
Appeal Decision

Site visit made on 11 April 2022

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal Ref: APP/J1535/W/21/3283846

8 Stanmore Way, Loughton IG10 2SA

- 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 Ms T Brough against the decision of Epping Forest District Council.
 - The application Ref EPF/0550/21, dated 26 February 2021, was refused by notice dated 14 July 2021.
 - The development proposed is demolition of an existing bungalow and replacement with two chalet bungalows.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The National Planning Policy Framework (Framework) was revised in July 2021. It replaces the version from 2019, which was effective when the planning application was determined. The appellant and the Council have been able to comment on the current version of the Framework during the appeal process.
3. In January 2022 the latest Housing Delivery Test results were published. These indicate that the presumption in favour of sustainable development, as set out at paragraph 11(d) of the Framework, is relevant to decision making in the district. The latest results are not referred to in the appeal submissions, but the results from the previous year have been referenced and the presumption was relevant then too. As such, it has not been necessary to seek the views of the main parties regarding the latest results.
4. A unilateral undertaking (UU) dated 22 September 2021 was submitted with the appeal. It intends to secure mitigation of potential adverse effects of the proposal on the integrity of the Epping Forest Special Area of Conservation (habitats site), which is designated under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations).
5. One of the Council's refusal reasons sets out that the proposal would have a 'detrimental impact on the amenities of the immediate neighbouring residents through its visual impact'. I have taken this to be a concern regarding outlook, which is reflected in the wording of one of the main issues identified below.

Main Issues

6. The main issues are the effects of the proposal on:
 - the integrity of the habitats site;

- the character and appearance of the area, with particular regard to landscaping;
- the mix of housing in the district; and
- the living conditions of the occupiers of neighbouring properties, with particular regard to outlook.

Reasons

Habitats site

7. The appeal site comprises a residential property adjacent to a highway junction between Stanmore Way and The Beacons. It is around 140 metres from the habitats site. The qualifying features for which the habitats site has been designated are Atlantic acidophilous beech forests, Northern Atlantic wet heaths, European dry heaths and the stag beetle.
8. The habitats site's conservation objectives are to ensure that its integrity is maintained or restored and achieve the favourable conservation status of its qualifying features by maintaining or restoring the extent, distribution, structure and function of its 3 qualifying habitats and the habitats of the stag beetle; the population and distribution of the stag beetle; and the supporting processes on which the qualifying features rely.
9. Natural England was consulted on the proposal during the appeal, but no response was received. However, I also requested that information was submitted to facilitate an appropriate assessment. Amongst other things, the Council provided advice from Natural England prepared principally to support the advancement of the emerging Local Plan¹ (eLP). The most recent advice² identifies that the habitats site's qualifying features are sensitive to changes in air quality and that pollutants adversely affecting them currently exceed critical level and load thresholds. Petrol and diesel motor vehicles emit those pollutants. Natural England also identifies that the qualifying features are vulnerable to impacts associated with recreational activities within the habitats site, including trampling, dog fouling and soil erosion and compaction.
10. The proposal would result in a net increase in housing in the immediate vicinity of the habitats site. There is nothing before me which indicates that petrol and diesel vehicles would not be used in connection with the residential use. Trips to and from the site, and through and near the habitats site, would therefore likely be made using petrol and diesel vehicles. Those vehicle movements would contribute to the levels and loads of the pollutants adversely affecting the habitats site. Additionally, the future occupiers of the development would likely use the habitats site for recreational purposes given their proximity to it.
11. The appellant has prepared a Habitats Regulations Assessment (HRA). It does not comment on the significance of the recreational impacts but concludes that the air quality impacts would be insignificant. While a limited number of petrol and diesel vehicle movements would be generated by 2 dwellings, the HRA reports that more trips would arise from the development than if the existing dwelling was occupied. Any additional petrol and diesel vehicle trips would contribute to the critical levels and loads of pollutants being further exceeded.

