



Appeal Decision

Site visit made on 9 August 2022

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2022

Appeal Ref: APP/J1535/W/21/3279772

Garages to the rear of Nos 13-43 Charles Street, Epping CM16 7AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Russell Tomkins (RCT Construction) against the decision of Epping Forest District Council.
 - The application Ref EPF/0281/21, dated 1 February 2021, was refused by notice dated 23 June 2021.
 - The application sought planning permission for the demolition of the existing garage buildings and the erection of 9 x 2 bedroom mews houses, with associated landscaping, parking, bike and refuse stores without complying with conditions attached to planning permission Ref EPF/3426/18, dated 15 December 2020.
 - The conditions in dispute are Nos 2 and 21 which state that: The development hereby permitted will be completed strictly in accordance with the approved drawings Nos: CHSs_EX_100_A, CHSs_EX_200_A, CHSs_PL_100_C, CHSs_PL_200_C, CHSs_PL_120_C, CHSs_PL_220_C, CHSs_PL_320_C, CHSs_PL_321_C, CHSs_PL_322_C, RCT Construction Limited Transport Statement ref A110371-1 December 2018, Planning Statement, Noise and Vibration Impact Assessment Technical Report 31503 R2 by Sound Solution Consultants, Flood Risk Assessment by Tree Counties Flood Risk Assessment, Energy and Sustainability Statement by Integration dated 12 December 2018, Tim Moya Associated Ecological Report Extended Phase 1 Habitat Survey Bat Scoping Assessment, Great Crested Newt HIS Assessment Nov 2017, Report on a Phase 1 Desk Study by Ground Engineering ref C14638 Dec 2018, Tim Moya Associates Arboricultural Impact Assessment ref 180920-PD-10 Dec 2018 and No new windows shall be inserted into the southern elevation walls of the dwellings hereby approved without the prior written permission of the Local Planning Authority.
 - The reasons given for the conditions are: To ensure the proposal is built in accordance with the approved drawings and To prevent overlooking and loss of privacy to the occupants of neighbouring properties, in accordance with the guidance contained within the National Planning Policy Framework, policy DBE9 of the adopted Local Plan and Alterations, and Policy DM 9 of the Epping Forest District Council Local Plan Submission Version 2017.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing garage buildings and the erection of 9 x 2 bedroom mews houses, with associated landscaping, parking, bike and refuse stores at Garages to the rear of Nos 13-43 Charles Street, Epping CM16 7AU in accordance with the terms of the application, Ref EPF/0281/21, dated 1 February 2021, without compliance with condition numbers 2 and 21 previously imposed on planning permission Ref EPF/3426/18 dated 15 December 2020 and subject to the conditions contained in the schedule to this decision.

Applications for Costs

2. An application for costs was made by Mr Russell Tomkins (RCT Construction) against Epping Forest District Council. This application is the subject of a separate decision.

Preliminary Matter

3. Although not included as a reason for refusal by the Council, I have included the effect of the proposal on the integrity of the European Site as a main issue. Under section 73 of the Town and Country Planning Act 1990, amending the conditions would create a new planning permission. Therefore, although the proposal involves the amendment of conditions only, as it would create a new planning permission should the appeal be allowed I am required to consider whether the proposed development as a whole would be likely to have a significant effect on the site, and if so assess the implications of the effect of the proposal on the site's conservation objectives under an appropriate assessment.

Main Issues

4. The main issues are the effect that amending conditions 2 and 21 would have on:
 - the character and appearance of the surrounding area,
 - the living conditions of the future occupiers of the proposed dwellings with regard to amenity space, and
 - the effect on the integrity of the Epping Forest Special Area of Conservation (EFSAC).

Reasons

Character and Appearance

5. Planning permission¹ has been granted on the appeal site for the demolition of the existing garage buildings and the erection of 9 x 2 bedroom mews houses, for which construction has begun. The appeal seeks permission to vary conditions 2 and 21, relating to the approved plans and the restriction of windows in the southern elevation wall, of the original permission. This is in order to facilitate a study room within the loft space of each of the nine dwellings, a rooflight and front window in each dwelling to serve the new study rooms and the adjustment of the roof forms.
6. The proposed changes to the roof heights and roof forms are minimal, with a maximum height increase of approximately 0.6 metres and a very similar dual pitched roof form to that which was originally proposed. Although the dwellings will be greater in height than those on Charles Street, the height, bulk and massing of the development is not significantly different from the scheme which was approved. The dwellings would also be set against much taller industrial buildings to the rear of the appeal site and therefore would not appear overly large in the surrounding area. Consequently, the changes to the development would not result in a more crowded visual appearance than the scheme set out in the original permission.

