



Appeal Decision

Site visit made on 28 November 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/J1535/W/22/3293000

3, Shelley Grove, Loughton IG10 1BY

- 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 Nimmo against the decision of Epping Forest District Council.
 - The application Ref EPF/2032/21, dated 20 July 2021, was refused by notice dated 1 December 2021.
 - The development proposed is the conversion of existing dwelling into 2 self-contained flats (1x GF flat and 1x FF flat), side extension to replace garage, and widening of crossover.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have amended the description of the proposal in the banner heading above, in order to remove superfluous words.
3. The Council's officer report listed a number of documents in relation to the Epping Forest Special Area of Conservation (SAC), which were not included in the Council's evidence. Consequently, I contacted the Council and asked them to provide copies, or updated copies, of these documents; to provide information about the designation of the Epping Forest SAC; and, to provide any views on these from Natural England.
4. Copies of various documents were provided, together with information regarding current mitigation measures for developments where adverse effects on the integrity of the SAC cannot be excluded. This was copied to the appellant for their information.
5. Upon reviewing the submitted drawings, I noted there were habitable rooms in the ground floor flat at both the front and rear of the building. I sought the views of the main parties on the living conditions of the future occupiers of the ground floor flat with regard to privacy and I have had regard to the responses received in determining this appeal.

Main Issues

6. The main issues are the effect of the proposal on:
 - the living conditions of future occupiers of the ground floor flat, with particular regard to privacy;
 - the character and appearance of the area.

Reasons

Living conditions

7. The proposed development would see the appeal building converted into two separate dwellings, a ground floor flat and a first floor flat, with both flats accessed from the existing entrance to the front, via a shared lobby/stairwell. The existing garage to the side of the building would be replaced with a somewhat larger extension that would form part of the ground floor flat.
8. The front garden would be used as car parking for both dwellings, with four spaces identified across the full width of the property. A bin storage area would be located on the northeastern side of the building serving both flats, whilst the existing rear garden would be a communal amenity space, with the access from the front by the side of the proposed extension.
9. The sitting room of the ground floor flat and the bedroom in the proposed side extension would have windows facing towards the car parking area and to the street beyond. Future occupiers of, or visitors to, the proposed first floor flat would be able to see into both of these habitable rooms as they approached the building entrance from one of the car parking spaces or from the street.
10. Furthermore, occupiers of the first floor flat would need to regularly walk past the ground floor flat sitting room window, to get to and from the proposed bin storage area from the building entrance; or, to walk past the ground floor flat front bedroom window, to get to and from the proposed communal rear garden area from the building entrance.
11. The communal rear garden would extend up to the rear elevations of the building, including the rear window / doorway to the rear bedroom of the ground floor flat, as well as to the rear doorway and window of the ground floor kitchen, allowing for unrestricted views into these rooms by occupants of the first floor flat.
12. I note the appellant's intention to occupy the proposed first floor flat, and for the ground floor flat to be occupied by their elderly mother. Consequently, I have had due regard to the Public Sector Equality Duty (PSED) contained at Section 149 of the Equality Act 2010, which requires me to consider the need to eliminate unlawful discrimination, to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. However, it does not follow from the PSED that the appeal should succeed.
13. The reduction in privacy that the appellant's mother would suffer as a result of the proposed arrangements would be limited, given their close family relationship. However, the proposal is for the permanent sub-division of the dwelling and so extends beyond the initial residents. Future occupiers are very unlikely to have a similar relationship and so would suffer significant harm caused by a lack of privacy.
14. I also note the reference to both the appellant and their mother retaining their independence, whilst care and support would be readily available. However, no substantive details of what care and support would be needed, presumably by the elderly mother, or how such care and support is currently delivered, have been provided.

