
Appeal Decision

Hearing Held on 8 and 9 July 2020

Site visit made on 9 July 2020

by P W Clark MA(Oxon) MA(TRP) MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 7 August 2020

Appeal Ref: APP/J1535/W/19/3239502

Old Epping Laundry Site, Bower Hill, Epping CM16 7AD

- 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 Phil Deeley of Troy Homes against the decision of Epping Forest District Council.
 - The application Ref EPF/3174/18, dated 23 November 2018, was refused by notice dated 30 April 2019.
 - The development proposed is demolition of existing buildings and erection of 58 residential units split between four blocks, along with internal landscaping and associated car and cycle parking.
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Decision

1. The appeal is dismissed.

Procedural matters

2. In addition to the Old Epping Laundry, the appeal site also includes numbers 26 and 28 Bower Hill.
3. The proposal was amended during its consideration by Epping Forest District Council. The description above reflects the scheme as amended. With the appeal comes a request to entertain a revised set of drawings dated April 2020 seeking to address a number of detailed points in the Council's reasons for refusal. The revised drawings were given the same level of publicity for public comment as were those the subject of the original application and so, nobody would be prejudiced by my decision being based on those revised drawings.
4. There are discrepancies between the site boundary shown on the application plans and that as seen on site. The appellant confirms that the application drawings are in error, caused by a small piece of land appearing on a separate title deed. With the concurrence of the Council, I have based my decision on a corrected site boundary plan, since it does not appear that anybody would be prejudiced by the correction of this error.

Main Issues

5. From what I have read in the submitted papers, it appears that the main parties are now in agreement on affordable housing. I have no reason to disagree with the accommodation they have reached which is enshrined in a submitted s106 planning obligation.

6. That leaves six main issues, four of which have several elements. They are the effect of the proposal on
- the character and appearance of the area in terms of
 - intensity of development,
 - type of dwelling,
 - height,
 - architectural form and
 - materials.
 - the quality of the public realm within the scheme in terms of
 - the efficiency of layout and
 - the nature of landscaping
 - the demand for, and supply of car parking and sustainable and less sustainable modes of transport
 - the living conditions of potential future occupants of the development in terms of
 - sunlight
 - daylight
 - privacy
 - amenity space
 - and protection from noise.
 - The living conditions of neighbours in terms of
 - privacy
 - and sunlight and daylight
 - The integrity of the Epping Forest Special Area of Conservation and Site of Special Scientific Interest
7. Although the parties agree that the council cannot demonstrate a five year supply of deliverable housing sites, there is an issue about the size of the shortfall.

Reasons

Character and appearance

(i) Intensity of development

8. The density of the proposal would be 123 dwellings per hectare, which the Council calculates as 463 habitable rooms per hectare, the developer as 342 (the difference is whether a kitchen/dining living room counts as one room or two). It would be considerably more intensely developed than the streets in the surrounding area, of which Bower Vale is the most intense (reckoned by the Council to be 83 dwellings per hectare or 254 habitable rooms per hectare). The surrounding average is much lower, mostly below 50 dwellings per hectare. Even relatively recent development, such as Theydon Bower, with which the appellant sought comparison, is only about 55 dwellings per hectare.
9. The proposal would therefore be developed at about two and a half times as densely as much of the surrounding area, half as densely again as even Bower Vale, its immediate neighbour. Yet, that level of intensity is what the Council is seeking in its emerging local plan in which the site is allocated for development at 128 dwellings per hectare, a requirement which has not been challenged by the inspector examining the soundness of the plan. By way of comparison, it is a level of intensity which is about one-third the level of intensity sought in the most highly accessible parts of the area covered by the London Plan.

10. So, it would not be a city-centre level of intensity but it would be a considerable departure from the levels of intensity familiar to Epping. For the Council, the question is not the principle of this degree of intensity but how it is achieved which determines the acceptability of the scheme overall. It is to successive aspects of that consideration to which I now turn.

(ii) Type of dwelling

11. Where the proposal interfaces with the surrounding area, at its frontages on Bower Hill and in Bower Vale, houses are proposed. These would represent about ten percent of the development. The rest of the development would be flats. In contrast, although there are flats in the surrounding area, such as Coniston Court, Theydon Bower and Hill Crest, houses and bungalows predominate.
12. This hearing took place during an epidemic. Views were expressed that this highlighted the inappropriateness of flats with limited space in close proximity. But there is as yet no evidence of a change in effective market demand, whatever surveys may show of people's untrammelled aspirations. It is not contested that the dwellings proposed would meet national space standards and so would be larger than most existing apartments in Epping.
13. Both main parties accept that, at the density sought for this site by the emerging local plan, a predominance of flatted development is inevitable. For both, it is not a question of the principle of flatted development which is at issue but a question of how it would be brought about in terms of matters such as form, massing, car parking provision, landscaping and the relationship with the topography which determine the acceptability of the scheme overall.