¹ Epping Forest District Local Plan Submission Version 2017

² Overarching Standard Advice for Development Applications within Epping Forest District, 10 August 2021

12. Furthermore, the effects must be considered in combination with other plans and projects and, following the People Over Wind judgement³, mitigation measures cannot be considered in determining whether effects would be significant. This includes mitigation identified in the eLP and for other development proposals. In the absence of mitigation and adopting a precautionary approach, the proposal would have likely significant effects on the habitats site. Moreover, there would be adverse impacts on its integrity from pollutants and recreational activities in the ways set out above, unless mitigation is secured.
13. The Council has created interim strategic approaches⁴ for mitigating the air quality and recreational impacts of development that would adversely affect the habitats site. The UU seeks to provide financial contributions towards mitigating the development's air pollution and recreational impacts in line with those interim approaches.
14. Natural England's latest advice sets out that air quality should not be considered an impediment to determining applications if development comes forward in accordance with a modelled scenario relied upon by the HRA from August 2020 to support the eLP, and the mitigation relied upon in that scenario and the Council's interim air quality strategy is secured and certain to proceed. In respect of recreational impacts, Natural England supports the Council's interim approach, but it raises concerns regarding the lack of a strategy for green infrastructure and suitable alternative natural greenspace.
15. Evidence relating to the eLP examination has been provided, including a schedule of proposed main modifications to the eLP. Amongst other things, modifications are proposed to eLP Policies DM2 and DM22 and their supporting text, which relates to development effecting the habitats site and air quality. The schedule also refers to an updated HRA that has not been submitted. On the basis of the evidence before me, I cannot be sure that the proposed changes and the updated HRA accord with Natural England's latest advice such as in respect of the modelling assumptions, and thus that there would be no adverse effects on the habitats site's integrity.
16. Additionally, it is logical that mitigation should be delivered to address the adverse impacts of this proposal specifically in time to prevent harm being caused, to maintain the integrity of the habitats site. Although the interim strategies set out various potential mitigation measures, evidence which indicates that mitigation for this specific proposal would be delivered in a timely manner has not been provided.
17. Therefore, based on the evidence before me and taking a precautionary approach, I cannot be certain that the mitigation necessary to conclude that the proposal would not adversely affect the habitats site would be secured.
18. Further, even if I was to conclude that the necessary mitigation could be secured, the UU is deficient insofar as Clause 1.3 indicates that a Building Society has an interest in the land. As it is not party to the UU, the obligations would be unenforceable against its successors in title. The UU also refers to the incorrect planning application reference and therefore it would not take effect if

³ People Over Wind & Peter Sweetman v Coillte Teoranta C-323/17

⁴ Epping Forest Interim Air Pollution Mitigation Strategy (2020); Interim Approach to Managing Recreational Pressure on the Epping Forest Special Area of Conservation (2018)

the appeal was allowed. Accordingly, I cannot be certain that the financial contributions would be made or that mitigation would be provided.

19. Planning conditions have been agreed between the main parties in the event the appeal succeeds. Amongst them are ones to require the provision of electrical vehicle charging points and a strategy to facilitate super-fast broadband for the occupiers. These would likely result in the number of petrol and diesel vehicle movements and harmful emissions generated from the development being lower than would otherwise be the case. However, the conditions would not prevent the use of such vehicles or address the proposal's impacts from recreational activities.
20. Whilst the appellant's HRA was reviewed by a specialist consultant appointed by the Council and housing may have been approved in locations that are similarly close to the habitats site, as competent authority I must be satisfied that the development would not adversely affect the habitats site's integrity. For the reasons identified, I cannot conclude that this would be the case.
21. Therefore, the proposal conflicts with Policy NC1 of the Epping Forest District Local Plan and Alterations (LP), which resists adverse effects on special areas of conservation. It also fails to comply with eLP Policies DM2 and DM22, which seek to avoid adverse effects on the habitats site. Additionally, it conflicts with Chapter 15 of the Framework and the Habitats Regulations, which seek to protect designated habitats and species.

