



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: 22nd September 2022

Appeal Ref: APP/J1535/W/21/3284002

Hillview, St. Leonards Road, Nazeing, Waltham Abbey EN9 2HQ

- 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 Robert Currell against the decision of Epping Forest District Council.
 - The application Ref EPF/0932/21, dated 31 March 2021, was refused by notice dated 8 September 2021.
 - The development proposed is replacement planning application for 5 flats to replace approved consent EPF/1547/18.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Robert Currell against Epping Forest District Council which is the subject of a separate decision.

Preliminary Matters

3. The description of development in the banner heading above has been taken from the planning application form. The Council's decision notice refers to removal of the S106 legal agreement relating to planning permission EPF/1547/18, but as the parties have not agreed a revised description I have used the one given in the original application form.
4. The appellant submitted a revised site plan with their final comments showing an increase in the size of the parking spaces. The amended plan did not form part of the scheme that the Council made its decision upon. I am not aware that all those who should have been consulted on the proposed changes have been given the opportunity of such consultation. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals. Having regard to the Wheatcroft principles¹, I consider that this appeal must be determined on the basis of the plans submitted to the Council and upon which it based its decision, which have been subject to consultation and not the suggested amendments. To do otherwise could prejudice unacceptably the interests of interested people who would not have been consulted on the amended plans and who may have observations to make.

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

5. The decision notice refers to Policies D4, DM9, DM10, SP1 and T1 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.
6. The decision notice refers to Policy 11A of the Epping Forest District Local Plan Alterations (2006) (LP Alterations). However, the Council has since confirmed that it should refer to Saved Policy I1A of the LP Alterations which seeks necessary planning obligations to mitigate the impacts of development.

Main Issues

7. The main issues are:
 - whether the development proposed would provide appropriate accessibility for disabled residents;
 - the effect of the proposal on highway safety, with particular regard to whether it would make adequate provision for car parking;
 - whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to external amenity space and privacy; and
 - whether the appeal site would be in a suitable location for the development proposed with particular regard to access to services, facilities and sustainable transport options.

Reasons

Accessibility for disabled residents

8. The appeal site relates to Hillview, a former detached chalet bungalow located on the corner of St Leonards Road and Tatsfield Avenue. The property has since been demolished. The appeal site has a long planning history. A previous application, EPF/1547/18, for the demolition of the existing house and erection of 5 flats, including the provision of 3 ground floor flats for disabled residents and their families, was granted permission subject to a S106 agreement which, in summary, secured the 3 ground floor flats as disabled units.
9. The submitted plans show that of the 3 ground floor flats, units A and C would provide ground floor accommodation only with each of the 2 bedrooms located at ground floor. However the 2 bedrooms and bathroom serving unit B would be located at first floor level where they would not be accessible to wheelchair users as access to the first floor would only be possible via stairs. That unit would therefore be unlikely to provide suitable accessibility for some disabled occupiers.
10. Moreover, there is no completed S106 agreement with the appeal to secure the occupation of the ground floor flats for occupation by disabled persons only. The appellant says that they are committed to providing 2 disabled ground floor flats and suggests 3 planning conditions to secure these for disabled persons only. In summary, the first 2 conditions would ensure that the 2 units in question would (1) be fitted out to mobility standards and (2) only occupied

by registered disabled persons and their families. However, the third would state that conditions (1) and (2) would apply only to the first occupation of the property and not apply to subsequent occupants or sale of property. Consequently, the appellant's suggested conditions would not secure the 2 ground floor flats as disabled units in perpetuity. Moreover, there is no mechanism before me which would restrict the occupancy of the 2 ground flats to disabled persons from the local area.