(iii) Height

14. Where the proposal interfaces with the surrounding area, at its frontages on Bower Hill and Bower Vale, the buildings would be two and three storeys high. In general terms this would not be out of kilter with their neighbours (although residents of Bower Vale would argue that even the detailed differences in height and alignment proposed compared with the rest of their street would make the development unacceptable).
15. Behind these frontages, two apartment blocks would be partly three and partly four storeys in height. A third apartment block, of greater extent than either of the other two, would be partly four storeys in height but mostly five storeys.
16. By contrast, a considerable extent of surrounding development in Bower Hill has the appearance of bungalows (although in fact, most are two storeys high, having rooms in the roofspace). That is not to say that taller buildings are absent (indeed, there is a terrace of three storey buildings on Bower Hill north of its junction with Bower Vale of which the end unit, on the corner of Bower Hill and Bower Vale has a loft conversion adding an additional floor at its rear to make a four storey building) but the overall impression of the area is that buildings mostly hug the ground. By contrast, the impression which this development would give is that it would mostly rise above surrounding development.
17. Having noted that, I accept the appellant's arguments that, to an extent, larger buildings deeper into the site would be masked by lower buildings in front of them and that the tallest building would be placed furthest away from the

public highway and from existing surrounding development, so the impact of greater height would be minimised. However the effect would be reduced because of changes in topography which result in the tallest building being positioned on the highest part of the site and there would be no smaller intervening buildings between the rear of houses in Bower Vale and the line of apartment buildings rising up into the site so that anybody using the access road into the development would be acutely aware of the differences in storey height between the development and its neighbours.

18. That tallest building, at five floors, would, in terms of numbers of storeys, be taller than any building in Epping hitherto. Height gives significance in townscape terms. Notwithstanding the appellant's observation that such a landmark building would be quite appropriately placed next to the railway line close to Epping station, I observe that the development does not provide any access by which to approach the station and so, in townscape terms, would present a misleading landmark, being placed in a cul-de-sac on the wrong side of the tracks. Nevertheless, having visited a number of representative viewpoints around the area, it appears that the development would not be greatly visible from many of them. I agree that, although visible, the development would be unlikely to breach the skyline of trees along the railway line and that there are equally prominent industrial sheds high on the hillside to the south of the development, so any harm would be limited.

(iv) *Architectural form*

19. In the discussions on height, the appellant's architect observed that the highest points of neighbouring buildings with pitched roofs would be no less high than the highest point of a flat roofed building on the appeal site with an additional storey. That assertion is contradicted by section C-C on drawing number MP_15 revision P3 which shows the second floor parapet of the three storey part of block C to be about 3m higher than the ridge height of numbers 11-13 Bower Vale. Moreover, the ridge which forms the highest part of a pitched roof building is usually further away from an observer than the eaves which represent the highest point of a flat roofed building and so, because of the effects of perspective, the closer eaves of a flat-roofed building appear to an observer to be higher than a more distant ridge of a pitched-roof building.
20. In the present appeal case, where the proposal would interface with the surrounding area, pitched roofed terraced houses are proposed but the apartment blocks within the body of the site would have flat roofs. Although there are existing flat-roofed developments within the neighbourhood (such as Bower Court, a little way up on the opposite side of Bower Hill), the appellant's Design and Access statement records that immediately neighbouring dwellings have pitched or mansarded roofs. The contrast of character is therefore obvious.

(v) *Materials*

21. The materials proposed are specified on the submitted drawings. The terrace in Bower Vale and the pair of semi-detached houses on Bower Hill would be largely constructed of red brick. Much traditional building in Epping is constructed of a locally made red brick and so, although a perfect match may not now be possible, the choice indicates a respect for context.

22. In contrast, the three apartment buildings would be largely constructed of London stock brick, with extensive areas of dark brown metal cladding. As the appellant's architect readily acknowledged, the inspiration for this choice is the industrial estate to the south of the site, where, although a reddish brick is generally used, the upper parts of several buildings abutting the site are clad in brown coloured metal.
23. Whilst recognising that the context of the site includes both residential and commercial uses, the choice of an industrially inspired material for the apartment blocks helps to establish a character which is alien to that of existing immediately surrounding residential property. Different uses are expected to appear different and to give rise to different characters and so a concept that this site should form an aesthetic transition between surrounding residential development and the neighbouring industrial estate is misplaced.

(vi) *Conclusions on character and appearance*

24. It is inevitable that, in trying to put forward a scheme which complies with the aspirations of the emerging plan for a high density of development, a degree of difference of character will ensue. Consequently, it is not surprising that I find that the proposal would be out of character with its surroundings in terms of the intensity of development; after all, that is what the Council is seeking to bring about. Flats, as a dwelling type, exist in the area but do not generally predominate. They would predominate, in this scheme, and that would make it uncharacteristic. Likewise, taller buildings, up to four storeys, exist in the immediate vicinity of the site but do not generally predominate. They would predominate in this scheme and that would make it uncharacteristic. Flat roofs also exist in the immediate surroundings but they do not generally predominate. They would predominate in this scheme and that would make it uncharacteristic. Metal cladding exists on industrial premises adjacent to the site. Its use on residential apartments would emphasise their alien character.
25. There are local precedents for each of these characteristics of the development and so, it would be hard to conclude that each, individually, would give rise to an overall finding that the development would be out of character with the neighbourhood but collectively the outcome justifies a different conclusion.
26. I therefore conclude that this proposal would be inconsistent with and unsympathetic to the existing character of surrounding residential development. Although it would seek to achieve the fullest use of an existing urban area in accordance with the first part of policy CP7 of the adopted local plan, it would be an unsympathetic change, not compatible with the character of the area as sought by later parts of that policy. It would not respect the scale, proportion, siting, massing, height, orientation, roof line and detailing of neighbouring development nor would its external materials be sympathetic in colour and texture to a vernacular range and so it would be contrary to adopted local plan policy DBE1. The third policy referenced in the council's second reason for refusal is concerned with the nature of the public realm, discussed in the next section of this decision.
27. The conclusion reached in this section is not necessarily determinative of the appeal. It is but one consideration amongst many. The proposal would be in conflict with two policies of the adopted plan but the adverse effects of that are relatively localised as I found when visiting the various viewpoints suggested by the Council from which its impact should be assessed. The local area does