Character and appearance

22. The site includes a bungalow and associated outbuildings. A tall hedge extends across the majority of the site's front boundary. Trees and other vegetation are located within and near the boundaries of the site.
23. The area is predominantly characterised by large, detached houses fronting the highway in fairly consistent lines; however, their ages and designs vary considerably and a few bungalows are also evident nearby. A high number of street trees are present in the vicinity. Additionally, many properties feature soft landscaping that is visible from the highway, including boundary hedges.
24. The bungalow has a tired appearance, is somewhat awkwardly juxtaposed between the comparatively large houses at 6 and 10a Stanmore Way and makes a limited contribution to the prevailing character of the area. Furthermore, the site's front boundary hedge is unusually large relative to the size and extent of boundary hedges at other properties.
25. The proposed building would feature asymmetrical pitched and gabled roofs which would appear to be separated by a chimney stack. Most of the accommodation, including a bathroom and bedroom or study, would be located on the ground floor of each dwelling. However, there would also be ensuite bedrooms above ground floor level, which would be served by windows in gable ends to the front and rear of the building.
26. Taking the proposed dwellings together, the overall building would be comparable with the height of the adjacent houses at Nos 6 and 10a, and similar in scale and width to many properties in the vicinity of the site. The building would also conform to the building line along Stanmore Way. Although the main entrances would be to the sides and not the front of the building, the site would nevertheless appear to feature semi-detached dwellings due to the

proposed roof design and as there would be front gardens for each property. However, the Council has not objected on the basis that the properties would be semi-detached. Having regard to the extent of variation in the appearance of the housing in the area, the development would not appear incongruous.

27. The proposal would involve the removal of part of the front boundary hedge to create an additional site access. The hedge is also proposed to be reduced in height. The resulting hedge would be typical of the size and extent of front boundary hedges apparent elsewhere in the locality. Although a few trees are proposed for removal, the appellant's arboricultural report identifies that they are of limited quality, none are protected by way of tree preservation orders, and their visibility from the public realm is limited. Subject to a condition to secure the implementation of new landscaping, the verdant character of the area would endure.
28. The proposal would not harm the character and appearance of the area. It accords with LP Policies LL10 and LL11, which resist the inadequate provision and retention of trees and other vegetation. It also complies with eLP Policies DM9 and DM10, which seek the integration of landscaping into schemes and enhancements to the quantity and quality of landscaping. Additionally, it accords with Chapter 12 of the Framework, which sets out that schemes should be visually attractive as a result of effective landscaping.

Housing mix

29. LP Policy H4A states that the provision of a range of dwellings, including an appropriate proportion of smaller dwellings, is required to meet identified needs. Similarly, eLP Policy H1 aims to address housing needs; however, Part F of the policy specifically resists the loss of bungalows and specialist accommodation. Its supporting text explains that there has been a gradual erosion of the existing stock of bungalows and that these play an important role because of their potential ease of adaptation such that they can provide choice for people with accessibility needs, including older people. In addition, paragraph 62 of the Framework sets out that the housing needs of different groups, including older people and people with disabilities, should be reflected in policies.
30. The appellant contends that the proposed dwellings would constitute 'chalet bungalows', whereas the Council argues that they would be 2 storey dwellings. I have not been referred to any definitions for bungalows or chalet bungalows for the purposes of assessing the proposal's conformity with LP Policy H4A or eLP Policy H1. However, details and drawings of several schemes have been provided which suggest that the Council has previously found chalet bungalows to be bungalows for the purposes of eLP Policy H1⁵. The buildings that the Council identifies as bungalows for policy purposes have similarities with the proposed dwellings, with some comparable in internal configuration and height, and others featuring first floor windows in gable ends. The Council has not provided reasons for concluding that the proposed dwellings do not constitute chalet bungalows or explained what sets them apart from the buildings that were found to constitute bungalows in compliance with eLP Policy H1. The Council's previous decisions therefore support the appellant's arguments.

⁵ Council references: EPF/1952/20; EPF/2680/20; EPF/2715/20; EPF/0028/21; EPF/0179/21

