



Appeal Decision

Site visit made on 29 March 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 15 June 2022

Appeal Ref: APP/J1535/W/20/3256254

Land adjacent to Forest House, Vicarage Lane, Chigwell, IG7 6NA

- 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 Warren against the decision of Epping Forest District Council.
 - The application Ref: EPF/0019/20, dated 12 December 2019, was refused by notice dated 10 March 2020.
 - The development proposed is the construction of new detached dwelling, a single garage and new access off of Vicarage Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission¹ for a two-storey dwelling at the appeal site was granted by the Council in 1989 and subsequently renewed in 1995². These permissions were not implemented. I have had regard to this matter as a material consideration in my overall determination of this appeal.
3. The Council's reasons for refusal refers to policies DM7, SP7, DM3 and DM5 of the Epping Forest District Local Plan (Submission Version)(2017)(LPSV). The LPSV has not yet been adopted by the Council as part of their development plan. However, the LPSV has been through the examination process and the Council advise that the emerging Local Plan has reached an advanced stage. Therefore, I have attached significant weight to these emerging policies but not the full weight of an adopted Local Plan.

Main Issues

4. The main issues are:-
 - i) whether the proposed development would preserve the setting and significance of a Grade II listed building, Forest House; and
 - ii) the effect of the proposed development on the character or appearance of the surrounding area with particular regard to the effect on the long-term health and vitality of trees.

¹ Planning Reference: EPF/1669/89

² EPF/0089/95

Reasons

Heritage

5. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The National Planning Policy Framework (the Framework) advises that 'significance derives not only from the asset's physical presence but also from its setting'. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
6. Forest House is a substantial Grade II listed building set within an extensive plot which originates from circa early 18th century. It comprises a range of pleasing decorative features including a central entrance porch with columns and pilasters, double hung sash windows, 2 chimney stacks to each side wall, parapet with stucco string course and two-storey cast iron balconies. The property is set within its own well-defined grounds with a rear garden mainly enclosed by substantial fencing and walls. The garden is extensive in size and reflects the listed buildings' high status in addition to providing a setting for the building which, in my view, derives its significance and special interest from its historical origins, its stature and attractive decorative architectural features and detailing.
7. A masonry wall presently separates the appeal site from the existing garden area of Forest House. Notwithstanding this physical separation, the appeal site forms part of its historic curtilage and as an undeveloped area that is largely laid to lawn, albeit with an unkempt and overgrown appearance, together with bands of mature trees set along two of its edges, the mainly open nature of the appeal site ensures that its historical and functional relationship with the historic building continues to be evident, particularly in views from Vicarage Lane.
8. Notwithstanding the presence of other more recent developments including High Elms and The Bowls, which have diluted the setting of the listed building over time, as a largely undeveloped area of land, even in its current unkempt state, it still makes a considerable contribution to the historic context of Forest House and forms an important part of its setting. This setting contributes positively to the understanding and the special interest and significance of the historic building along with the ability to appreciate it from the public domain. I have had special regard to this matter in considering the appeal.
9. The appeal scheme would introduce a sizeable dwelling in close proximity to the listed building. Whilst numerous of the mature trees would be retained, the physical presence of the proposed development would still have a significant and permanent adverse effect, altering substantially the open and green character of the appeal site and bringing built development close to Forest House in an area that has historically been linked to the listed building and free from development.
10. This effect would be particularly noticeable in views from the adjacent road, where presently there are distinctive and attractive views of the historic building and its setting including the appeal site. Given that there are presently

limited views of the historic building and its setting from wider public vantage points by reason of the existing neighbouring built forms, the appeal scheme would undermine the ability to appreciate the historic building from Vicarage Lane and erode the positive contribution it makes to the streetscene.