not have a special designation which would make the consideration of character and appearance one of overriding significance. I therefore now turn to those other considerations.

The quality of the public realm

(i) Efficiency of layout

28. The appellant has sought to propose an efficient layout of the site, as paragraph 7.17 of the November 2018 Planning Statement makes clear. That accords with the provisions of adopted local plan policy CP7 and emerging plan SP3. Indeed, it is likely that only an efficient layout could reconcile the intensity of development which the Council seeks for the site with the acceptability of the development in other ways.
29. Yet the achievement of an efficient layout is hampered by the long, thin configuration of the site. The larger extent of site area is located at a distance from Bower Hill. It follows that, if service or emergency vehicles or car parking cannot be restricted to the parts of the site close to Bower Hill, then a long access road, consuming a considerable proportion of the site area is inevitable. The layout proposed places car parking at the western and southern extremities of the site and makes provision for large service and emergency vehicles to penetrate close to the front entrances of each building. The access proposed is consequently lengthy.
30. Moreover, because of the constraints of the site's narrow width, the access road would be single-sided, which is inherently less efficient than would be a roadway which gives access to development or parking on both sides. Compounding the effect is the fact that the access way serves a single purpose, that of the passage of vehicles and pedestrians; only a small extent doubles up as manoeuvring space for car parking directly accessed from it. None of the apartment buildings access directly onto it.
31. The use of undercroft parking for blocks A, B and C would be an efficient use of land. By contrast, a separate car parking area to the rear of block D on the southern edge of the site is provided with its own additional space for manoeuvring and its own separate access way, both of which consume scarce land area and so reduce the efficiency of the layout.
32. The appellant's transport expert observed that car parking directly accessed off and manoeuvring on the access way would have safety concerns. But, as the appellant's architect confirmed, the intent is to provide the access way as a shared surface, encouraging pedestrian and cycle use through low vehicle speeds. Those are normally achieved by the use of overt features, such as indirect alignments and shared purposes, which drivers recognise as hazards and so slow down. In this case, other than a raised traffic calming feature close to the junction with Bower Hill and the use of brick paviours as a surface material, the long straight, alignment of the single purpose access way does not suggest that, in practice, it would be respected as a slow speed space to be shared with cyclists, pedestrians or playing children.

(ii) Landscaping

33. A consequence of the inefficiencies of the layout is that much of the external environment would be a hard surface. Only between the pair of houses proposed on Bower Hill and the first apartment block behind would the majority

of the space be largely soft landscaping. Even there, it would be reduced by the location of a bin holding area for block D necessitated by the choice of a bin storage area for that block being located on its southern elevation too far away to be collected from the access way.

34. The provision of a service yard to block D and its access would mean that about half of the sizeable area between blocks C and D would be paved over (but the soft area would be slightly larger than shown on the submitted drawings as a result of the boundary error at this point). Between blocks A, B and C, where the majority of dwellings would be located, soft landscaping would be limited to two areas each about the size of a small domestic garden placed on either side of the entrance to undercroft parking and to two small slivers of land on either side of the terrace in Bower Vale.
35. Other amenity space for blocks A and B would be hard surfaced, on balconies or decks over car parking. The only other areas of soft landscaping would be in the form of a screen of trees along the north side of the access road and privacy planting closely around the ground floor flats of apartment blocks C and D.

(iii) Conclusions on public realm

36. I conclude that the public realm which would be provided by the development would be dominated by hard surfacing and its layout would give the impression of prioritising vehicular traffic over pedestrians. Consequently, it would not result in the kind of user-friendly multi-purpose public domain sought by adopted local plan policies DBE3 and DBE5 and which would be necessary to make such a highly intensive development successful.
37. The other adopted policies ST1 and DBE1 referred to in the Council's fourth reason for refusal are concerned with the location of development in places that encourage walking cycling and the use of public transport discussed in the next issue and with the character and appearance of new buildings, discussed in the previous issue. They are not relevant to this issue.