¹ EPF/3426/18 (the original permission)

7. Furthermore, the size of the appeal site and the footprint of the development would not change. Therefore, although slightly greater in height, the proposed changes would not appear as a cramped or overly dense form of development. The addition of a window on the front elevation to serve the proposed study room within the loft space would not significantly alter the appearance of the proposed dwellings or harmfully impact upon the overall streetscene.
8. I therefore conclude that amended conditions 2 and 21 would not have a harmful impact on the character and appearance of the surrounding area. As such I find no conflict with Policies CP2, CP3, CP7 and DBE1 of the Epping Forest District Local Plan 1998 and Local Plan Alterations 2006 (the adopted Local Plan). These policies collectively seek to ensure that new development maintains the quality of the built environment and uses higher densities where compatible with the character of the locality, respecting their setting in terms of scale, proportion, massing and height. There would also be no conflict with the general design objectives of the National Planning Policy Framework.
9. The amended conditions would also comply with Policies SP3, H1 and DM9 of the Epping Forest District Local Plan Submission Version 2017 (the submission Local Plan). These policies seek to ensure that the design of new development relates positively to its context, maintains the character of existing settlements and is appropriate to the size of the site and its surroundings.

Living Conditions

10. The proposed changes would introduce a study room within the loft space of each dwelling. Although the Council suggest that this could be used as a child's bedroom, the small size of the room and the low ceiling height would indicate that it would not be suitable for such use. Nevertheless, as the room is intended to be used as a study it should be considered as such. Therefore, as the proposed changes would not result in additional occupants within the dwellings, it would not intensify the use of the appeal site. As such, the proposed changes would not require a different amount of garden space or children's play space from that which was approved under the original permission.
11. No evidence has been provided to suggest that the amenity space provided for each dwelling should be different from that of the original permission. Although located to the front of the dwellings, the amenity space would be suitable for the mews style proposed taking into account their size and the suburban location. Consequently, the amended conditions would not have a harmful impact on the living conditions of the future occupiers and would not conflict with Policy DM10 of the submission Local Plan which requires family housing to provide access to amenity space.
12. The Council's statement makes reference to Policy DBE8 of the adopted Local Plan and Policy DM10B of the submission Local Plan, in relation to the provision of amenity space. However, these were not included in the reason for refusal and copies of these policies have not been provided. Therefore, I have not considered these policies as part of the appeal. Furthermore, Policies CP1 and DBE3 of the adopted Local Plan have been included within the Council's reason for refusal. However, these relate to neither of the main issues in this appeal and therefore have also not formed part of my considerations.

Special Area of Conservation

13. The Council's pre-application advice indicates that the appeal site lies within 3km of the Epping Forest Special Area of Conservation (EFSAC), a European site designated under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The area is noted for its wood pasture with habitats of high nature conservation value including ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland. These habitats support a nationally outstanding assemblage of invertebrates major amphibian interest and an exceptional breeding bird community. The site's conservation objectives seek to ensure the maintenance or restoration of the site's integrity to provide favourable conditions for the identified features. The Epping Forest District Local Plan Habitats Regulation Assessment 2019 identifies the pathways of impact on the EFSAC as disturbance from recreational activities arising from new residents and atmospheric pollution as a result of increased traffic using the roads in the EFSAC.
14. In relation to the impact on the EFSAC through atmospheric pollution as a result of increased traffic using the roads, the Council has provided information from a transport note prepared by the appellant. This compares the annual average daily vehicle trips generated by the existing use compared with the proposed scheme. From this information the Council were satisfied that the development would not result in a net increase in traffic using roads through the EFSAC and therefore the proposal would not have a likely significant effect on the integrity of the EFSAC in relation to air quality. From the evidence provided, I agree with this conclusion.
15. In relation to disturbance from recreational activities, the Council's Interim Mitigation Strategy for the EFSAC (the IMS) 2018 sets out a strategy to prevent and mitigate the impact from additional development on the EFSAC. This document indicates that Epping Forest is a popular destination for recreation and provides an important function as a greenspace. However, it highlights the number of potential ways recreation could have an impact on the nature conservation interest of the site including, but not limited to, trampling pressure, dog waste, vandalism, erosion and soil compaction, disturbance, litter and pollution and fire. The development would result in a net increase of nine dwellings with a consequent increase in local residents living within 3km of the EFSAC. This would be likely to increase recreational pressures and therefore it is likely that the proposal, taken both in isolation and cumulatively, would have a significant adverse effect on the integrity of the EFSAC. As the competent authority, it is necessary for me to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the EFSAC.
16. A signed Unilateral Undertaking has been submitted by the appellant, requiring the development to pay a recreation and monitoring contribution to the Council prior to the commencement of the development. The original permission was subject to a similar obligation, of which the appellant has confirmed payment of the financial contribution. Under section 73 of the Town and Country Planning Act 1990, amending the conditions would create a new planning permission. Therefore, a planning obligation is still necessary for the new planning permission to secure the payment regardless of which planning permission the appellant chooses to implement. I have consulted Natural England and it has confirmed that it is content that the secured financial contribution would be

