



Appeal Decision

Site visit made on 20 December 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2022

Appeal Ref: APP/J1535/W/20/3261896

Brooklyn Nursery, Mott Street, Waltham Abbey E4 7RW

- 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 L Venables of Purdy Bilby Group against the decision of Epping Forest District Council.
 - The application Ref EPF/2882/18, dated 25 October 2018, was refused by notice dated 1 May 2020.
 - The development proposed is the Partial Demolition of the existing building and conversion to B1/B8 use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. I have given the Council and the Appellant the opportunity to comment upon the implications of this for their cases.
3. Since the appeal was lodged the Council has published the Epping Forest District Local Plan 2021 Habitat Regulations Assessment (the HRA). I have given the appellant the opportunity to comment upon this.

Main Issues

4. The main issues are:
 - whether or not the development would be in a suitably accessible location having regard to sustainable transport modes and local services; and,
 - the effect of the proposed development upon the Epping Forest Special Area of Conservation (the SAC).

Reasons

Location

5. Policies CP3, CP6 and CP9 of the Epping Forest Local Plan (2006) (the LP) seek to deliver development sustainably by concentrating it in urban areas and ensuring it is accessible by and provides for sustainable means of transport to avoid commuting dependent upon the private car. The appeal site is not located within a designated urban area. It previously operated as a nursery,

and the Traffic Assessment (the TA) states the appeal proposal would result in 13 additional daily vehicle movements.

6. There are limited services within its vicinity, such as two pubs, a restaurant, hotels, a tyre fitters and garden centres. Further afield facilities such as a supermarket, gym and doctors surgery are approximately 1km west at Island Centre Way/Enfield Lock. Some shops are also located a significant distance further south on Stewartstone Road. While many are a significant distance away it is not clear why the location of services would in itself, result in harmful effects given the nature of this proposed development.
7. I have not been provided with timetables for buses that stop at Island Centre Way/Enfield Lock, Stewartstone Road, or other stops that might be closer. The routes from Island Centre Way/Enfield Lock and Stewartstone Road might be well maintained flat routes. However, the distances, and the secluded nature of the route from Island Centre Way means they are not likely to be viewed as attractive or convenient means of travelling to and from the appeal site for pedestrians and cyclists, particularly during darker and wetter months. The nearest railway station is approximately 2km away. Given its distance it is also not likely to be viewed as being attractive or convenient. The appeal site is also a significant distance from other main population centres, where many employees and customers may be likely to live or be based.
8. It is likely that many journeys to and from the appeal site would take place by private motor vehicles. The Council's workplace travel plan condition and suggestions in respect of EV charging points are noted. Cycle storage, showers and changing facilities are proposed, and an assisted season ticket purchase scheme is understood to operate. However, I am offered no guarantee that sustainable transport modes would be used. Therefore, the substantive evidence does not demonstrate sustainable transport measures, would or could be made effective, and enforceable, to ensure the appeal site is accessed by use of sustainable transport modes in-light of its inaccessible location.
9. I do not find harm as a result of the site location in relation to local services. However, for the reasons set out above the development is not in a suitably accessible location for sustainable transport modes, in conflict with Policies CP1, CP3, CP6 and CP9 of the LP. Amongst other things these seek to concentrate development in urban areas, and ensure it is accessible by and provides for sustainable transport to avoid commuting dependent upon the private car. It would result in a conflict with the aims of paragraphs 8, 85, and 103 of the Framework which seek to use natural resources prudently, minimise pollution, focus development toward locations that limit the need to travel, are or can be made sustainable, and offer a genuine transport choice.
10. The development would also conflict with Policies SP3 and T1 of the Epping Forest District Local Plan – Submission version (2017) (the ELP), which seek that development provides sustainable movement and access, reduces journey time, and promotes genuine alternatives to the private car. Although the ELP is yet to be found sound or adopted, it has been examined, so given the stage of preparation and the degree of consistency with the Framework, I attach significant weight to those policies.
11. Policy SP2 of the ELP does not specifically direct employment development to sustainable locations. Therefore, I do not find a conflict with SP2 in relation to this main issue.