Transport and car parking

38. Fifty-four car parking spaces and one car club space would be provided for fifty-eight flats, a ratio of 0.93:1. Local residents consider that this would be insufficient, citing a 2016 Essex County Council report which reports average car ownership in Epping Forest District ranging between 1.12 and 1.66 cars per dwelling. But that figure is an average for the whole district whereas the site lies within the part of the district in the third lowest of four categories of car ownership, as one would expect from its location close to the Central Line station and the town centre. Moreover, it is known that car ownership rates for flats are less than for houses; as noted previously, only about ten percent of the development would be houses. It is also known that car ownership rates are reduced in affordable housing, which would comprise 27% of the number of dwellings proposed. It is also known that car ownership is reduced by about six cars for every car club space provided.
39. In the light of these considerations, the car parking provision proposed seems generous rather than an under-provision and so would be unlikely to lead to a displacement of demand onto surrounding local streets. The hearing was informed that it was the intention that parking spaces would be allocated,

rather than used in common, a management regime which results in a less efficient use of spaces provided. However, the developer proposes to make a financial contribution to the costs of setting up a controlled parking zone in surrounding streets, from which the addresses of dwellings in the development could be excluded from eligibility.

40. The Council is pressing for even less car parking to be provided, citing its emerging plan which provides for car-free housing where appropriate. However, national policy, set out in the National Planning Policy Framework (NPPF) paragraph 106 is that limitations on car parking should only be set where there is a clear and compelling justification for managing the local road network or for optimising the density of development.
41. The developer's architect accepted that car parking and amenity space represent the two factors which offer flexibility when the efficiency of layout is under pressure, which it is in this scheme, as noted earlier. But, with the exception of the parking and servicing court to the rear of block D, the car parking proposed is generally located in undercrofts, which are a relatively efficient form of provision.
42. The Council points out that reductions in air pollution from the use of cars are sought in order to reduce adverse effects on the Epping Forest Special Area of Conservation (an issue discussed further below). But the method by which reductions in adverse effects on the SAC are to be secured has yet to be agreed and may not necessarily involve reductions in car ownership and use so much as changes in their propulsion and fuel.
43. Balancing all the above considerations, I conclude that the quantity of parking proposed for this development is about right and that the effect of the proposal on the demand for and supply of car parking would be in balance.
44. A second consideration relating to the issue of transport and car parking is the matter of facilities for more sustainable transport modes. These are defined in the NPPF as any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling. Low and ultra low emission vehicles, car sharing and public transport.
45. The entrance to the site is immediately adjacent to a bus stop. Its removal to a safer position in relation to the new access proposed would be provided for by the planning obligation submitted with the appeal but would not materially affect the proximity of the site to public transport. The service at this stop is not particularly frequent but a much more frequent and comprehensive network of bus services is available at the Central Line station, which is within a walking distance of the site. The planning obligation also includes provision of a residential travel information pack for each dwelling including guidance and promotional material on the use of local public transport and travel vouchers for the use of the same. This appears to be a proportionate measure for promoting public transport.
46. A car club is to be provided with a parking space. This would be located near to the entrance to the site, where it would be visible to and convenient for all residents. The amended drawings submitted as part of the appeal show that all parking spaces would be provided with an electric vehicle charging point. Compliance with the drawings in the implementation of the scheme can be

required by condition. These appear to be proportionate measures for promoting low and ultra-low emission vehicles and car sharing.

47. Less satisfactory are the measures proposed to encourage cycling. Although an adequate number of cycle parking spaces would be provided for apartment blocks B, C and D, those for blocks B and D would be located as far away as could reasonably be from the stairs and lifts in each block and those for block D would require a circumnavigation of the block on each journey. Although this is an irksome detail rather than a matter of great significance in itself, it adds to criticisms of the layout of the scheme reported earlier.
48. With the exception of facilities for cycles, which would not comply with adopted local plan policy DBE5 which requires allowance for the convenient movement of cyclists within the development, I conclude that the effects of the proposal on the provision of sustainable transport would be acceptable. The development would be located in accordance with policies ST1 and DBE1 referred to in the Council's fourth reason for refusal which are concerned with the location of development in places that encourage walking, cycling and the use of public transport.

Living conditions of potential future occupants

(i) Sunlight and daylight

49. The Council submits no evidence to support its concerns relating to sunlight and daylight conditions within the development. Subsequent to the Council's decision on the application, the appellant has commissioned an assessment by one of the country's leading expert firms on the subject. This demonstrates that all of a representative sample of 95 habitable rooms comply with Building Research Establishment (BRE) guidelines for adequate daylight¹. Out of a representative sample of 35 living rooms tested for sunlight, only 19 met the guidelines but the test was carried out regardless of orientation whereas the guidelines are only intended to apply to rooms with a southerly orientation, so the findings represent a good outcome.
50. Apartment blocks B and C approach to within a metre or so of the southern boundary with windows to habitable rooms on all floors facing out onto that boundary. Adequate daylight to those rooms depends on light drawn from across the neighbouring land and so depends upon the adjacent site remaining in its current state of development.
51. The owner of the adjoining site expresses an intention to redevelop. That intention may or may not accord with the development plan and may or may not receive planning permission and may or may not then be implemented if permission is given. Whatever the uncertainties, it is clear that unless the appeal proposal is coordinated with proposals for the adjoining site, its development so close to the boundary with windows to habitable rooms relying

¹ The analysis excludes some kitchen areas forming part of a living room. BRE guidance recognises that BS8206-2 Code of Practice for daylighting recommends a minimum Average Daylight Factor for kitchens which is higher than that for living rooms. On the other hand, internal kitchens with no natural lighting at all do not offend the Building Regulations. BRE Guidance reconciles this dilemma with the advice that non-daylit kitchens should be avoided wherever possible but that if the layout means that a small internal galley-type kitchen is inevitable, it should be directly linked to a well-daylit living room. The appellant's analysis interprets this guidance (in common with other practitioners of my experience) as meaning that small internal galley-type kitchens should be treated as internal rooms for the purposes of daylight studies, even when connected to or forming part of otherwise well-lit living rooms.

for their natural light on land across the boundary remaining open would place a constraint on the potential development of the adjoining site.