15. The appellant has suggested that a moveable planter could be placed by the front bedroom window to prevent cars from driving too close to the front. However, this would be likely to restrict pedestrian access to the rear amenity area and in any event would not prevent harmful overlooking as set out above.
16. The appellant has also suggested that part of the communal rear garden could be fenced off should the occupants change. However, with reference to Government guidance¹, the appeal process should not be used to evolve a scheme and in any event, I am not satisfied from the evidence that a satisfactory solution could be reached in this case.
17. I do not find the Council's position in relation to privacy in the ground floor flat to be coherent or logical. There is an acknowledgement that there would be harmful overlooking, but that because occupiers would be aware of this, and could choose to address it by restricting their outlook with curtains or blinds, it would somehow be acceptable.
18. The Council also states that no mitigation for (presumably the front) bedroom is possible, before suggesting some of the harm could be mitigated by landscaping. I have already determined that such an approach would be unsatisfactory.
19. Paragraphs 126 and 130 of the National Planning Policy Framework (the Framework) are concerned with the creation of high quality, well-designed places which promote health and well-being and a high standard of amenity for existing and future users, amongst other things. I am satisfied that the design of the proposed development would mean a loss of privacy that would cause significant harm to future occupiers of the ground floor flat, including with regard to health, well-being and amenity.
20. For these reasons the proposed development would adversely affect the living conditions of future occupiers of the ground floor flat, with particular regard to privacy. It would, therefore, conflict with policies CP7 (urban form and quality) and DBE11, which concerns the subdivision of existing residential properties, of the Epping Forest Local Plan 1998 and Alterations 2006 (EFLPA); with draft policy DM9 (high quality design) of the Submission Draft Epping Forest Local Plan 2017 (SDEFLP); and, with the Framework, in this regard.

Character and appearance

21. The appeal site is located on a cul-de-sac in a suburban residential area, a short distance from the centre of Loughton. The terrain of the area is sloping, with Shelley Grove rising away from its junction with Tycehurst Hill. It is characterised by traditional, predominantly detached houses with front and rear gardens. Many of the front gardens, including on Shelley Grove, have been paved and are used for car parking.
22. The appeal building is a traditional, 2-storey, 4-bedroom, detached house with front and rear gardens, and a short driveway leading to a single storey garage on its southwestern side. The front garden area is predominantly lawn, adjacent to the driveway, and the house is located in a somewhat elevated position relative to the highway. The property is not out of keeping with the character or appearance of Shelley Grove or the wider area.

¹ Annexe M – Procedural Guide: Planning Appeals – England (April 2022)

23. The proposed development would entail converting the building into two 2-bedroomed flats, one at ground floor level and one at first floor level, both accessed from the existing entrance to the front. The existing single storey garage to the side of the house would be replaced with a somewhat larger, single storey side extension with a mono-pitched roof. Four off-street car parking spaces would be provided in the front garden, with an extended dropped crossing providing access to the carriageway.
24. The building's external appearance would be very largely unchanged. Whilst there would clearly be an intensification in the use of the building, accommodating two households rather than one, this would be at a potentially reduced scale and the residential character would not be changed. The parking of vehicles in the front garden area would be similar to many other properties on Shelley Grove.
25. No compelling evidence has been provided that the proposed 2-bedroom flats would be harmfully out of keeping with the character of the area. Furthermore, I do not accept that allowing the appeal would set a precedent for, or encourage, other such conversion proposals in the area; each proposal should be considered on its individual merits.
26. For these reasons the proposed development would not adversely affect the character and appearance of the area. Consequently, it would not conflict with policies CP2 (protecting the quality of the rural and built environment), CP3 (new development), CP7 and DBE11 of the EFLPA; with draft policy DM9 of the SDEFLP; and, with the Framework, in this regard.

Other Matters

27. The Council's second reason for refusal concerned the effect of the proposed development upon the Epping Forest SAC and the absence of a legal agreement to mitigate identified adverse effects.
28. Were the proposal to be otherwise acceptable I would need to consider this matter further and undertake an appropriate assessment under the Conservation of Habitats and Species Regulations 2017. However, as I am dismissing the appeal for other reasons, there is no need for me to do so in this case.

Conclusion

29. The effect of the proposal on the character and appearance of the area would be acceptable. However, this would be outweighed by the substantial harm to the living conditions of future occupiers of the ground floor flat, and a refusal of planning permission would be a proportionate outcome in this case.
30. For the reasons given above, and taking into account all matters raised, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR