



Appeal Decision

Site visit made on 9 June 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th September 2020

Appeal Ref: APP/U5930/W/20/3245750

69 Browning Road, Leytonstone, London, E11 3AR

- 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 Gale Quigley against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref: 191016 dated 19 March 2019, was refused by notice dated 4 December 2019.
 - The development proposed is described as construction of two 4-bedroom family houses, demolition of the existing outbuildings, installing a new gate to the main access on the front, removing the trees (8 in total), works to TPO Beech Tree.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice does not refer to effects of the development upon the Epping Forest Special Area of Conservation (SAC) as a reason for refusing planning permission. However, effects upon the SAC is referred to by a number of third parties. Having sought the views of the Council, the appellant and Natural England (NE) on this matter I have been advised the appeal site lies within the 0-3 km zone of influence for the SAC identified by Natural England. Therefore, I have considered this as a main issue.

Main Issues

3. The main issues are the effect of the proposed development upon:
 - the Epping Forest Special Area of Conservation;
 - flooding and drainage;
 - protected and priority species and habitats;
 - the character and appearance of the area;
 - the living conditions of the occupiers of Nos. 63 – 69 Browning Road, Nos. 2 – 12 Beacontree Road and Nos. 3 – 6 Bushwood, with particular reference to outlook;
 - safe and adequate access for fire-fighting apparatus; and,
 - highway safety.

Reasons

Epping Forest SAC

4. The Conservation of Habitats and Species Regulations 2017 (the Regulations) requires that where a plan or project is likely to result in a significant effect on a European site (in this case the SAC), a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. Any likely significant effects arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
5. The SAC is designated due to the presence of three qualifying habitats and one species. These are Atlantic beech forest, European dry heaths, Northern Atlantic wet heaths and the Stag Beetle, respectively. The conservation objectives for the SAC are to achieve the favourable conservation status of the qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats, the population and distribution of the qualifying species, and the supporting processes on which they rely.
6. If constructed, the appeal scheme would facilitate a permanent increase in the number of people living within a short drive of the SAC. NE's interim advice (March 2019) and the Council's Draft Habitats Regulations Assessment Report (April 2020) (the DHRA) identifies that development within the 0–3km zone of influence is likely to have a significant effect upon the SAC as occupiers of new dwellings would access the SAC for recreational purposes causing recreational disturbance. Additional recreational activity would, alone and in combination with other development in the area, be likely to have significant adverse effects through damage to vegetation, erosion of soils and reduction of habitat continuity. There is also the potential for air pollution impacts from development within the zone of influence, but NE's interim advice does not confirm the nature of or address any likely significant effects.
7. NE is the Statutory Nature Conservation Body for the SAC. It is working with affected local authorities to produce the Epping Forest Mitigation Strategy (EFMS) which would comprise a package of strategic mitigation measures to address recreational pressure and air quality impacts, which will be costed and funded through developer contributions. NE's interim advice is that developments of one or more new dwellings should make a payment to costed Strategic Access Management Measures (SAMM) to avoid and mitigate impacts upon the SAC until the EFMS has been completed.
8. NE has agreed an approach with the Council which does not involve the collection of SAMM contributions on developments of less than 10 residential units. This is because NE is satisfied this approach will avoid and mitigate impacts on the SAC as part of the overall Waltham Forest strategy. However, NE has not explained why developments of less than 10 dwellings no longer require mitigation. I do not have a planning obligation before me securing a financial contribution to Strategic Access Management Measures or other alternative mitigation measures.
9. The appeal scheme makes no provision to mitigate the recreational disturbance impacts and thus maintain a favourable condition and the integrity of the SAC. Applying the precautionary principle, based upon the evidence before me and

in the absence of appropriate mitigation, the appeal scheme would have significant adverse effects on the integrity of the SAC due to increased recreational disturbance. For this reason, the appeal scheme would fail to adhere to the conservation objectives. I also cannot be sure there would not be significant adverse effects in respect of air pollution.

