
Appeal Decision

Site visit made on 11 July 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2022

Appeal Ref: APP/J1535/W/21/3281343

Land adjacent to 105 Lower Park Road, Loughton, Essex IG10 4NE

- 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 Alan Davey against the decision of Epping Forest District Council.
 - The application Ref EPF/1379/20, dated 23 June 2020, was refused by notice dated 23 February 2021.
 - The development proposed is proposed new two bedroom semi-detached dwelling attached to existing house.
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Decision

1. The appeal is allowed and planning permission is granted for proposed new two bedroom semi-detached dwelling attached to existing house at land adjacent to 105 Lower Park Road, Loughton, Essex IG10 4NE in accordance with the terms of the application, Ref EPF/1379/20, dated 23 June 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. I have taken the description of development as it is shown on the appeal form and the decision notice since, whilst not matching the description on the application form, accurately describes the revised proposal.
3. The appellant submitted amended plans with the appeal, which seek to clarify the existence of a void between the ground surface and underside of the proposed pile and beam foundations, and detail a proposed piling layout. An Arboricultural Appeal Statement and accompanying technical drawings were also submitted. In addition, the appellant submitted a Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 and a supplemental agreement. As the revised plans and additional documents do not change the substance of the proposed development that was considered by the Council, having regard to the "Wheatcroft" principles¹ the Council and interested parties would not be prejudiced by my consideration of them.
4. Following the submission of a Flood Risk Assessment, Surface Water Drainage and SuDS Strategy with the appeal, the Council confirmed that the third reason for refusal relating to surface water flooding would not be pursued, subject to conditions. I have no reason to disagree with the conclusions of that document which contains mitigation measures for the safe development of the site.

¹ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37

5. The Council's first and second reasons for refusal refer to policies DM2, DM5 and DM22 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 has reached a very advanced stage. I am not aware of any unresolved objections to these policies so far as they relate to this appeal. Therefore, I have attached significant weight to these emerging policies.

Main Issues

6. The main issues are the effect of the proposal on nearby trees, and the effect on the Epping Forest Special Area of Conservation (SAC).

Reasons

Trees

7. The appeal site is located to the side of 105 Lower Park Road, a three storey end terraced dwelling situated at the end of the cul-de-sac. There are a number of mature trees within the site and close to its boundaries, notably a large sycamore (identified as T1) located just beyond the southern boundary of the site within the grounds of the adjoining tennis club.
8. As noted by the Council, T1 has been heavily pruned such that its height and crown spread have been significantly reduced. It is now classified as a Category C tree in the appellant's arboricultural report. I agree with that classification and I note that this tree is not protected. Nevertheless, in combination with other nearby mature trees, the sycamore has some amenity value in contributing to the verdant character of the area.
9. The appellant proposes to retain T1. However, the proposed dwelling would be sited around 1.5-2m from this tree and it would lead to development within at least 40% of its root protection area (RPA), in addition to around 10% of the RPA that is already impacted on by the existing house. That would exceed the recommended 20% sought in British Standard 5837:2012 Trees in relation to design, demolition and construction – recommendations.
10. The proposed construction method would include a piled foundation with construction above existing ground level to prevent soil compaction and allow for water to transmit below the slab. The appellant's arboricultural report notes that there are multiple large roots positioned approximately 50mm below ground. Whilst the cross section shows that the ground would be excavated by around 25mm to facilitate the installation of the piled foundation, this would still leave a gap of around 25mm from the large roots. If significant tree roots are discovered during the trial trenches, the positioning of the piles could be altered to avoid damage to any roots. The final foundation design and tree protection measures can be addressed by the imposition of appropriate conditions. Subject to this, I am satisfied that the proposed measures would secure the long term health of the tree.
11. Due to the proximity of the tree to the proposal, there is the potential for some overshadowing of the new dwelling together with leaf fall and debris. The principal outlook from the new dwelling's living area would be to the rear. The bedroom windows would be to the front and rear of the property. These would be set away from potential overshadowing effects of the tree. The kitchen/dining room window would be to the side elevation facing towards the tree but this area

of the house would also benefit from an outlook to the rear as it would be a through room to the living area. Based on the evidence before me, and taking into account that the tree has already been cut back from the site boundary, I see no reason why leaf fall could not be adequately managed to prevent it being a nuisance. I am not persuaded that the proposal would result in harm to the living conditions of future occupiers to an extent that would cause unacceptable pressure to remove or significantly prune the tree.