11. I note that the proposed development is broadly similar to a previously approved scheme and that consideration would have been given to the impact of that scheme on the historic environment. Although there is little information before me regarding the extent, if any, of any material changes to local planning policy, national planning policy has altered giving greater strength and protection in terms of the preservation of heritage assets. Moreover, the appellant advises me that there has been considerable development within and near to the curtilage of Forest House and therefore, on this basis of the erosion of the setting of the historic buildings' setting over time, it becomes even more essential to protect those elements of its setting that continue to endure so that its setting is not irrevocably lost and the significance of the heritage asset unduly harmed. Accordingly, I find it appropriate in this instance to depart from the earlier decisions made by the Council in respect of the approved scheme.
12. For the reasons set out above, the proposal would have a permanent negative impact on the setting of the listed building and it would be materially harmful to its significance. This would be contrary to Policy HC12 of the Epping Forest District Local Plan (1998)(LP) and emerging Policy DM7 of the LPSV insofar as these policies require development to conserve and enhance the character, appearance and function of heritage assets and their settings, and respect the significance of the historic environment.
13. I consider that the harm would be "less than substantial" and accordingly paragraph 196 of the Framework provides for a balancing exercise to be undertaken between "less than substantial harm" to the designated heritage asset and the public benefits of the proposal.
14. In terms of the public benefits, it would provide an additional dwelling which would contribute to the supply of housing within the district. The construction of the proposed dwelling would provide short term benefits to the local and wider economy and any future occupants would contribute to consumer spending and help to support local services and facilities, which would all constitute benefits in social and economic terms. However, given the modest scale of the proposal, the associated public benefits would be limited.
15. I have concluded that the appeal scheme would fail to preserve the setting and result in 'less than substantial' harm to the significance of the Grade II listed Forest House. I have paid special regard to the desirability of preserving this setting and I note that I am required to give considerable importance and great weight to preserving the setting of such a heritage asset. Having considered the range of public benefits that would be generated by the appeal scheme, I consider that these attract limited weight and as a consequence, they would not outweigh the clear harm that would be caused. Heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life for existing and future generations. The proposal would be contrary to LP Policy HC12 and emerging Policy DM7 of the LPSV, the requirements of which are set out above, together with national planning policy contained within section 16 of the Framework.

Character and appearance – trees

16. The appeal site comprises a significant number of mature trees, a number of which are, together with a number of additional trees adjacent to the appeal site, protected by a Tree Preservation Order³. Within the appeal site, the protected trees are generally substantial in size and are readily visible from public viewpoints from the highway and in private views from neighbouring dwellings and their gardens. Cumulatively, the group of trees, including those with the benefit of protection and those without, are a prominent and attractive group of trees that make a positive contribution to the pleasant and sylvan character of the area.
17. The appeal scheme will introduce built form where there is presently none. The submitted arboricultural report (AR) identifies that the proposed development would be likely to encroach within the root protection areas (RPAs) of a number of trees. In particular, parts of the proposed building together with a large area of hardstanding will encroach within the RPAs of two category B23 trees of moderate quality, T6 and T8. Additionally, the proposed driveway would be positioned close to the stem of T8. There is no dispute that these trees have good landscape, cultural and conservation values and notwithstanding some recent storm damage, the majority of the trees would be expected to live for many more years.
18. Notwithstanding the availability of alternative methodologies for construction over RPAs, a significant part of the RPAs of a number of these trees would be impacted by the proposed building and hardstanding areas. There is little evidence before me of an appropriate technical solution to adequately demonstrate that these trees would continue to remain viable and therefore, I cannot be certain that the long-term health of the existing trees would not be unduly compromised as a result of incursion of construction activities within the RPAs of these trees.
19. In addition, given the proximity of a number of trees to the proposed building, several trees would require crown reduction, in areas adjacent to the proposed building to retain a sufficient gap between the tree and the building. Given that trees can often be perceived as a nuisance by reason of the obstruction of light and from falling leaves and debris, the appeal scheme is likely to subject the trees to additional pressure for pruning works or even felling, in order to bring in more sunlight into the garden area and internal areas of the dwelling and to avoid perceived or actual damage. This issue would only become more acute as the trees continue to grow.
20. I have had regard to the previous approved development and I note that the renewed planning permission was granted following the imposition of the TPO. However, the grant of planning permission occurred sometime ago and albeit no new trees have grown nor have any additional trees been made subject to a further TPO, importantly, since that date the trees on site will have changed in terms of having experienced further growth and spread. I must determine the appeal before me having regard to the current physical condition of the trees and their existing contribution to character and appearance and assess the proposed scheme against the most up to date and recent guidance of the British Standard relating to trees.