11. The appellant alleges that the previous permission EPF/1547/18 is not capable of being implemented because the S106 agreement relating to it requires the 3 ground floor units to be occupied by disabled persons, but unit B is a maisonette with no bedroom or bathroom facilities on ground floor level and therefore unsuitable for occupation by a disabled person. It is not, however, the purpose of this S78 appeal to determine the legality of the previous planning permission or S106 agreement.
12. For the above reasons, I conclude that unit B would not achieve suitable access for some disabled users, but units A and C would provide appropriate accessibility for disabled residents for which I am satisfied there is a need in the local area. However, there is no mechanism before me to limit the occupation of the ground floor flats to disabled persons from the local area in perpetuity. As a result, the proposal would not secure the local community benefits that provided justification for the previous schemes on this site. The proposal would conflict with saved Policy CP1 of the LP Alterations and Policy D4 of the LPSV, which, amongst other things, seek to secure the provision of sufficient types and amounts of housing accommodation to meet the needs of the local population and to ensure that development contributes to the provision of new or improved community facilities. The proposal would conflict with saved Policy I1A of the LP Alterations, which seeks to secure necessary planning obligations. Furthermore, the proposal would not be a sustainable form of development and would not accord with Policy SP1 of the LPSV or the Framework in this regard.

Car parking provision

13. The appellant asserts that the Council have previously accepted the proposal on the basis of their own parking standards in preference to the Essex Parking Standards². However, no further information as to how the proposal would meet the Council's own parking standards has been provided. The supporting text to Policy T1 of the LPSV explains that, until the Council has developed specific residential car parking standards for Epping Forest District, planning applications will use Essex County Council's adopted Parking Standards as the starting point. I therefore consider it appropriate to apply the Essex Parking Standards to the proposal.
14. These would require a minimum of 10 spaces for this proposal, of which 1 would be a visitor space. The development would be served by 5 car parking spaces within the site, 1 of which would be a disabled space. Whilst a further 5 parking spaces would be provided on the roadside adjacent to the development, these would be outside the appeal site and there is no mechanism before me to secure the provision of these spaces. The proposal would therefore fail to provide sufficient off-street parking spaces to meet the needs of future residents.

² Parking Standards: Design and Good Practice, September 2009

15. The Essex Parking Standards set out that the preferred size for parking spaces is 5.5m x 2.9m, while the minimum size (only used in exceptional circumstances) is 5m x 2.5m. I am not aware of any exceptional circumstances relating to the site which means that the development should not provide parking spaces of the preferred size. Moreover, the Essex Parking Standards requires that parking spaces for people with disabilities should be at least 5.5m x 2.9m. The 5 parking spaces on the site would measure 5m x 2.4m and fall short of the preferred size for spaces.
16. Due to its failure to achieve sufficient parking provision on the site in terms of both numbers and size of spaces, the proposal would be likely to lead to additional pressure for parking spaces in the area. This would result in overspill parking on the nearby roads and potentially lead to reduced visibility at junctions due to parked vehicles, obstruction of crossovers, and obstruction of emergency service, refuse and larger delivery vehicles. The cumulative effects on the safety of highway users and the amenity of local residents would, as a result, be unacceptable.
17. The appellant has provided an approved plan for a nearby development at the former Total Garage site, where parking spaces of 2.4m x 4.8m were permitted. However, I do not have the planning history or precise circumstances which led to the approval of this development and so cannot be sure that it represents a direct parallel to the appeal proposal. In any event, I have considered the appeal on its own merits based on the specific site circumstances.
18. For the above reasons, I conclude that the proposal would not would make adequate provision for car parking which would be detrimental to highway safety. The proposal would not therefore accord with saved Policy DBE6 of the Epping Forest District Local Plan (1998) (LP), saved Policies ST4 and ST6 of the LP Alterations or Policy T1 of the LPSV, which, amongst other things, seek to secure adequate parking arrangements and ensure that development is not harmful to highway safety.