52. Not only would this be contrary to government policy set out in section 11 of the NPPF, entitled Making effective use of land, but it cannot be presumed that the adjoining site would remain unchanged for the lifetime of the appeal proposal, if it were to be built. I therefore conclude that there can be no certainty that the dwellings concerned in this appeal proposal would continue to receive adequate daylight for the lifetime of the development. That would be contrary to adopted Local Plan policies CP7 and DBE9 which require the environmental quality of urban areas to be maintained and improved with loss of amenity not permitted.

(ii) Privacy

53. The council had concerns about overlooking from the balconies of the northernmost flats on the first and second floors of apartment block B to the rear of one of the four houses proposed to front onto Bower Vale at a distance of about 2m to the rear amenity space, 10 m or so to the rear living and bedroom windows but, in the most recently amended drawings, submitted in March 2020, the appellant proposes a solid full-height privacy screen to the flank of the balconies in question so that the problem would not arise.
54. In both blocks C and D, the bedroom of one flat in each block would be lit by two windows, one directly overlooking the private amenity space of an adjoining flat, the other facing directly on to the shared surface access road 1m away. The most recently amended drawings, submitted in March 2020, propose the use of obscured glass to the lower half of each window, offering privacy whilst maintaining occupants' clear view of the sky.
55. Both these features can be required by condition and so I conclude that the proposal would provide adequate privacy for its potential occupants. To that degree, it would comply with adopted local plan policy DBE9(ii) requiring no excessive loss of amenity by way of overlooking.

(iii) Amenity space

56. The quality of amenity space has already been discussed. Here, I am concerned with its quantity. The Council does not contest the appellant's figure of 1,371 sq m of usable community and private open space, about 23.6 sq m per dwelling. This would consist of 814 sq m of private open space, largely in the form of balconies, together with 558 sq m of communal open space (about 9.6 sq m per dwelling). The communal open space would comprise 86 sq m in two parcels each the size of a small domestic garden either side of the access to the basement parking of block C, 137 sq m on the podium over the parking area between blocks B and C, 212² sq m on the sloping ground between blocks C and D and 123 sq m of nature garden between block D and the rear of the two houses proposed fronting Bower Hill.
57. The Council's currently adopted local plan has no policy with a quantified requirement for open space provision but the version in existence before the alterations adopted in 2006 had a requirement of 25 sq m per flat and for houses, 20 sq m per habitable room, a total requirement of 1906 sq m for this

² In fact his figure would be higher as the site boundary in this area is corrected; the additional land would be amenity space.

appeal development. The currently extant Essex Design Guide, which is not a statutory development plan but represents good practice guidance, recommends 25 sq m per dwelling, or 1,450 sqm for the appeal proposal.

58. The proposal would therefore provide about 94.6% of the Essex Design Guide recommendation, or about 72% of the superseded and outdated earlier policy requirement. For such an intense development, this is a good result. With the exception of the two parcels divided by the entrance to the parking at block C, one of which would be overshadowed and would fail the BRE sunlight test, the four communal areas are of a reasonable position, size and shape to be usable, although the nature garden to the east of block D is somewhat inaccessible.
59. I conclude that the proposal would provide an adequate quantity of open space. It would therefore comply with adopted Local Plan policy LL11 which requires permission to be refused if landscaping would be inadequate, inappropriate or ineffective.

(iv) *Protection from noise*

60. Apartment block D is closely surrounded by potential noise sources on three and a half sides; parking bays and a service yard to the south, access roads to the north and west, more parking to the east. Yet the frequency of noise events would be very low so that the overall exposure to noise would be well within recommended limits in normally accepted guidance. The effect is probably more a visual and psychological perception of exposure to intermittent activity and the smell of vehicles in shared areas than an actually unacceptable noise environment.
61. To the west of the development, on an embankment, is London Underground's Central line, a source of frequent noise events late into the night. The uninterrupted combination of terrace block A and apartment block B would provide a noise barrier to protect the rest of the development and, indeed, odd-numbered properties in Bower Vale from this noise source, which is a benefit of the layout proposed.
62. But, there would be a number of flats on the western side of block B which would be fully exposed to noise, without the possibility of escape because they would be single-aspect properties. The findings of the appellant's noise surveys that the flats can be constructed with acoustic double glazing and acoustic ventilation which would provide adequate internal noise conditions and ventilation during the day without the need to open windows are not in dispute³. Their provision can be required by condition. It was explained during the hearing that this construction would also provide adequate conditions to moderate the effects of intermittent noises during the night.
63. The relevant British Standard on Planning and Noise advises that it is not necessarily appropriate to apply noise standards to small balconies, particularly where other, more tranquil amenity space would be available (as in the communal space on the protected side of this development). But, the balconies provided to these apartments are intended to contribute to the overall quantity of amenity space within the development which, as noted above, falls slightly short of Essex Design Guide recommendations, so it is important to ensure that every bit is usable.