³ TPO/EPF/17/91

21. Furthermore, there is limited information before me regarding the provision of services which would require a below ground position. Albeit I accept that it would be possible to avoid the RPAs of trees taking account of access to services via the adjacent property, Forest House, there is no substantive evidence before me that the adjacent landowner would facilitate this or that the appellant benefits from any right to use the neighbouring land and services in the manner suggested. Although it is put to me that the proposed services would be outside of the trees RPAs, there is no clear evidence to demonstrate that this would be achievable and that adverse harm to the health of trees would be prevented. In this instance, a precautionary approach is appropriate as these matters should be addressed and considered at this stage and not by means of the imposition of a planning condition.
22. Accordingly, I find that the appellant has not satisfactorily demonstrated that the proposed development would not compromise a very important part of the root area of trees. Consequently, there is a clear risk that the proposed development would threaten the integrity and long-term future of trees and thereby compromising their considerable contribution to the character and appearance of the area. There would be conflict with LP Policy LL10 and emerging Policies SP7, DM3 and DM5 of the LPSV. Among other things, these policies require high quality development that makes adequate provision for the retention of trees. In addition, the appeal scheme would conflict with the provisions of the Framework insofar as it aims to conserve and enhance the natural environment.

Other Matters

23. No adverse harm has been identified with regards to highway safety or the outlook from neighbouring dwellings, however, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
24. My attention has been drawn to an appeal decision at Wayback⁴, for a replacement dwelling adjacent to a listed building and a recent scheme at Grange Court⁵, for alterations, extensions and conversion of a Grade II* Listed Building. However, there is limited information before me regarding the circumstances of each scheme and their impact on designated heritage assets. Whilst it is put to me that these schemes were assessed against similar development plan policies and shared similar stringent constraints as the appeal scheme, the detail of those policies and the circumstances and constraints of those schemes are not before me to consider. It is not clear to me whether the circumstances are comparable to the appeal proposal and therefore a comparison is of limited relevance in this instance. I have determined the appeal scheme on its individual planning merits.
25. The appeal site is located within a sustainable location with access to services and facilities. The appeal scheme would make efficient use of land and contribute an additional dwelling to housing supply. However, given the modest scale of the development any consequent benefits of the appeal scheme would be limited.
26. The appeal site is located within the zone of influence of the Epping Forest Special Area of Conservation (SAC). The proximity of this European site means

⁴ APP/J1535/W/20/3254429) Wayback, 179 Lambourne Road, Chigwell

⁵ Planning References: EPF/3264/17 and EPF/3275/17 Grange Court, Chigwell

that determination of the application should be undertaken with regard to the requirements of the Habitats Regulations 2017. Occupation of an additional dwelling at the appeal site could lead to additional pressure in respect of air quality and the increased recreational disturbance on the integrity of habitats sites. In such circumstances an Appropriate Assessment is required. However, as the scheme is unacceptable for other reasons, it is not necessary for me to give consideration to the implications on the integrity of the European site from the appeal scheme. The development is not going ahead and therefore any harm to the SAC will not occur.

Conclusion

27. For the reasons given above, I conclude that the appeal scheme would conflict with the development plan. The material considerations weighing in favour of the appeal scheme are limited and do not outweigh the conflict with the development plan. Accordingly, the appeal is dismissed.

E Brownless

INSPECTOR