Hill. This access would not provide visibility splays of 2.4 by 43 metres. Essex County Council, in their capacity as highway authority, have stated that this lack of visibility would result in an unacceptable degree of hazard to all road users to the detriment of highway safety.
19. The appellant argues that no other properties in York Hill have visibility splays of these dimensions, and that traffic moves slowly on York Hill to accommodate this lack of visibility. They suggest that visibility splays of the dimensions sought are therefore not necessary. However, I have no evidence before me to show when other accesses onto York Hill were created, and they may predate current visibility standards. In any case, the existence of other substandard accesses does not justify the creation of a new access that would fail to provide acceptable visibility.
20. I therefore find that the development would have an unacceptable effect on highway safety and would conflict with Policy ST4 of the LP, which amongst other criteria requires that new development not be detrimental to highway safety.

#### *Parking*

21. The plans originally submitted to the Council showed two parking bays, both below the Essex County Council standard size. The appellant states that bays of the larger size can be accommodated within the site, but no evidence has been provided with the appeal to show how or where these could be provided in the layout as originally seen by the Council.
22. I have considered whether this matter could be satisfactorily addressed by a condition, were I minded to allow the appeal. However, both parking bays shown on the original plan are close to established trees. In the absence of additional information to show that the larger parking bays would not compromise the roots of these trees, and given the significance of the trees to the character and appearance of the CA, I am not satisfied that this matter could be addressed by condition.

23. Accordingly, the appeal proposal fails to make sufficient provision for off-street parking. It therefore conflicts with Policy ST6 of the LP, which requires all development proposals to provide on-street parking in accordance with the adopted standards.

*Epping Forest Special Area for Conservation*

24. The Epping Forest Special Area for Conservation (the EFSAC) is designated under the Conservation of Habitats and Species Regulations 2017 (as amended) due to the presence of heaths and heathlands, amongst other qualifying features. It is potentially vulnerable to increased traffic and visitor numbers, which may result from new residential development such as the appeal proposal.
25. No substantive evidence or appropriate assessment (AA) has been submitted demonstrating that the development proposed would not harm the integrity of the EFSAC. Were I minded to allow the appeal it would have fallen to me to carry out the AA. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further

*Other Matters*

26. The appellant has drawn my attention to a new dwelling for which planning permission has been granted on Woodbury Hill. However, I do not have the full details of that development, including its siting, visibility within the CA or the circumstances of its being granted planning permission. I have therefore only given it limited weight in my determination of this appeal.
27. I note third party references to a covenant relating to the appeal site. However, any such covenant that may exist would be a private legal matter, and not a planning matter that would be an issue for this appeal.
28. References to other policies by parties have been noted. However, I consider that the policies I have cited in this decision to be the most relevant to the determination of this appeal.

**Conclusion**

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

*M Chalk*

INSPECTOR