³ Although openable windows would be installed to allow residents to act on their own preferences

64. The appellant's Technical Response 001 of April 2020, supplemented by a response to a question at the Hearing, intimates that an acoustically absorptive soffit above each balcony, together with the use of a solid balcony parapet would improve the acoustic environment of these exposed balconies to comply with commonly accepted noise standards. These could be required by condition.
65. With these conditions in place, I conclude that the development would be provided with acceptable noise conditions. The proposal would therefore comply with those parts of adopted Local Plan policies CP7 and DBE9(iv) which require the environmental quality of the urban area to be maintained and improved and which requires development not to result in an excessive loss of amenity through noise. However, for the reasons explained above, I am not convinced that apartment block D would comply with the part of Local Plan policy DBE9(iv) which requires development not to suffer an excessive loss of amenity through smell or disturbance.

(v) Conclusions on living conditions within the development

66. For such an intense development, the appeal proposal would perform well in terms of the living conditions of its potential residents. All dwellings would have adequate daylight and, as appropriate, sunlight. There would be adequate privacy. The quantity of open space is reasonable, although in places overshadowed, fragmented or isolated. The development is designed to provide an acceptable acoustic environment for its residents and would provide an incidental acoustic benefit to residents of Bower Vale. Apartment block D would have an unappealing setting but the only serious adverse effects of securing good living conditions for residents of the development itself would be the cost of a restraint on the development potential of adjoining land.

Living conditions of neighbours

(i) Privacy

67. In any row of houses, it is common to be able to see over the side fence between neighbouring gardens or, from upper floor windows, towards the further end of a neighbour's garden. The appeal proposal would give number 15 Bower Vale a new neighbour to its west side. Part of the amenity space of this new neighbour would be elevated over its parking spaces. It would be the part furthest away from number 15. On the edge of the elevated terrace would be a boundary wall, about 1.5m in height, surmounted by a metal railing or trellis. This would effectively prevent sidelong overlooking towards the rear garden of number 15. Balconies in Block B would be within 15-16m of the rear boundary of number 15 Bower Vale but would be more than 20m distant from its rear elevation and at right angles to it, so would meet normal standards of distance for privacy in any event.
68. Both balconies and windows in blocks C and D face towards the rear elevations of houses in Bower Vale at distances about 20-25% closer than the 20m distance normally recommended for privacy in cases of direct facing windows in two-storey buildings. Greater distances are sometimes recommended for taller buildings because of the impression of being overlooked from a greater height. But, in the case of this appeal proposal privacy screens would be fitted to the flanks of balconies at first and second floor levels to direct vision to east or west. All directly north-facing windows at first and second floor levels would be

fitted with obscure glazing. As these would be secondary windows in any event, that would not result in unacceptable living conditions within the development. On the top floor, the private north-facing terraces would be set back from the edge of the roof by about 3-5m. In combination, these measures would ensure no overlooking of the rear of odd-numbered properties in Bower Vale from apartment blocks C or D, despite their proximity.

69. On the street side of Bower Vale, existing houses are historically sited facing each other at about 13 m distance, much closer than the 20m distance commonly thought necessary to achieve privacy but reflecting a commonly held view that privacy should not be expected in relation to a public space such as a street. The four new dwellings in block A would be about 1m closer still to the facades of numbers 20-26 (even) opposite. Notwithstanding the general conformity with the pattern of the street and recognising that ground floor rooms facing onto a street should not be expected to enjoy complete privacy, the introduction of new houses at such proximity, facing properties not hitherto facing any other dwellings would cause a degree of harm through loss of privacy to facing bedrooms at first floor level which would be contrary to policy DBE9(ii) of the adopted Local Plan which requires development not to result in an excessive loss of amenity in terms of overlooking.

(ii) Sunlight and daylight

70. The Council submits no evidence to support its concerns relating to the effect of the development on sunlight and daylight conditions at neighbouring properties. By contrast and in response to my question, the appellant has commissioned a study of the development's effects on sunlight and daylight received at nearby residential properties.
71. This finds that although there would indeed be some loss of daylight and sunlight, the quantity of daylight and sunlight received at neighbouring properties would not be reduced below BRE guidance recommendations. Although the quantity of daylight received would be adequate, the distribution of daylight within the ground floor kitchen of number 15 Bourne Vale would not comply with guidance. The BRE guidance is not an inflexible standard; the outcome in terms of distribution of light is as much a consequence of the depth of room being measured (number 15 has been extended to the rear) as it is of the development proposed.
72. Consequently, I conclude that the proposal would have an acceptable effect on the sunlight and daylight received at adjoining residential properties. In that respect it would comply with adopted Local Plan policy DBE9 (iii) which requires development to avoid an excessive loss of amenity in terms of daylight and sunlight.

