
Appeal Decision

Site visit made on 7 February 2023

by H Lock BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2023

Appeal Ref: APP/J1535/W/22/3304896

The Firs, 191 High Road, CHIGWELL, Essex, IG7 5AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Robert Whitton (Impact Developments Chigwell 2 Ltd) against Epping Forest District Council.
 - The application is Ref. EPF/0580/22, dated 9 March 2022.
 - The development proposed is replacement of existing dwelling with a more sustainable new house of modular construction.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of existing dwelling with a more sustainable new house of modular construction at The Firs, 191 High Road, CHIGWELL, Essex, IG7 5AS, in accordance with the terms of the application, Ref. EPF/0580/22, dated 9 March 2022, subject to the schedule of conditions at the end of this decision.

Background and Main Issue

2. The appeal is against non-determination of the application, but in the Council's appeal statement it confirms that there is no objection in principle to the replacement of the existing dwelling, and that the design is acceptable save for the proposed materials; and that subject to conditions, the proposal would be acceptable in relation to trees on the site, and the living conditions of neighbouring residents. The statement advises that, had the Council been empowered to do so, it would have refused the application on the basis of the use of incongruous materials and their effect on the setting of the adjacent listed building, Oak Cottage.
3. In this context, the main issue is the effect of the proposal on the character and appearance of the streetscene, with particular reference to the setting of a listed building.

Reasons

4. The appeal site is occupied by an unremarkable single-storey dwelling which is in a poor state of repair. The site has a split-level rear garden which reflects the land fall. The building sits behind a paved frontage and metal railings, and between a prominent Grade II listed building, Oak Cottage, and The Lanterns, Victorian dwellings which are set back from the road. The streetscene is a mix

of traditional and modern developments, with a wide range of building designs and materials. This includes a large 2½-storey building opposite the site, and a modern, flat-roofed, mixed-use development at 185 High Road further to the north-east. All of these contribute to the variety of the streetscene and form the context for the appeal site. Within this group, the architecture and style of the appeal property makes little positive contribution, and I share the Council's view that its demolition would be acceptable.

5. Planning permission was granted to demolish the bungalow and to erect a 5-bedroom house under ref. EPF/2674/18 on 30 November 2018. The plans which have been supplied of that development indicate that it was a substantial dwelling that would occupy much of the plot width and projected some distance into the site. I have no information to indicate that the permission was implemented, but it is nevertheless a material consideration. In addition, two appeals¹ to redevelop the site with flats have been dismissed in recent years. However, in both appeals the developments were found to be acceptable in their impact on the setting of the listed Oak Cottage.
6. There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses in decision-making. There are two listed buildings within the vicinity of the appeal site, but I consider the distance from Ten Mile Cottage to the south-west to be sufficient to avoid the proposal materially impacting its setting.
7. However, Oak Cottage (No.189), is an eighteenth century Grade II listed dwelling immediately adjacent to the site. Although the Council's assessment is that it is relatively modest in scale, Oak Cottage is a prominent property as a result of its height and roof form. It has a façade of stock bricks, and there are elements of timber weatherboarding on the side elevations. Given the proximity of the proposal to the listed building, there would inevitably be shared views of the two, but I note the assessment in the submitted Heritage Statement, that the significant change to the surroundings of both listed cottages in the vicinity has reduced the contribution that setting makes to the heritage assets, with the result that the setting of each cottage is now restricted to the gardens within the boundaries of their plots.
8. The scale of the proposed dwelling would sit comfortably between the neighbouring properties, and would not compete with Oak Cottage. Indeed, compared to the existing dwelling, the proposed siting would provide greater separation between the two buildings. A proposed single-storey section next to the footpath that separates The Lanterns from the site would help to maintain the sense of space within the streetscene. In this regard, the proposal would accord with Policy DBE1 (i) and (ii) of the Epping Forest District Local Plan 1998 and Alterations 2006 (LP), in that it would respect its setting and the streetscene in matters including scale, proportion, siting, massing, height, roof line and detailing.
9. The Council's concern is the proposed material palette, and in particular the use of fibre cement cladding, composite aluminium/timber elements and polyester coated aluminium. However, the new dwelling would be