Living conditions

19. The external amenity space for the development would be located primarily to the eastern side of the building. In this location at the front of the building, the amenity space would be adjacent to St Leonards Road and be visible from passing pedestrians and road users. It would also be overlooked from the living room/kitchen and bedroom windows to unit A. The space to the south side would be a narrow strip of land between the proposed building and the boundary with a neighbouring property, Willows, and this area would also be overlooked from windows. Consequently, the external amenity space would lack privacy. The proposal would fail to provide adequate private external amenity space for the future occupiers of the flats, which would be to the detriment of their living conditions.
20. The appellant notes that the 84m² of external amenity space to be provided would exceed in size the amenity space approved as part of a previous scheme³. However, I do not have the substantive details of the previous scheme before. Furthermore, I must consider the appeal on its own merits.

³ Council ref EPF/2548/15

21. For the above reasons, I conclude that the proposal would not provide satisfactory living conditions for future occupiers, having particular regard to external amenity space and privacy. Accordingly, the proposal would conflict with saved Policy DBE8 of the LP and Policies DM9 and DM10 of the LPSV, which, amongst other things, seek to ensure that development is provided with adequate private amenity space.
22. The reason for refusal also refers to saved Policy DBE9 of the LP, which relates to consideration of the impact on neighbouring occupiers. Based on the evidence before me, I consider that the proposal would not be harmful to the living conditions of neighbouring occupiers and I therefore find no conflict with this policy.

Suitable location

23. The appeal site is located around 360m from the centre of the village and therefore within reasonable walking distance of the range of shops within the village centre. There are also bus stops within the village centre which provide regular services to other larger settlements nearby where there are a greater range of services and facilities.
24. I conclude that the site would be a suitable location for the proposed development having particular regard to access to services, facilities and sustainable transport options. In this regard it would accord with saved Policy CP1 of the LP Alterations and Policy T1 of the LPSV, which, amongst other things, 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.

Other Matters

25. The appellant says that the Council unlawfully changed the description of the development and that the ground for refusal does not reflect the description on the planning application form. However, that is not a reason to allow the appeal unless founded on valid planning grounds and, for the reasons explained above, I have found that the appeal scheme would be harmful.
26. There is some support for the proposal from the Parish Council. However, there were also objections. I have found that the proposal would be harmful and therefore the weight of support is not a determinative matter in favour of the proposal.
27. The Council raised no concerns in relation to the effect of the proposal on the living conditions of neighbouring occupiers or the character and appearance of the area and I have no reason to disagree with that assessment based on the evidence before me. The proposal would accord with saved Policy DBE1 of the LP and Policy DM9 of the LPSV, which seek to ensure that development respects its setting and is sympathetic to the street scene. Compliance with the development plan in respect of these, or other matters, is effectively neutral rather than weighing in favour of the proposal.

Planning Balance and Conclusion

28. The appellant asserts that the Council cannot demonstrate a 5-year housing land supply, which is disputed by the Council. Paragraph 11 d) ii. of the National Planning Policy Framework (the Framework) directs that permission

should be granted unless 'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.' Were that balance to apply, the development would offer benefits in terms of providing additional units of accommodation, albeit there is no mechanism before me which would secure the 2 ground floor units for occupation by disabled persons from the local area in perpetuity. I therefore give limited weight to this consideration. The proposal would also have economic benefits through employment opportunities created during the construction phase and spending in the local area by future occupants. However, given the modest scale of the development proposed, the weight attributable to these matters is limited. Moreover, the appeal site already benefits from planning permission for the same quantum of development as is proposed by the appeal scheme.

29. The proposal would be in a suitable location having particular regard to access to services, facilities and sustainable transport options. However, I have also found that the proposal would not provide satisfactory living conditions for future occupiers having regard to external amenity space and privacy, and it would not make adequate provision for car parking to the detriment of highway safety.
30. I have considered the benefits of the proposal, however, even were I to find that the Council were unable to demonstrate a 5-year housing land supply of deliverable sites relative to needs, inherent in my reasoning above is that the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits.
31. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

M Ollerenshaw

INSPECTOR