10. The appellant has not suggested that there are no alternative solutions to providing unmitigated housing at the appeal site. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SAC.
11. Therefore, the proposal would conflict with Policy CS5 of the Waltham Forest Local Plan Core Strategy (2012) (the CS) and Policy DM35 of the Waltham Forest Development Management Policies Local Plan (2013) (the DMPLP), which seek to protect and enhance habitats, species and sites of international, national and local importance including the SAC. The development would also fail to comply with the Regulations, as well as Paragraphs 174 and 175 of the National Planning Policy Framework (2019) (the Framework) which states that where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

Drainage and flooding

12. The Council's decision notice refers to flooding in the context of its impact upon biodiversity. However, the Council's appeal statement expresses a wider concern in respect of groundwater flooding and drainage. Installing the basement would involve excavating a volume of material from within and around the footprint of the building and replacing this with an impermeable void. The appellant's Basement Impact Assessment Report (BIAR) and GeoTechnical Ground Investigation Report (GGIR) explain the results of the borehole analysis of geology and moisture content.
13. The site is located in flood zone 1 and is primarily underlain by sandy gravelly clay. The borehole analysis advises there is potential for some perched water and ponding, but groundwater is not likely to be encountered by the works. It concludes the basement development is highly unlikely to result in any specific issues relating to hydrogeology and hydrology of the site and surrounding area. These are the findings of a GeoEnvironmental Engineer to which I attribute significant weight. There is no substantive evidence before me to suggest the development would have any harmful effect on groundwater by impeding flow.
14. The limited depth and extent of the proposed basement together with the findings in the BIAR and GGIR in respect of ground conditions, gives assurance that the development could be constructed in a structurally sound manner and would not result in ground instability. I am also satisfied that it could be constructed to a specification to prevent ingress or flooding from water or sewage. Furthermore, additional mitigation in the form of pumps can be installed as a further safeguard in the unlikely event of a breach.
15. The development would result in a significant gain in permeable surface area compared to the existing buildings and hard surfacing. In particular, the new driveway would be constructed in a permeable hardstanding and approximately 325 square metres of permeable soft landscaped gardens would be beneficial for surface water run-off and drainage. There is no substantive evidence to suggest the space around the dwellings would not provide an adequate area to

install surface water drainage infrastructure and the Council's engineer has raised no objection to the development in this regard. Therefore, subject to the imposition of the planning conditions suggested by the Council, the development would not increase surface water flooding.

16. For the reasons set out above the development would not result in harm having regard to Policy DM34 of the DMPLP, which requires amongst other things, that development does not increase flood risk elsewhere, provides adequate drainage and uses permeable materials in hardstandings.

Biodiversity

17. The protected beech tree and the majority of other trees in the appeal site are proposed to be retained subject to some management works. The Arboricultural Method Statement and the Council's suggested planning conditions, gives me assurance that the retention and longer term health of those trees would be secured through management measures and protection during construction and therefore would continue to function as potential habitat for nesting birds.
18. Subject to the tree management works taking place outside the bird nesting season there would be no harm to nesting birds. There is no substantive evidence before me to demonstrate the site is used by bats or any other protected or priority species or habitats. In fact, the development could result in minor benefits to biodiversity as the Council's suggested condition would secure a hard and soft landscaping scheme in-lieu of hardstanding and buildings as well as a number of habitat boxes.
19. For the reasons set out above the development would not result in material harm biodiversity on the appeal site. Therefore, in this regard it would not result in a conflict with Policy CS5 of the CS or Policy DM35 of the DMPLP. In combination these seek to protect, retain and where appropriate enhance biodiversity resources, and to support species and habitats through landscaping. However, this does not mitigate the harm I have found above in respect of the European designated SAC.

Character and appearance

20. The appeal site currently comprises an area of hardstanding with a dilapidated single storey building, accessed through an undercroft beneath No 69 Browning Road. It is almost entirely screened from surrounding public land by dwellings and gardens, with only limited views of the trees possible. Although several surrounding properties have rear gardens backing onto the site giving clear visibility.
21. Surrounding dwellings are predominantly Edwardian or Victorian style terraces to the north and west. To the east there is a considerable variation in age, styles, forms and materials of terraced and detached dwellings. The proposed dwellings would be of a contemporary appearance due to (amongst other features) being joined by a cross-gable element and multiple rooflights. However, being orientated east-west, the natural red and clay grey brickwork and simple traditional elevations, set under a slate roof, would be reflective and in keeping with the forms and materials of many surrounding dwellings.
22. The windows and roof lights would appear larger than some on the nearby buildings. However, they are not out of proportion with the elevations and roof

of the buildings in which they would be set. By installing a basement floor and the first floor occupying the roof space, the eaves and ridge of the dwellings would be at a lower level than those surrounding. This, and the spacing around the dwellings, would allow the site to accommodate the generously sized dwellings, without appearing cramped or over developed.