effective in terms of mitigating the recreational impacts of the development on the EFSAC and avoiding adverse effects on its integrity.

17. Paragraph 56 of the Framework sets out three tests that planning obligations must meet. First, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development and thirdly, they must be fairly and reasonably related in scale and kind to the development. I am satisfied that the financial contribution is necessary to make the development acceptable in planning terms. The obligation would contribute towards the maintenance, improvement, management, access management and monitoring of the European Site to mitigate the impact of the development. Given the proximity of the appeal site to the protected site, I consider that the contribution is directly related to the appeal scheme. In addition, as it relates to a standard charge based on the scale of residential development proposed, I consider it to be fairly and reasonably related in scale and kind to the development. I am satisfied that the planning obligation would meet the requirements of the Framework and I therefore give it significant weight in the determination of this appeal.
18. In their consultation response Natural England have highlighted that for development in the recreational Zone of Influence of the EFSAC, a contribution towards the delivery of Suitable Alternative Natural Greenspace (SANGS) should also be required. However, their document Overarching Standard Advice for Development Applications within the Epping Forest District suggest that all development must be dealt with on a case by case basis with regard to the provision of SANGS. The Council agree with the appellant's position that a development of this limited scale should not be required to make such provision. The IMS only highlights four allocations within the Epping Forest District Local Plan Submission Version which are required to provide Strategic Alternative Natural Green Space. However, the provision of SANGS has not been listed within the mitigation measures and no specific sites have been identified. Therefore, I do not consider that a separate contribution towards the delivery of SANGS is necessary in this instance.
19. As such, I am satisfied, on the basis of the evidence before me, that the planning obligation is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation. I therefore find within my AA that, with the provided mitigation, the proposal would not have an adverse effect on the integrity of the EFSAC. The development would therefore comply with the Habitats Regulations.

Other Matters

20. Although not within the reason for refusal, within their statement the Council make reference to the safety of the access to the properties, due to its narrow width and use for multiple purposes. However, as it has been found that there would be no intensification of the usage of the site and there are no changes to the access proposed, I find no reason to come to a different conclusion to that within the original permission in relation to highway safety.
21. A number of objections have been received in relation to this appeal from both the occupiers of neighbouring dwellings and the Town Council. Aside from the issues covered above, concerns largely relate to the potential increase in traffic, noise and waste and additional emergency/fire risk from the increased use of the site. As the additional room would be a study room as opposed to a

bedroom, this would not lead to the increased use of the site and the factors listed would not be significantly altered from the original permission. Concerns were also received with regard to overlooking from the additional window on the front elevation serving the loft room. This additional window would face the gardens and rear elevations of the properties on Charles Street, separated by the access road and the front garden/car parking area serving the new dwellings. However, although at second floor level, the window would be small in size and some distance from the neighbouring dwellings. It would therefore not result in any more overlooking than the windows at first floor level set out in the original permission.

Conditions

22. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Therefore, I have imposed all those that I consider remain relevant. The appellant has provided details showing that conditions 3,4,5,8 and 9 of the original permission have been discharged. Therefore, I have altered these conditions (2,3,4,7 and 8 in this permission) as necessary to ensure compliance with the approved details in relation to each condition.
23. In their statement the Council has requested a condition requiring the submission of details of the parking spaces equipped with active and/or passive electric vehicle charging points. However, this condition was not included in the original planning permission and the requirement for electric vehicle charging points is covered by condition 17 (condition 18 of the original permission). Therefore, this condition is not necessary and has not been included in the schedule of conditions. I have also altered the suggested wording from the Council in relation to conditions 1 and 20 (conditions 2 and 21 in the original permission) so that they comply with the changes requested by the appellant and allowed within this appeal.