31. The appellant has undertaken an appraisal of the accessibility and adaptability credentials of the existing bungalow and the proposed dwellings. The bungalow is limited in these regards for several reasons, including stepped entrances, narrow accesses, small rooms and limited circulation space. The proposed dwellings would not have such constraints. Moreover, all the rooms typically required to meet day-to-day needs, such as cooking and bathing facilities, would be located at ground floor level. The proposed dwellings would satisfy the requirements of people with accessibility needs, including older people, even though the accommodation would be located over 2 floors.
32. Furthermore, a prior approval application has been granted⁶ that would have the effect of turning the bungalow into a 2 storey house. Having regard to the bungalow's condition, there is a reasonable prospect that the prior approval scheme would be implemented if this appeal was dismissed. This fallback position attracts considerable weight. Therefore, even if I were to find that the proposed dwellings were neither bungalows nor chalet bungalows, the loss of the existing bungalow would not lead me to conclude that the proposal should be rejected due to housing mix concerns.
33. I have been provided with 3 appeal decisions⁷ wherein the loss of bungalows was found to conflict with LP Policy H4A and eLP Policy H1. Full details and drawings of those proposals have not been provided. However, one decision refers to the creation of a 'two storey house with roof above', another refers to a proposed 'standard two storey dwelling', and the other scheme sought outline permission with all matters reserved. Chalet bungalows are not referred to within the decisions and thus the precise circumstances of and arguments put forward for those appeals appear to differ to this one. Furthermore, in this case, there is evidence that dwellings with similarities to the proposal have been found to comply with LP Policy H4A and eLP Policy H1. Accordingly, those appeal decisions have little bearing on this appeal.
34. Based on the evidence before me and taking account of the fallback position, the proposal would have a satisfactory effect on housing mix. On that basis, it does not conflict with LP Policy H4A, eLP Policy H1 or paragraph 62 of the Framework, the purposes of which are set out above.

Living conditions

35. The proposed building would be located almost centrally within the site. The gaps between it and the adjacent dwellings at Nos 6 and 10a would be similar to those between buildings elsewhere in the street. It would extend modestly beyond the front elevation of No 6 and the rear elevation of 10a. Furthermore, its pitched roof design is such that much of its upper parts would be set back significantly from the site's boundaries. Adequate outward views from the neighbouring dwellings and gardens would therefore be retained and any sense of enclosure would be limited.
36. The proposal would not result in excessive harm to the living conditions of the occupiers of adjacent properties. It accords with LP Policy DBE9, which requires that new development does not result in excessive loss of amenity for neighbouring properties. It also complies with eLP Policy DM9 and Chapter 12

⁶ Council reference: EPF/3114/21

⁷ Appeal references: APP/J1535/D/20/3252852; APP/J1535/W/21/3268775; APP/J1535/D/21/3284249

of the Framework, which seek to achieve high amenity standards and prevent overlooking, overbearing and over enclosure.

Other Matters

37. Paragraph 182 of the Framework makes clear that the presumption in favour of sustainable development does not apply where a plan or project is likely to have a significant effect on a habitats site, unless an appropriate assessment has concluded that the project would not adversely affect the integrity of a habitats site. It has not been possible to conclude that the proposal would not adversely affect the habitats site's integrity. Therefore, the presumption is not applicable in this case.
38. Nevertheless, it is undisputed that the Council cannot demonstrate 5 years supply of deliverable housing sites, with the appellant indicating that only 1.35 years supply exists. The proposal would make a small but notable contribution to housing supply and delivery having regard to the housing provision issues in the district. Additionally, the housing would be within walking distance of the centre of Loughton and the site would be used efficiently to increase the amount of accessible and adaptable accommodation in the district. Energy efficiency measures are also proposed. Further, the Framework supports the use of small sites, windfall schemes in existing settlements, the development of under-utilised land and the subdivision of sites. However, these benefits do not outweigh my concerns in respect of the habitats site.
39. The proposal is supported by an ecological assessment. Amongst other things, it recommends that a bat emergence survey of the existing bungalow is undertaken. The main parties have agreed to a condition that would require the recommendations in the assessment to be carried out.
40. Circular 06/2005⁸ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted. On that basis, it would be inappropriate to require the undertaking of surveys by means of a condition. The use of conditions to require mitigation in the absence of surveying would also be inappropriate as there would be no certainty that such measures would satisfactorily address any harm to bats that might occur. However, as I am dismissing the appeal in relation to one of the main issues in dispute, I have not sought further views from the parties regarding this matter.

Conclusion

41. The proposal is contrary to the development plan. Material considerations do not outweigh the conflict with the development plan. Accordingly, the appeal is dismissed.

Mark Philpott

INSPECTOR

⁸ Office of the Deputy Prime Minister Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impacts within the Planning System