Epping Forest SAC and SSSI

73. The development would be of such a scale and proximity to the Epping Forest SAC that the likelihood cannot be excluded that it would, either on its own, or in combination with other known proposals in the area, have a significant adverse effect on the integrity of the SAC. For those reasons it is necessary that I carry out the following Appropriate Assessment in accordance with the Habitats Regulations before determining the appeal. Natural England was consulted by the Council on the application and on the appeal but I have no information of any response specific to this application. The Council appears

to have relied, as do I, on Natural England's general advice dated 15 June 2018 on an Emerging Strategic Approach relating to the Epping Forest SAC Mitigation Strategy which gives Interim Advice for Development.

74. The primary reason for the qualification of the Epping Forest as a SAC is the existence of Atlantic acidophilous beech forests in the north-eastern part of the habitat's UK range with *Ilex* (Holly) and sometimes also *Taxus* (Yew) in the shrub layer. Although the epiphytes (air supported, non-parasitic plants) in the forest have declined, largely as a result of air pollution, it remains important for a range of rare species, including the moss *Zygodon forsteri*. The long history of pollarding, and resultant large number of veteran trees, ensures that the site is also rich in fungi and dead-wood invertebrates. The presence of Stag Beetle is also a primary reason for designation as a SAC. Qualifying features which are not the primary reason for designation are Northern Atlantic wet heaths with heather *Erica tetralix* and European dry heath.
75. Natural England's Conservation Objectives for Epping Forest Special Area of Conservation (27th November 2018) are;
- To ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;
 - The extent and distribution of qualifying natural habitats and habitats of qualifying species
 - The structure and function (including typical species) of qualifying natural habitats
 - The structure and function of the habitats of qualifying species
 - The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
 - The populations of qualifying species, and,
 - The distribution of qualifying species within the site.
76. There are two pathways whereby housing growth in Epping Forest District is likely to result in significant effects on the SAC, namely disturbance from recreational activities as a result of additional nearby residents and atmospheric pollution as a result of increased traffic.
77. In relation to the first of these, Epping Forest District Council has prepared an Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation (October 2018), which is agreed with Natural England. The Interim Approach identifies that any net increase in residential development within 6.2km of the SAC requires consideration and mitigation by the payment of a financial contribution, secured via a Section 106 Agreement, for Strategic Access Management and Monitoring (SAMMs) for each net additional dwelling within 3km. A commitment to this financial contribution is included within the submitted planning obligation and so I conclude that with that agreement in place the proposal would not prejudice the integrity of the SAC through disturbance from recreational activities.
78. There is no such agreed approach in terms of atmospheric pollution.

79. The site of the proposal is not a greenfield site. Although much of the existing development on site has not been used for some considerable time because of fire damage and may be regarded as abandoned, some existing buildings last operating as a MOT testing garage until February 2017 are still capable of re-use, although presently vacant. Other buildings are in current use for storage, albeit at a low level of activity. It is the net effect of the appeal proposal in comparison with the fall-back position, which is a realistic assessment of a likely resumption of the previous MOT use which must be used in this Appropriate Assessment.
80. With the original application, the appellant provided a Transport Statement which excluded the current usage of the existing lock-up garages and the now abandoned laundry and considered the effects of the MOT garage as only a five-day operation. The assessment predicted a small reduction in vehicle movements through the Epping Forest SAC as a result of the development. With the appeal comes a Transport Addendum which refines the analysis and increases the predicted reduction in traffic expected to pass through the SAC as a result of the appeal proposal. Information provided by third parties does not succeed in refuting this analysis. I therefore conclude that in respect of air pollution, the effect of the proposal on the Epping Forest SAC would be one of net benefit.
81. The combination of a financial payment towards the Council's scheme of Strategic Access Management and Monitoring, together with the net beneficial effect of the development on air pollution within the SAC means that the appeal proposal would not, either on its own, or in combination with other known proposals in the area, have a significant adverse effect on the integrity of the SAC. I therefore conclude that it would comply with adopted Local Plan policy CP1 which seeks to avoid impacts on the environment and with paragraph 175(a) of the NPPF.

Planning balance and conclusions

82. The law requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise. The adopted development plan recognises the site as part of an employment area where changes of use to uses other than business and general industry will not be permitted. However, a material consideration is the government's National Planning Policy Framework (NPPF). This advises that decisions should apply a presumption in favour of sustainable development.
83. This means approving development proposals that accord with an up-to-date development plan without delay or, where the policies which are most important for determining the permission are out of date (eg because the council cannot demonstrate a five-year supply of deliverable housing sites, which is the case in Epping Forest), granting permission unless specific policies in the NPPF (in this case, that relating to an SAC) provides a clear reason for refusal or unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the NPPF taken as a whole.
84. In this case, there is a consensus that, in respect of the employment land designation, the plan is out of date. As noted above, policy relating to the SAC does not provide a clear reason for refusal. It follows that the basis for determination of this appeal must be its accordance with the development plan

insofar as it is not out of date but applying the presumption in favour of development unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits.