12. There are mature trees in the surrounding area which are similarly closely related to residential properties, including 128 Lower Park Road which is opposite the appeal site. In that context, rather than creating an incongruous visual relationship between the tree and the dwelling, the proposal would reflect its general surroundings.
13. For the above reasons, I conclude that the proposal would not be harmful to nearby trees. As such it would comply with saved Policy LL10 of the Epping Forest District Adopted Local Plan (1998) which, amongst other things, requires development proposals to make adequate provision for the retention of trees and other natural features. It would also accord with Policy DM5 of the LPSV which, amongst other things, requires that development proposals demonstrate that they have been designed to retain and where possible enhance existing green infrastructure, including trees. The proposal would also comply with the aims of the National Planning Policy Framework (the Framework) that seeks to ensure developments contribute to and enhance the natural and local environment.

Epping Forest SAC

14. The appeal site is located within the 3km Zone of Influence (ZoI) of the Epping Forest SAC. The area was designated due to the presence of three qualifying habitats and one species, namely Atlantic beech forest, European dry heaths, Northern Atlantic wet heaths and the Stag beetle. The conservation objectives are to achieve the favourable conservation status of these 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 it relies.
15. The Conservation of Habitat and Species Regulations 2017 (the Habitat Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC.
16. The SAC and its qualifying features are at risk from increases in nitrogen oxide, ammonia and nitrogen deposition, largely emitted by vehicular traffic. Proposals for development are likely to generate such traffic and are therefore, either alone or in combination with other schemes, likely to have a significant effect on the quality features of interest of the SAC. In addition, an increase in residents would generate additional recreational pressure upon the SAC that could affect its integrity.
17. Based on evidence before me, I have no reason to disagree with the Council's assessment that the creation of a new dwelling within the ZoI would impact on the SAC in terms of air quality and increased recreational pressure from future occupants of the development. In combination with other development in the area, this would likely have a significant effect on the SAC. To address such

impacts the Council has adopted interim strategies requiring appropriate contributions in accordance with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

18. The appellant's completed UU includes financial contributions to mitigate impacts on the SAC from recreational pressure and air quality. It also provides for an electric charging point and high-speed broadband. A supplemental document to the UU further commits the appellant to provide a 5% monitoring fee which would enable a review of the agreement until such time as the financial contributions have been made and physical works completed.
19. The contributions would address any effects associated with the proposed development and its likely effects on the SAC. The proposal would comply with saved Policies CP1 and CP6 of the Epping Forest District Local Plan Alterations (2006), which seek to minimise impacts upon the environment, provide compensatory measures to off-set such impacts, and accommodate development and economic growth in a sustainable manner. It would also comply with Policies DM2 and DM22 of the LPSV which require development to conserve and enhance the biodiversity of the SAC including having regard to impacts upon air quality, which should be adequately mitigated. It would also accord with the Habitat Regulations because there would not be an adverse effect on the integrity of the SAC, and with the Framework in avoiding harm to biodiversity.
20. I am satisfied that the planning obligations contained within the UU are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. They meet the tests set out within Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Framework paragraph 57.

Other Matters

21. Interested parties raise concerns about the design and appearance of the proposed dwelling and overdevelopment. The Council have not raised objections to the proposal in this regard and I have no reason to disagree with this assessment based on the evidence before me and my observations on site. There is no indication that the guttering to the proposed dwelling would overhang the boundary with the tennis club. However, the absence of harm in relation to these matters is effectively neutral rather than weighing positively in favour of the proposal.

Conditions

22. I have had regard to the conditions suggested by the Council in their statement. In imposing conditions I have had regard to the relevant tests in the Framework, Planning Practice Guidance (PPG) and of statute. In that context I have modified the wording of some of the conditions proposed by the Council without altering their fundamental aims.
23. In addition to the standard implementation condition, I have imposed a condition specifying the relevant plans as this provides certainty.
24. In the interests of safeguarding trees, conditions are necessary relating to tree protection measures, details of foundations of the new dwelling and no installation of services within the RPA of the sycamore tree.