23. Therefore, whilst the buildings would be of a larger scale than those presently on the site, and result in the loss of some trees, the design, positioning, and the retention of the more valuable trees would limit the short term landscape impact. Furthermore, the schedule of works set out in the arboricultural report and the provision of greenspace would help ensure the longer term health and retention of the remaining trees. This would preserve the wider townscape value of the trees.
24. For the reasons set out above, the proposed development would not be harmful to the character and appearance of the area. Therefore, the development would be compliant with paragraph 127 of the Framework, which amongst other things, requires developments add to the overall quality of the area, and are sympathetic to the local character of the built environment.
25. In its reason for refusal the Council has referred to Policies CS13 of the CS and Policy DM32 of the DMPLP. However, these policies relate to promoting health and well-being and the living conditions of occupiers and neighbours. Therefore, they are of little relevance to character and appearance.

Living conditions

26. The Council's first reason for refusal refers to the visual impact upon the character and appearance and the amenity of the neighbouring residents. I have taken this to mean a concern about a loss of outlook to neighbouring properties.
27. The new dwellings would be approximately 8m from the rear boundary of properties on Bushwood and 19m from the rear habitable windows, facing the new gable walls. The neighbouring dwellings north and south of Nos. 3 – 6 would have more oblique views at an increased distance. To the west Nos 2 – 12 Beacontree Road would have visibility of the opposite almost symmetrical elevation at an increased distance (approximately 13m from the common boundary and 20m between the facing rear facades).
28. The triangular gable shape would have an approximate eaves height of 3.1m and an approximate ridge height of 7.4m. The shape would significantly reduce bulk and massing when viewed from neighbouring properties. The link first floor roof slopes away providing a good degree of relief. The proposed roof shape, height and distance to the boundaries and facing facades, means the development would not appear oppressive when viewed from neighbouring dwellings and gardens to the east and west. Consequently, the properties to the east and west would retain an acceptable outlook.
29. Nos. 66 – 69 Browning Road would face the flank elevation of one of the new dwellings. From the rear of the outrigger the gardens are between approximately 6 – 7m in depth. The eaves would be a further approximately 4m from the property boundary, and the roof slope means there is another 4m distance to the ridge. The distances to the new eaves combined with the relief provided by the roof slope and limited depth of that elevation of the new

dwelling, would provide an acceptable level of outlook. Therefore, in this regard the development would not result in harmful living conditions to the occupiers of Nos. 66 – 69. Nos. 63 – 65 Browning Road would view the gable at oblique angles at a distance of around 10m or greater. Given the distance and oblique angles, the properties would also retain an acceptable level of outlook.

30. To the south the gardens of No. 6 Bushwood and No. 12 Beacontree Road are in the closest proximity to the new dwellings. The eaves of the dwellings would be approximately 4m from the garden boundaries. Given the depth of the gardens, the distance and height of the eaves, ridge and the direction of the roof slope, the overall level of outlook would be acceptable, and it would not result in harmful living conditions for the occupiers of Nos. 6 or 12.
31. For the reasons set out above, the proposed development would not result in harmful living conditions in respect of outlook, having regard to Policy DM32 of the DMPLP and Policy CS13 of CS, which seek to promote healthy and sustainable places and ensure development maintains acceptable levels of outlook for existing and new occupiers.

Fire risk

32. The application is accompanied by Fire Risk Assessments (FRAs) for escape and brigade access. These explain how the development would integrate measures in accordance with and above the requirements of the Building Regulations for fire prevention and escape.
33. As the dwellings would be accessed through an undercroft, appliances could not get to within 45m of the dwellings. Therefore, it is proposed to integrate a British Standard compliant water suppression system throughout the open plan living areas, fire doors to bedrooms, an Automatic Opening Vent and an interlinked smoke alarm system for all risk rooms and bedrooms. The FRAs conclude the measures would reduce the risk of flashover and increase escape time for occupiers for up to 20 minutes longer than required under the Building Regulations.
34. Whilst some elements of the system would be likely to be dependent upon long term satisfactory maintenance, this would be no different to other mechanisms required to be installed at new dwellings under the Building Regulations. The Council sought the views of the London Fire Commissioner, who reviewed the proposals and was satisfied with them. The Commissioner is responsible for enforcing the Regulatory Reform (Fire Safety) Order 2005 and therefore, I attribute those views considerable weight, even if the commissioner did not visit the site in person.
35. For the reasons set out above, the development would be compliant with Policies D11 and D12 of the Draft London Plan (December 2019) (DLP). These require proposals maximise building resilience to fire, achieves the highest standards of fire safety and provides suitable access and equipment for firefighting. It would also provide a high quality and inclusive design that creates a safe development. Therefore, in this regard the development is compliant with Policy CS15 of the CS and Policy DM29 of the DMPLP.