85. The principal benefit of the scheme would be the provision of 58 new homes, of which 16 would be made affordable, in a highly accessible location where the adverse consequences of traffic generation can be minimised, in a district which has considerable difficulties in meeting housing demand.
86. The quantification of this benefit is disputed because the Council claims it has a 4.2-year supply, whereas the appellant considers it to be 1.15 years. The difference concerns the alleged deliverability of sites towards the end of the five year period, a dispute which is probably indeterminable at this point in time. In truth, both figures indicate a shortfall of supply. As Dr Johnson once remarked; "there is no settling the point of precedence between a louse and a flea."
87. The value of the proposal is that it would be capable of delivering housing at all at a time when, because of the Council's inability to certify that most development sites would not lead to a significant adverse effect on the integrity of the SAC, there is a moratorium on granting permission for new housing development. On the other hand, its value should not be exaggerated; it is a site which even when intensively developed as proposed, would only provide the equivalent of about 5% of the quantity of housing needed each year in the district.
88. There would also be the general economic benefits resulting from construction expenditure and the ongoing benefit to the local economy of the disposable income of an increased number of residents, the benefit of a general improvement in the site's appearance, a reduction in potential traffic generation compared with previous uses and a small net biodiversity gain (because the existing site is largely covered with buildings and hard surfacing).
89. The adverse impacts of the development proposed may be summarised as follows;
 - Although seeking to achieve the fullest use of an existing urban area in accordance with the first part of policy CP7 of the adopted local plan, it would be an unsympathetic change, not compatible with the character of the area as sought by later parts of that policy. It would not respect the scale, proportion, siting, massing, height, orientation, roof line and detailing of neighbouring development nor would its external materials be sympathetic in colour and texture to a vernacular range and so it would be contrary to adopted local plan policy DBE1. But, these adverse effects would be relatively localised and the local area does not have a special designation which would make the consideration of character and appearance one of overriding significance.
 - The public realm which would be provided by the development would be dominated by hard surfacing and its layout would give the impression of prioritising vehicular traffic over pedestrians. Consequently, it would not result in the kind of user-friendly multi-purpose public domain sought by adopted local plan policies DBE3 and DBE5 and which would be necessary to make such a highly intensive development successful.

- Facilities for cycles would not comply with adopted local plan policy DBE5 which requires allowance for the convenient movement of cyclists within the development.
 - Development so close to the boundary with windows to habitable rooms relying for their natural light on land across the boundary remaining open would place a constraint on the potential development of the adjoining site. Consequently, there can be no certainty that the dwellings concerned in apartment blocks B and C of this appeal proposal would continue to receive adequate daylight for the lifetime of the development.
 - Apartment block D would have an unappealing setting. I am not convinced that it would comply with the part of Local Plan policy DBE9(iv) which requires development not to suffer an excessive loss of amenity through smell or disturbance.
 - Notwithstanding the general conformity with the pattern of Bower Vale and recognising that ground floor rooms facing onto a street should not be expected to enjoy complete privacy, the introduction of new houses facing at close range properties not hitherto facing any other dwellings would cause a degree of harm through loss of privacy to facing bedrooms at first floor level which would be contrary to policy DBE9(ii) of the adopted Local Plan which requires development not to result in an excessive loss of amenity in terms of overlooking.
90. In many ways, this appeal proposal would perform well. Many of the criticisms levelled at it have been met with adjustments which would provide an acceptable outcome. Several of the deficiencies which remain unresolved would have limited geographic effects or would be limited to specific parts of the development and may still be capable of resolution by adjustments to the scheme. However, no adjustments are before me for consideration.
91. With one exception the deficiencies of the scheme represent harmful and undesirable disadvantages rather than utterly unacceptable features. But, there is little satisfaction in permitting a development with a life-expectancy of sixty years or more which is known to have detractions from the start; over time, its deficiencies would become unacceptable features which would significantly and demonstrably outweigh the short term benefits of housing available sooner rather than later. The one exception, which even now is an unacceptable feature which cannot be permitted to pass, is the scheme's reliance on neighbouring land for daylight to several of the units in apartment blocks B and C. Accordingly, I dismiss the appeal.

P. W. Clark

Inspector

APPEARANCES

FOR THE APPELLANT:

Michael Calder BSc(Hons) DipTP MRTPI	Director, Phase 2 Planning
Dave Swindells RIBA	Associate, JTP Architects
Ian Wharton CEng	Associate Director, Ardent Consulting Engineers
Lance Harris MRICS	Senior Director, Anstey Horne
Thomas Leach BSc(Hons) MSc MIOA	Associate Director, Sol Acoustics Ltd
(on site visit) Philip Deeley MCIAT	Technical Manager, Troy Homes

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Sukhi Dhadwar BA DipTP MRTPI	Senior Planning Officer, Epping Forest District Council
Miss Ione Braddick MA MArch ARB	Senior Urban Design Officer, Epping Forest District Council

INTERESTED PERSONS:

Kelly Collins	Local resident
Dipti Amin	Local resident
Cllr Nigel Avey	Epping Town Council
Andrew Maslowicz	Local resident
Vanessa Attridge	Local resident
Eileen Mackie	Local resident
Cllr Jon Whitehouse	Ward Councillor
Dan Curtis-Allen	Local resident
Emma Whitcomb-Seed	Local resident
Maggie Stockton	Local resident
John Cutler MRTPI	Associate Planning Director, Strutt and Parker
Roger Lowry	Epping Society
Nick Athienitis	Managing Director, P A Finlay and Co Ltd
Cllr Barbara Scruton	Epping Town Council
Jacqui Petts	Local resident
Ceris Pike	Local resident