25. In order to control any alterations to levels on the site, a condition has been included to ensure that excavated materials are removed from the site.
26. Conditions to secure the implementation of the proposed drainage strategy and details of flood mitigation measures are required to ensure satisfactory drainage and mitigation of flood risk.
27. In order to preserve the character and appearance of the area, conditions are required in relation to details of hard and soft landscaping and the use of matching materials.
28. In the interests of highway safety, I have included conditions to require wheel washing facilities during the construction period.
29. In order to protect the living conditions of neighbouring residents, a condition controlling the hours of construction is necessary. A condition relating to contamination is necessary to safeguard human health and the environment.
30. A condition is necessary to incorporate measures to ensure a water efficiency standard of 110 litres or less per person per day to address the existing water stress in the borough.
31. The PPG advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. In this case, the removal of permitted development rights in relation to the enlargement of the proposed dwelling and additions or other alterations to its roof is reasonable and necessary in order to safeguard the nearby trees and the character and appearance of the area.
32. Conditions relating to the provision of an electric vehicle charging point and high speed broadband are unnecessary since these would be secured by the Unilateral Undertaking.

Conclusion

33. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed subject to conditions.

M Ollerenshaw

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LDEF/20/01, LDEF/20/02/01, LDEF/20/02/02, LDEF/20/02/03 Rev A, LDEF/20/02/04 Rev A, LDEF/20/02/05 Rev A, SK001 Rev P1 and EX2105005 Drawing 100 Issue P1.

Before development commences

- 3) No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837:2005 (Trees in relation to construction) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule unless the Local Planning Authority gives its written consent to any variation.
- 4) No development shall take place until foundation details have been submitted to and approved in writing by the Local Planning Authority. The foundations shall consist of piles and an above ground beam design. Drawings submitted shall include cross sectional detail of pile and beam join and the location of piles in plan form. The development shall be carried out in accordance with the approved documents unless the Local Planning Authority gives its written consent to any variation.
- 5) No development shall take place until details of flood mitigation measures to be incorporated into the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details prior to first occupation.

Before work above ground

- 6) Prior to any above ground works full details of both hard and soft landscape works (including tree planting) and implementation programme shall be submitted to and approved in writing by the Local Planning Authority. These works shall be carried out as approved. The hard landscaping details shall include, as appropriate, and in addition to details of existing features to be retained: proposed finished levels or contours; means of enclosure; car parking layout; other minor artefacts and structures, including signs and lighting and functional services above and below ground. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of 5 years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

Before occupation or other stage conditions

- 7) Prior to first occupation of the development measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 8) The development be carried out in accordance with the drainage strategy (Proposed Drainage Strategy, EX2105005, Drawing 100, Issue P1).
- 9) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 10) If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place, unless the Local Planning Authority gives its written consent to any variation. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.
- 11) No services shall be installed within the root protection area of the sycamore tree (identified as T1 in the Arboricultural Impact Assessment, dated September 2020, report ref 200854-PD-11) unless the Local Planning Authority gives its prior written approval.
- 12) Wheel washing or other cleaning facilities for vehicles leaving the site during construction works shall be installed and utilised to clean vehicles immediately before leaving the site. Any mud or other material deposited on nearby roads as a result of the development shall be removed.
- 13) All construction/demolition works and ancillary operations, including vehicle movement on site which are audible at the boundary of noise sensitive premises, shall only take place between the hours of 0730 to 1830 hours Monday to Friday and 0800 to 1300 hours on Saturday and at no time during Sundays or Public/Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.
- 14) Should any discoloured or odorous soils be encountered during development works or should any hazardous materials or significant quantities of non-soil forming materials be found, then all development works should be stopped, the Local Planning Authority contacted and a scheme to investigate the risks and/or adoption of any remedial measures be submitted to and agreed in writing by the Local Planning Authority prior to the recommencement of development works. Following the completion of development works and prior to the first occupation of the site, sufficient information shall be submitted to the Local Planning Authority to demonstrate that any required remedial measures were satisfactorily implemented or confirmation provided that no unexpected contamination was encountered.
- 15) All material excavated from the below ground works hereby approved shall be removed from the site.

- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development under Schedule 2, Part 1, Classes A, B and C shall be carried out unless expressly authorised by a planning permission.

END OF SCHEDULE