¹ APP/J1535/W/19/3222929 – demolition of existing bungalow and erection of building to provide four flats – dismissed 5 December 2019; APP/J1535/W/20/3250679 – demolition of existing residential dwelling and replacement with eight apartments – dismissed 4 December 2020.

contemporary in its design approach, and the proposed mix of modern cladding and framing alongside more traditional stock brickwork would reflect the range of both old and new buildings and materials in the area. Cladding would take its cue from that on Oak Cottage, but I do not consider it necessary to use natural timber to achieve an appropriate appearance in the street scene and alongside the listed building. The mix of modern and more traditional materials used in other buildings in the vicinity has not been detrimental to the character and appearance of the area. Having found that the proposal would not adversely affect the setting of a listed building, it would not conflict with LP Policy HC12, or the requirement in LP Policy DBE1 (iii) to employ materials which are sympathetic in colour and texture to the vernacular range.

10. Whilst I do not share the Council's assessment that the proposal would lead to less than substantial harm to the significance of Oak Cottage as a designated heritage asset, I have had regard to paragraph 202 of the National Planning Policy Framework (the Framework), which requires such harm to be weighed against the public benefits of the proposal.
11. I note the Council's view that the existing bungalow and previous planning permission would have less adverse impact on the visual appreciation of the listed building. However, although low in profile, the existing dwelling is not a positive feature in terms of its design and detailing, and the approved dwelling appears to have been much larger in scale than now proposed. The proposed siting of the building and the replacement of paving in the front garden with soft landscaping would visually benefit the listed building and the longevity of the neighbouring Horse Chestnut tree, which is subject of a Tree Preservation Order. The proposed building has been designed to be energy efficient in its construction and after use, to the benefit of the environment. In the planning balance, I consider these to be public benefits that would outweigh any less than substantial harm to the setting of the listed building perceived by the Council.
12. I therefore conclude that the proposal, including its materials, would be acceptable in its impact on the character and appearance of the streetscene and the setting of the adjacent listed building, which would be preserved in accordance with the statutory duty. I have not found any harm to the significance of Oak Cottage as a heritage asset that would not be outweighed by the public benefits of the proposal in accordance with the Framework. It would be compliant with LP Policies DBE1 and HC12, but also the aim to protect the built and historic environment set out in LP Policies CP2 and CP7. I find no conflict with Policies DM7 and DM9 of the Epping Forest District Local Plan Submission version 2017 (LPSV), to which I have had regard given the stage of preparation.

Other Matters

13. The site is within the Zone of Influence of the Epping Forest Special Area of Conservation. However, as this is a replacement dwelling there would be no net increase in the number of residential units on the site, and as such no financial contribution towards impact mitigation has been sought by the Council.
14. The parties agree that the proposal would have no adverse impact on a neighbouring tree the subject of Tree Preservation Order No.5/96, and indeed would be positive with the replacement of hard landscaping with planting.

Subject to conditions, the proposal would accord with the duty to ensure that adequate provision is made for the preservation of trees, and LP Policy LL10.