Highways

36. The Council's decision notice does not identify the effect of the proposal on highway safety as a reason for refusing planning permission. However, having regard to the contents of the Council officers report I have addressed it as such, having first sought the Council's and appellant's views.
37. The development would generate a small number of vehicle movements per day. There is no objection from the Council in respect of the access to the site or the number vehicle movements it would generate, and I see no reason to disagree. Whilst my visit can only represent a brief snapshot in time, Browning Road, Beacontree Road and Bushwood were quiet with low traffic flows over the duration of my visit and there was a number of available parking spaces on the highway.
38. The Council has advised that being within a Controlled Parking Zone (CPZ) new occupiers would not be entitled to a parking permit. Council officers advised this should be sought through a section 106 agreement. However, a planning obligation under section 106 could not prevent occupiers from applying for a permit, as prevention of parking on the highway is not a restriction on the appeal property (being the "land" for the purposes of s106). There is no appropriate legal agreement or other mechanism before me that would prevent the future occupiers from being able to apply for a parking permit.
39. The appeal site has a Public Transport Accessibility Level (PTAL) rating of 5, so it is deemed to have a high level of accessibility by walking and public transport. It is located within a CPZ, where Policy DM16 of the DMPLP requires that each dwelling provides 0.5 parking spaces and two cycle racks. The development would provide the two cycle racks and one parking space per dwelling and therefore the provision is above the requirement of DM16. The Council has not provided detailed justification for the requirement for a legal agreement and there is no substantive evidence before me of a shortage of parking on the public highway.
40. Therefore, there is not sufficient evidence before me to allow me to conclude the development would result in harmful effects to highway safety or sustainable transport objectives. Consequently, it is not demonstrated an obligation is necessary to make the development acceptable in planning terms. Based upon the evidence before me, the requirement to sacrifice the right to eligibility for parking permits would not meet the first test¹ in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
41. The surrounding roads and access would necessitate the submission of a detailed construction logistics plan. Due to use by larger vehicles, plant and machinery associated with construction, a highway condition survey and section 278 agreement, for the renewal of the existing crossover, the footway on the frontage and survey of the existing public highway around the site would be necessary, to ensure the highway remains in a satisfactory condition.
42. Subject to the Council's recommended planning conditions, the development would not be harmful to highway safety or sustainable transport objectives. The development would not conflict with Policies DM14 and DM16 of the DMPLP insofar as it would not result in harm to the provision of safe and attractive parking facilities, would not have a harmful impact upon the walking and cycling environment or hinder the use of sustainable travel. Whilst, allowing

¹ 1 Necessary to make the development acceptable in planning terms;

this appeal would not directly encourage car free parking, there is no evidence of harmful effects from the conflict with this requirement of DM14.

Other Matters

43. The appellant's overshadowing report demonstrates the development would be compliant with recommended standards in respect of limiting overshadowing to neighbouring amenity areas. The report also concludes the development would meet the requirements of the Building Regulations and development plan policies in respect of energy and water efficiency.
44. The appeal site is located within an Air Quality Management Area (AQMA). The Council and the Environmental Health Officer is satisfied that subject to the imposition of planning conditions, the development would be compliant with Policy DM24 of the DMPLP. However, as I am dismissing this appeal for other reasons, and the development does not propose an overall benefit to air quality in the Borough, I have not investigated this matter further.

Planning Balance and Conclusion

45. The proposed development would be acceptable in respect of its impacts upon the character and appearance of the area, the living conditions of neighbouring occupiers, energy efficiency, highway safety, and drainage and flooding. However, compliance with the relevant policies in this regard are neutral effects and these all attract neutral weight.
46. The provision of two family sized dwellings on the appeal site would provide new residential accommodation in a sustainable location, result in a small temporary economic benefit during construction, and once occupied a small sustained benefit to the local economy. There would also be likely to be a minor ecological benefit on the appeal site through management of trees and provision of habitat boxes. These combined benefits attract modest weight in favour of the scheme. However, these do not overcome the harm I have identified in respect of the Epping Forest SAC. Therefore, I conclude the appeal should not succeed.

Dan Szymanski

INSPECTOR