Epping Forest SAC

12. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require 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 its implications on the integrity of the European site in view of its conservation objectives. Any likely significant effects (LSE) arising from a development needs to be considered alone and in combination with other development in the area, adopting the precautionary principle.
13. The SAC is designated due to three qualifying habitats (Atlantic beech forest, European dry heaths, Northern Atlantic wet heaths) and one species (the Stag Beetle). 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, the supporting processes on which they rely, and the structure and function of their habitats.
14. I consulted Natural England (NE) in accordance with discharging my obligations in undertaking an Appropriate Assessment under Regulation 63(3) of the Regulations. No response was received. However, I have been provided with NE advice by the Council, stating critical levels for NO_x and NH₃ and critical loads for Nitrogen deposition are being exceeded for the qualifying habitats and species, above which there are links to damage to them. The exceedances are linked to modification of the chemical status of substrate, acceleration or damage to plant growth, alteration to vegetation structure and composition, increased susceptibility to frosts, droughts and pests, the loss of sensitive species, reduced species diversity and an increase in nitrogen-loving species.
15. Additional petrol and diesel vehicle movements would emit further pollutants referred to above. The HRA identifies where these vehicle exhaust emissions occur within 200m of the SAC, they would affect pollutant concentrations at the SAC. Therefore, either alone or in combination, additional petrol and diesel vehicle movements within 200m of the SAC would have LSE¹.
16. Table 4 of the TA states the appeal proposal would result in an additional 13 daily vehicle movements onto Mott Street. It is not clear if the movements onto the other three roads (totalling 14) are the routes once vehicles have left Mott Street or additional movements to be added to the 13. As the site access would be onto Mott Street I have taken it to be the former. The TA and the Air Quality Assessment (the AQA) do not explain the detailed routes of the 13 additional daily vehicle movements. Given the nature of the appellant's business and staff travel to and from the site, I cannot discount some of the additional vehicle movements using roads within 200m of the SAC, given its proximity to the appeal site and the nature of the local road network.
17. The AQA concludes that even if all 13 additional daily traffic movements passed through the SAC, this would not constitute LSE. Furthermore, that in respect of in-combination effects, the number of trips from this development that would contribute to any effects, would be so infinitesimally small as to be unnoteworthy. However, given the critical levels and loads of pollutants are already reached, any additional increase in pollutant levels would have some

¹ Paragraph 4.12 of the HRA.

effect. The appellant's AQA does not address the concerns so as to dispel all reasonable scientific doubt. Any increase in vehicle movements within 200m of the SAC from the proposed development would result in LSE to the SAC whether alone or in combination.

18. The Epping Forest Interim Air Pollution Mitigation Strategy (2020) (the APMS). seeks to demonstrate how the Council can ensure no adverse effect upon the SAC from ELP allocations and advise upon the determination of individual applications. A wide variety of mitigation measures are set out to be secured through planning conditions, obligations, and financial contributions. These include Electric Vehicle (EV) charging points, supporting home working, a Clean Air Zone, Route management strategies, initiatives to support walking, cycling and public transport use, and a road based pollution extraction system.
19. Suggested planning conditions before me include a Workplace Travel Plan Monitoring Fee of £5,000, and the appellant agrees to a condition to secure EV charging points. Cycle storage, showers and changing facilities are proposed, and an assisted season ticket purchase scheme operates. However, there is no certainty demonstrated that the required number of employees and visitors would travel to and from the appeal site by EV's, cycle, walk or use public transport, or how this could be robustly enforced. Therefore, I cannot be certain such measures would mitigate LSE.
20. The uncompleted planning obligation for a contribution to the SAC and a Workplace Travel Plan Monitoring Fee is not signed or executed. Section N.2.1 of the Procedural Guide: Planning appeals – England (2021) confirms if an appellant intends to send a planning obligation and wants to be certain that it will be taken into account, it must be executed, and a certified copy received no later than 7 weeks from the start date. Therefore, as the competent authority, I do not have a planning obligation before me securing other alternative mitigation measures. The proposed energy and resource efficiency measures integrated into the build would not mitigate the effects of increased vehicular emissions within 200m of the SAC boundary.
21. The appeal scheme makes no other provision to mitigate the air quality 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, I cannot be certain the appeal scheme would not have significant adverse effects on the integrity of the SAC due to increased pollutant emissions from vehicles driving within 200m of the SAC. For this reason, the appeal scheme would fail to adhere to the conservation objectives. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SAC.
22. Therefore, the proposal would conflict with the aims of Policies CP1 and CP6 of the LP, which seek to minimise impacts upon the environment, provide compensatory measures to off-set such impacts, and to accommodate development and economic growth in a sustainable manner. The development would also fail to comply with the Regulations, as well as paragraph 180 of the Framework which states that where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.
23. The development would also conflict with Policies DM2 and DM22 of the ELP which, state that development should conserve and enhance the biodiversity of the SAC including having regard to impacts upon air quality, which should be

adequately mitigated. Given ELP has been examined and the degree of consistency with the Framework, I attach significant weight to these policies.

Other Matters

24. A significant proportion of the appeal site is at a high and medium risk of surface water flooding. However, there is no objection from the Council in respect of flood risk, drainage, or the application of the sequential test. The proposals include raising floor levels with other internal protection and resilience measures, a significant reduction in building/impermeable surface floorspace, with some non-permeable surfaces to be replaced with a permeable grass grid system and rainwater harvesting. The Flood Risk Assessment (2019) confirms the development would reduce flood risk, surface water volumes, and benefit those downstream.
25. The site is within the Green Belt within which the Framework states that inappropriate development is harmful and should not be approved except in very special circumstances (paragraph 147). Having regard to paragraph 150d) of the Framework and policies of the development plan, the Council is of the view the development would not be inappropriate development.
26. There is no substantive evidence that would lead me to believe the Structural Report is not accurate in its conclusions. The existing buildings have an approximate footprint of 2,925 square metres (m²) and volume of 12,342 cubic metres (m³). The development would result the footprint and volume of buildings to 1,374m² and 5,703 m³ respectively with 31 car parking spaces. The reduction in volume and floorspace of the buildings, hardstanding, proposed landscaping, and vehicular activity, leads me to share the view of the Council in respect of paragraph 150d) of the Framework.
27. While the appellant is unhappy with aspects of the Council's consideration of the planning application, my determination of this appeal is made upon the planning merits only. Any dissatisfaction with the Council's handling of the application should be pursued with the Council in the first instance.

Planning Balance

28. The proposed development would result in benefits to the openness of the Green Belt. It would result in a moderate temporary economic benefit during construction, and once occupied significant sustained social and economic benefits through the additional employment at the appeal site, consistent with Framework objectives in this regard. Being located next to the appellant's existing premises this would aid business continuity.
29. The development would be compliant with Policies DBE1 and DBE4 of the LP and Policy DM9 of the ELP in respect of its design and appearance. Having regard to the appearance of the significantly larger but largely transparent glasshouse, this proposal would overall result in a limited benefit to character and appearance. There would also be some moderate benefits in respect of surface water drainage. Overall, the benefits of the development are attributed significant weight in favour of the scheme.
30. Were I to agree, subject to the imposition of suitably worded planning conditions, the development is compliant with development plan policies in respect of matters such as the site access, highway safety, parking, and the

living conditions of neighbouring occupiers these would be neutral matters in the planning balance.

31. The development would not be in a suitably accessible location having regard to opportunities for sustainable transport modes, which attracts moderate weight against the scheme. However, I cannot be certain the proposed development would not result in unacceptably harmful effects upon the SAC. This is attributed substantial weight against the development. Therefore, the harm identified significantly and demonstrably outweighs the benefits of the development. Consequently, it would also conflict the development plan read as a whole, and material considerations do not indicate the decision should be made otherwise, contrary to Policy SP1 of the ELP.

Conclusion

32. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR