

Appeal Decision

Site visit made on 23 February 2022

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Appeal Ref: APP/J1535/W/21/3270758
69 Church Hill, Loughton, Essex, IG10 1QP

- 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 Reformer Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/2369/20, dated 14 October 2020, was refused by notice dated 11 December 2020.
 - The development proposed is Demolition of the existing dwelling and replacement with a block of 8 residential apartments alongside associated accesses, landscaping, amenity space, parking and other ancillary works.
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Decision

1. The appeal is dismissed.

Application for costs

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

Preliminary Matters

3. The appellant submitted three revised plans as part of the appeal, essentially to include a pedestrian pathway to the side of the proposed building. The Procedural Guide Planning Appeals - England is clear that the appeal process should not be used to evolve a scheme and it is important what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. I have therefore made my decision on the basis of the plans put to the Council at application stage.
4. The emerging Epping Forest District Local Plan (LP2) is at an advanced stage. However, it is yet to be adopted and its policies may be subject to further change, which limits the weight to be attached to it. The saved policies of the Epping Forest District Local Plan (1998, as altered 2006) (LP) therefore constitute the development plan for the purposes of the appeal, which I will determine accordingly.
5. The Government published a revised National Planning policy Framework (the Framework) in July 2021. The main parties had the opportunity to address this matter in their appeal submissions. All references to the Framework in this decision relate to the updated document.

Main Issues

6. The main issues are (i) the effect of the proposed development on the character and appearance of the area; (ii) whether or not the proposed development would provide satisfactory living conditions for future occupiers with regard to pedestrian movement within the site; and (iii) the effect of the proposed development on the integrity of the qualifying features of nearby European sites.

Reasons

Character and appearance

7. The appeal site comprises a rectangular parcel of land which is host to a detached part single, part two storey dwelling and its garden areas. The site is situated within a long 'block' of land which is bound by Church Hill and The Uplands roads and the Meads Path public footpath. The block rises in a north easterly direction from Loughton Cricket Club. The site is situated towards the top end of this block, nearing the crest of Church Hill. This block of land is characterised by predominantly two storey houses which, although greatly varied in design, present a cohesive low-rise suburban character. This contrasts with the more varied scale of buildings on the northwest side of Church Hill, where a number of larger three storey apartment buildings are present.
8. The appeal site is one of the widest plots within the block and the proposal, for a three storey, eight apartment building, would extend across the majority of the site's width. Although stepped down at the side next to No 67A Church Hill, where it would incorporate a flat roof element, reflective of the design and height of that property and its wider terrace, the bulk of the proposed building would be higher than the existing dwelling. It would maintain a stepped appearance in the street scene, with its main ridgeline being set about the eaves' height of the neighbouring property to the northeast, No 73 Church Hill.
9. However, whilst the proposal has sought to address the concerns of the dismissed appeal scheme¹, the span of the proposed building, in combination with its overall massing, would nevertheless result in a development of substantially greater scale and proportions than those within its immediate context. Despite maintaining the existing frontage building line and being set off the side boundaries, the appeal building would be overly dominant in the street scene and would starkly contrast with the prevailing arrangement of buildings within this block of land. The proposed building would appear incongruous and unsympathetic within its surroundings and would cause harm to the character and appearance of the area. The elements of visual relief that would be created by, amongst other matters, a staggered front elevation and roof line and use of materials and brick details similar to those used in nearby buildings, would not sufficiently mitigate the identified harm.
10. The three storey nature of the proposal could only be accommodated within the overall height parameters of the adjacent buildings by significant excavation of the site. The need for such change in the existing land level further indicates that the appeal scheme would be an overdevelopment of the site.

¹ APP/J1535/W/19/3224739

11. My attention has been drawn to a number of other nearby developments² which I was able to view on my site visit. However, there are many differences between the appeal proposal and the examples given such that their presence can only be afforded limited weight in my considerations. The only example situated within the same block of land as the appeal site, albeit not within its view, is a chalet bungalow style building, that appears to provide four flats. Its appearance and its position between the rear gardens of properties situated on The Uplands and Church Hill bear little comparison with the appeal scheme.
12. Although the flatted development opposite the appeal site contains thirty units and is comprised of three storeys, such that it is larger in scale than the appeal proposal, it is situated on a corner plot. The building is not located between dwellings, is set well back from its road frontages and is screened by mature boundary trees. Its presence is not therefore supportive of the appeal proposal.
13. The buildings situated at the junction of St Johns Road and Church Hill also comprise corner plots, as does the building on the southwest side of The Uplands where it joins Church Hill. The character of the surroundings and composition of those developments are not directly comparable to the appeal proposal. Further, the flats situated within Church Lane are two storey and are also set within a different site context. Other examples provided comprise commercial development on the ground floor with residential above and are not therefore directly comparable to the appeal proposal.
14. In addition, the developments, known as 'Maitlands', 'Hazel Court' and 'Almond House', whose site-specific circumstances are more closely aligned with those of the appeal proposal, appear prominent and incongruous in the street scene and are not examples that I consider draw favour toward the appeal proposal.
15. I conclude that the proposal would unacceptably harm the character and appearance of the area. It would conflict with LP Policies CP7 and DBE1, LP2 Policies SP3 and DM9 and Chapter 12 of the Framework, which together and amongst other matters, require development to demonstrate high quality design and to respond to local character.

Living conditions

16. The Council is concerned that the proposal fails to demonstrate safe and suitable access for all users, throughout the site, due to insufficient information being provided in relation to changing land levels and the potential for conflict between pedestrian and vehicular movements between the front and rear of the building. In particular because access to the communal amenity space for most future occupiers would be via the proposed driveway.
17. The proposed plans provide a number of sections to demonstrate gradients within the site, which include part of the shared route to the rear of the building. A section is also provided at the rear of the site for the car park spaces, which demonstrates this area to be flat. As significant excavation of the existing site is proposed, it is not unreasonable to seek evidence of finished land levels in order to ensure safe movement within the site would be achieved.

² Appellant's plan titled 'Proximity to apartment blocks in the surrounding area' - Drawing Number 2297-503.3 dated 29 Jul 20

18. However, despite the sections provided, it remains unclear what the gradient of the main stretch of driveway through the building would be, beyond the section provided on the plans which shows the entrance to the undercroft to be 1:14. Further, I have not been provided with a section plan to clarify any gradient between the rear of the building and the parking spaces along the rear boundary. Thus, I am unable to adequately determine whether or not movement within the site for all users would be satisfactory with regard to finished levels.
19. Whilst I recognise that pedestrian movements within the site could conflict with vehicular movements when going to and from the car park and the communal amenity space, there appears to be space available to provide a dedicated footpath route to these areas. This is therefore a matter that could be addressed by imposition of a condition if the appeal was to be allowed. However, as I cannot be certain that the site layout would not include inappropriate gradients, I am unable to reach a clear conclusion that the proposal would provide safe and suitable access for all users within the site.
20. I acknowledge that the Highway Authority has not objected to the proposal. However, its considerations appear to have been centred around adequate and suitable parking provision and suitable access to the highway and do not therefore affect my findings in respect of movement within the site.
21. I therefore conclude that the appeal proposal has failed to demonstrate that it would provide satisfactory living conditions for future occupiers with regard to pedestrian movement within the site. Thus, it conflicts with LP Policies DBE5 and DBE8 which require, amongst other matters, new development to allow for convenient movement of pedestrians within a site and amenity space that would be accessible. The proposal would also conflict with LP2 Policies SP3, T1 and DM9 which seek, amongst other matters, the provision of accessible amenity space and on-site layouts that are compatible with all potential users.
22. The proposal would also conflict with Paragraphs 92, 112 and 130 of the Framework which seek the creation of places that are safe, that minimise the scope for conflicts between pedestrians, cyclists and vehicles and require a high standard of amenity for future users.
23. I do not consider LP Policies ST1 or DBE5 to be relevant to this main issue as they are largely concerned with locating development near to services and facilities and respecting local character.

European sites

24. The Habitats Regulations³ require that planning permission may only be granted after having ascertained that the proposed development will not affect the integrity of a European site⁴ or sites. The appeal site falls within the zone of influence of the Epping Forest Special Area of Conservation (SAC). The SAC is designated for the diverse species range of flora, fauna and habitats found within the Epping Forest. The qualifying features of the SAC are at risk from increases in recreational pressure and atmospheric pollution. I note that the appellant has submitted a Unilateral Undertaking (UU) pursuant to Section 106

³ Conservation of Habitats and Species Regulations 2017.

⁴ Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

of the Town and Country Planning Act 1990 to address matters of mitigation. However, as I am dismissing the appeal on other grounds, upon which an assessment under the Habitats Regulations would have no bearing, it is not necessary to explore this issue any further in this case.

Other Matters

25. In light of the separation distance, of some 150 metres, and intervening features between the appeal site and the York Hill Conservation Area (CA), I consider that no harm would be caused to the setting and thus the significance of this designated heritage asset.
26. I acknowledge the efforts to address the concerns raised under the earlier dismissed appeal, the pre-application engagement with the Council and the desire to make the best and most efficient use of the site. However, these matters do not alter my conclusions on the main issues.
27. I note the support for the proposal. However, this does not lead me to a different conclusion.

Planning Balance

28. The appellant suggests that the Council can only demonstrate a 1.15 year supply of deliverable housing sites. The Council does not dispute this figure. Therefore, for the purposes of this appeal, I will use the appellant's assessment, which represents a significant shortfall in supply. Consequently, because of the provisions of footnote 8, paragraph 11 d) ii. of the Framework should be applied.
29. This presumption in favour of sustainable development would not be engaged if I had found that there would be unmitigated harm to the SAC. However, as I have not undertaken an appropriate assessment in this instance, I have applied the so-called tilted balance.
30. The proposal would provide a net gain of 7 market homes, in an accessible location. It would add to the mix of housing choice in the area. The proposal would boost the supply of housing as required by the Framework. The Framework recognises the important contribution that small and medium sized sites can contribute to meeting the housing requirement of an area. Given the level of housing land supply shortfall, I afford these benefits considerable weight.
31. The proposal would have economic benefits by way of the support for construction jobs during the build and indirect jobs at that stage in associated industries. There would be the support for the local economy by future occupiers. The limited social and economic benefits to the area resulting from the provision of an additional seven dwellings would be modest. The proposal offers the potential for improvement of biodiversity at the site, I afford this benefit modest weight.
32. Although the Framework seeks to make effective and efficient use of land and, in places where there is an existing shortage of land for meeting identified housing needs, to avoid homes being built at low densities, it also requires developments to be sympathetic to local character and to create places that are safe, inclusive and accessible and which provide a high standard of amenity for future users.

33. I have found the proposal would give rise to unacceptable harm to the character and appearance of the area. I have also found that the proposal has failed to demonstrate that it would provide satisfactory living conditions for future occupiers with regard to pedestrian movement within the site. As a result, the proposal would conflict with environmental and social objectives of the Framework. I attach significant weight to the harm and policy conflicts I have identified.
34. Overall, I find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. Therefore, the proposal would not represent sustainable development. The proposal would be contrary to the development plan and this conflict is not outweighed by other material considerations, including the provisions of the Framework.

Conclusion

35. For the above reasons the appeal is dismissed.

S Tudhope

INSPECTOR