Conclusion

24. For the reasons set out above, the appeal is allowed.

E Grierson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted will be completed strictly in accordance with the approved drawings Nos: CHSs_EX_100_A, CHSs_EX_200_A, CHSs_PL_100_D, CHSs_PL_200_D, CHSs_PL_120_D, CHSs_PL_121_D, CHSs_PL_220_D, CHSs_PL_320_D, CHSs_PL_322_D, RCT Construction Limited Transport Statement ref A110371-1 December 2018, Planning Statement, Noise and Vibration Impact Assessment Technical Report 31503 R2 by Sound Solution Consultants, Flood Risk Assessment by Tree Counties Flood Risk Assessment, Energy and Sustainability Statement by Integration dated 12 December 2018, Tim Moya Associated Ecological Report Extended Phase 1 Habitat Survey Bat Scoping Assessment, Great Crested Newt HIS Assessment Nov 2017, Report on a Phase 1 Desk Study by Ground

Engineering ref C14638 Dec 2018, Tim Moya Associates Arboricultural Impact Assessment ref 180920-PD-10 Dec 2018.

- 2) The development shall be implemented in accordance with details approved under the application PL/EPF/0236/21 on 18 May 2021, in relation to the types and colours of the external finishes.
- 3) The measures approved under the application PL/EPF/2036/21 on 8 September 2021, in relation to a flood risk assessment and management and maintenance plan, shall be carried out prior to the substantial completion of the development and shall be adequately maintained in accordance with the management and maintenance plan approved.
- 4) The development shall be implemented in accordance with the details approved under the application PL/EPF/0409/21 on 14 September 2021 in relation to the risks posed by any contamination. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.
- 5) Following completion of the measures identified in the approved remediation scheme, and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The approved monitoring and maintenance programme shall be implemented.
- 6) In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the Phase 2 report, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.
- 7) The development shall be implemented in accordance with the details approved under the application PL/EPF/0236/21 on 18 May 2021, in relation to hard and soft landscape works and an implementation programme. If

within a period of five 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.

- 8) The development shall be implemented in accordance with the details approved under the application PL/EPF/2036/21 on 8 September 2021, in relation to surface water disposal.
- 9) 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.
- 10) The development permitted by this planning permission shall be carried out in accordance with the recommendations made in the submitted Noise and Vibration Impact Assessment Technical Report reference 31503 R2 by Sound Solution Consultants.
- 11) The development permitted by this planning permission shall be constructed in accordance with the details listed in the Energy and Sustainability Statement by Integration dated 12 December 2018.
- 12) The development permitted by this planning permission shall be carried out in accordance Recommendations made in Tim Moya Associated Ecological Report Extended Phase 1 Habitat Survey Bat Scoping Assessment, Great Crested Newt HIS Assessment Nov 2017.
- 13) Access to the flat roof over the extension hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a seating area, roof garden, terrace, patio or similar amenity area.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (or any other order revoking, further amending or re-enacting that Order) no development generally permitted by virtue of Class B of Part 1 of Schedule 2 to the Order, shall be undertaken without the prior written permission of the Local Planning Authority.
- 15) Prior to first occupation of the development, the Developer shall be responsible for the provision and implementation, per dwelling, of a residential Travel Information Pack for sustainable transport, approved by Essex County Council.
- 16) Prior to the first occupation of the development the access arrangements, vehicle parking and turning areas as indicated on the approved plans shall be provided, hard surfaced, sealed and marked out. The access, parking and turning areas shall be retained in perpetuity for their intended purpose.
- 17) Prior to first occupation of the development hereby approved, 1 Electric Vehicle Charging Point for each dwelling that has a garage or allocated

parking space shall be installed and retained thereafter for use by the occupants of the site.

- 18) 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 07.30 to 18.30 Monday to Friday and 08.00 to 13.00 hours on Saturday, and at no time during Sundays and Public/Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.
- 19) 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.
- 20) No further windows shall be inserted into the southern elevation walls of the dwellings hereby approved without the prior written permission of the Local Planning Authority.

END OF SCHEDULE