Conditions

15. In addition to the standard time limit, a condition is attached requiring the submission of further details of the proposed external materials, in the interest of the appearance of the development. I have also attached a condition specifying the approved drawings, as this provides certainty.
16. The appellant has agreed to the submission of further details on land contamination as a pre-commencement condition, due to the need to ascertain such details at an early stage on safety grounds.
17. With some modification to timing or wording to reflect published model conditions I have attached those suggested by the Council in respect of tree protection measures, landscaping details, and drainage. Given the site levels and the amount of excavation involved, a requirement to remove material from the site is also appropriate in the interest of neighbouring amenity.
18. I have not included a condition regarding sustainable water use, as this duplicates information in the Sustainability Statement. I have attached conditions requiring the provision of an electric vehicle charging point and broadband in view of the support in the Framework for sustainable transport and the expansion of electronic communications networks, including full fibre broadband connections.
19. The Planning Practice Guidance advises that conditions restricting freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. I am not persuaded that the site constraints and relationship with neighbouring properties, including the adjacent listed building, would be such that Permitted Development rights should be withdrawn.
20. Notwithstanding that part of the concept of this modular building is to complete much of the construction off-site, I have attached a construction hours condition to limit nuisance and disturbance to neighbouring residents. However, for a single-unit scheme I do not find a requirement for wheel washing equipment to be necessary.
21. Although not included in the list of suggested conditions, the Council's appeal statement sets out a need to secure obscure glazing to upper floor flank windows. As the submitted plans indicate this, I have attached a condition accordingly in the interests of the privacy of neighbouring residents.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

H Lock

INSPECTOR

Schedule of Planning 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 and documents: A-20243- P3 - - 100; A-20243- P3 - - 101; A-20243- P3 - - 102; A-20243- P3 - - 103; A-20243- P - - 200B; A-20243- P3 - - 201; A-20243- P3 - - 300; A-20243- P3 - - 301; the Arboricultural Report (Tree Survey, Arboricultural Impact Assessment & Tree Protection Plan) by The Mayhew Consultancy Ltd reference AR/79819 dated April 2022; and the Sustainability Statement prepared by atelier-sm architects limited, ref. 20243- 20-05-2022.
- 3) A) No work (with the exception of demolition works where this is for the reason of making areas of the site available for site investigation), shall commence until an assessment of the risks posed by any contamination have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of Potentially Contaminated Sites - Code of Practice and the Environment Agency's Guidelines for Land Contamination: Risk Management (LCRM 2020) (or equivalent British Standard or Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The development shall only be carried out in accordance with the approved assessment details. The assessment shall include:
 - (i) A survey of the extent, scale and nature of contamination; and
 - (ii) An assessment of the potential risks to: human health; property (existing or proposed) including buildings, pets, service lines and pipes; adjoining land; groundwater and surface waters; ecological systems; and archaeological sites and ancient monuments.B) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 4) Tree protection shall be installed as shown on the Tree Protection Plan within the Arboricultural Report by The Mayhew Consultancy Ltd, Ref: AR/79819, dated April 2022, prior to the commencement of development activities (including any demolition). The methodology for development (including

Arboricultural supervision) shall be undertaken in accordance with the submitted Tree Survey/ Arboricultural Method Statement reports.

- 5) No construction works above ground level shall take place until documentary and photographic details of the types and colours of the external finishes to be used in the construction of the dwelling have been submitted to and approved by the Local Planning Authority, in writing. The development shall be implemented in accordance with such approved details.
- 6) No construction works above ground level shall take place until details of surface water disposal have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and shall be provided on site prior to the first occupation of the dwelling. The measures installed shall thereafter be retained.
- 7) If any tree, shrub or hedge shown to be retained in the submitted Arboricultural report 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.
- 8) Prior to the first occupation of the dwelling, details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include: existing features to be retained; proposed finished levels or contours; means of enclosure and retaining structures; vehicle parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; 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. All hard landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 9) All material excavated from the below ground works hereby approved shall be removed from the site prior to the occupation of the dwelling.
- 10) Prior to occupation of the dwelling, either a landline or ducting to facilitate the provision of a super-fast broadband service for occupants from a site-

wide network, shall be in place, unless evidence is submitted to and agreed in writing by the Local Planning Authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure.

- 11) An operational electric vehicle charging point shall be installed on the site to serve the dwelling prior to first occupation.
- 12) All construction/demolition works and ancillary operations, including vehicle movement on site, which are audible at the site boundaries, 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.
- 13) The building hereby permitted shall not be occupied until the top floor windows in both side elevations have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.