



Appeal Decision

Site visit made on 28 September 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal Ref: APP/J1535/W/22/3291871

76 Algers Road, Loughton IG10 4NF

- 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 Gary Crouch - Islandbridge Algers Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/0861/21, dated 24 March 2021, was refused by notice dated 8 September 2021.
 - The development proposed is demolition of existing dwelling and replacement with new building containing six flats.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and replacement with new building containing six flats at 76 Algers Road, Loughton IG10 4NF in accordance with the terms of the application, Ref EPF/0861/21, dated 24 March 2021, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Islandbridge Algers Ltd against Epping Forest District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used the description on the planning application form for the purposes of my decision. However, I have removed the text referring to a previously refused planning application on the site as this is not a description of development.
4. The Council's decision notice refers to Policies DM2, and DM22 of the Epping Forest Local Plan (Submission Version) 2017 (LPSV). The LPSV has not yet been adopted by the Council as part of its development plan. However, the LPSV has been through the examination process and has reached an 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 but not the full weight of an adopted Local Plan.
5. The appellant has provided revised drawings as part of their appeal submission which I am advised seeks to address a land ownership dispute. The revised plans omit a narrow strip of land adjacent to the garage of No 53 Lower Park Road. Consequently, the red line site location plan, proposed site plan and street scene elevations have been realigned accordingly. This change marginally reduces the size of the site and does not materially alter the

proposals or indeed the ability to impose necessary conditions. The evidence is that the revised plans would also have no adverse consequences from land ownership certificate and public consultation perspectives as it is a lesser proposal in that regard. Therefore, I find that accepting the amended red edged plan would, on the evidence before me, not lead to any prejudice for any interested party.

6. Two almost identical Unilateral Undertakings (UU), dated 10 February 2023, have been provided by the appellant. The only difference between the UUs is that one has the original red line site plan appended, the other has the amended site plan with the marginally smaller site. Given my findings above, I have assessed the appeal on the basis of the latter of these UUs.
7. Since the appeal was submitted and following the appellant's final comments in respect of this appeal, the Council has refused planning permission for a separate planning application on the site¹ with the same reason given to the decision which led to the appeal before me. It is not within the remit of this appeal for me to review that separate decision, and I have assessed the appeal before me on its own merits.

Main Issue

8. The main issue is the effect of the proposal on the Epping Forest Special Area of Conservation (SAC)

Reasons

9. The evidence before me indicates that the site is located within the zone of influence (ZoI) for the Epping Forest SAC which is a European designated site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected site, either alone or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). This responsibility falls to me in the context of this appeal. In this respect, I am mindful of the advice within the Planning Practice Guidance (PPG) including that an AA must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project.
10. The designation of the Epping Forest SAC reflects the presence of 3 qualifying habitats (Atlantic Beech forests on acids soils, Northern Atlantic wet heaths with cross-leaved heath and European dry heaths) as well as one qualifying species (Stag beetle). The conservation objectives identified for the SAC include ensuring that the integrity of the site is maintained or restored. The site should also contribute to achieving the favourable conservation status of its qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats and the habitats of qualifying species; the supporting processes on which these rely; and the population and distribution of the qualifying species.
11. 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 in the ZoI have the potential to generate increases traffic using roads in the vicinity of the SAC and are therefore, either alone or

¹ LPA Ref EPF/0236/22

in combination with other schemes, could adversely affect the SAC. In addition, an increase in residents could generate additional recreational activity within the SAC. The Council has confirmed that that these are the pertinent pathways of impact in this instance.

12. The replacement of the existing dwelling with a building containing 6 flats would equate to a net gain of 5 dwellings on the site. This increased occupation of the site would have the potential to have an adverse impact on the SAC in terms of any associated recreational pressure and in terms of air pollution as a result of a net increase in traffic. In combination with other development in the area, there is the potential that this would have a significant adverse effect on the SAC.
13. The mitigation measures to counter such impacts are set out in the following strategies adopted by the Council:
 - an Interim Air Pollution Mitigation Strategy (2020) (IAPMS),
 - an Interim Strategic Access Management and Monitoring Strategy (SAMMS) and
 - an Interim Green Infrastructure/Suitable Alternative Natural Greenspace Strategy (GI/SANGS Strategy).
14. The above strategies include developer contributions which are designed to, collectively, fund the mitigation measures required to ensure that the in-combination impacts of new housing will not give rise to an adverse effect on the integrity of the European site. The developer contributions apply to new residential development on a net new dwelling basis. With regards to SAMMS, the Council agreed at its Cabinet meeting on 11 April 2022 to adopt updated financial contributions attributable to new development in the district. This is based on an approach to apportioning SAMMS costs to individual local authorities, based upon the likely increase in visitor pressure from each local authority as a result of development through respective Local Plans.
15. The appellant has provided a Unilateral Undertaking (UU) dated 10 February 2023 with the revised red line site boundary, as referred to in the preliminary matters to this decision, appended. This includes financial obligations reflecting the increase in the number of units on the appeal site and in line with the up-to-date requirements of the mitigation strategies set out by the Council in an email dated 31 January 2023. Namely an 'Air Pollution Contribution' of £1,675.00 (5 x £335), a 'Recreation Contribution' of £9,263.13 (5 x £1,852.63) and a 'Green Infrastructure Enhancements Projects Contribution' of £3,580 (5 x £716).
16. I have consulted Natural England (NE) in respect of this appeal. In its first response dated 22 December 2022, NE confirmed that it is supportive of the approach that the Council has adopted in terms of SAMMS and GI/SANGS and that it is supportive of the IAPMS in principle. Following updates to the UU to bring it in line with the up-to-date requirements of the mitigation strategies, NE confirmed in an email dated 6 February 2023 that it concurs with the Council's understanding of the financial contributions applicable. Accordingly, I find that in this instance, the contributions within the UU would mitigate the recreational and air pollution impacts of the development on the Epping Forest SAC.

17. Notwithstanding the above, the appellant's 'EFSAC Trip Generation Assessment' (November 2021) (TGA) notes the site's close proximity to Loughton Underground Station and the local centre of Loughton. There are several bus services close to the site. The evidence in the TGA also suggests that the car ownership ratio for flatted developments is lower than those related to local houses and that more than half of local residents travel to work by sustainable means. I find no reason to doubt these statistics and I acknowledge that the site has good accessibility to services and facilities in the local area and beyond.
18. There are parking controls nearby which restrict parking for one hour every day on weekdays (Mondays to Fridays) between 1400 and 1500, and which limit parking on Algers Road to permit holders only between the hours of 1000 and 1600 Monday to Friday. I acknowledge this may discourage occupiers of the development from vehicle ownership due to the potential inconvenience of having to move a vehicle off the road during these periods.
19. However, as was the case for the Inspector who dealt with the previous appeal on the site² (previous appeal), there is no persuasive evidence before me to demonstrate that future occupiers of the development would be unable to acquire a permit, or that it would otherwise be impossible for occupiers to own or use a private motor vehicle, particularly with regard to the relatively limited hours of operation of the parking restrictions nearby which do not apply in the evenings or weekends.
20. In addition, it is not clear from the TGA whether the number of visitors to a development of 6 units compared with the potential level of visitor movements associated with a single dwelling on the site has been factored in, including for example deliveries.
21. Taking all the above factors into account, I cannot therefore be certain that vehicle ownership levels for the development would be as low as anticipated in the TGA or that there would be a decrease in vehicular trips associated with the site. Consequently, I can only conclude that the development has the potential to increase vehicular trips to and from the site. In the circumstances the provision within the appellant's UU for an air pollution mitigation payment to be made is required in this instance and I note that NE have not objected to the provision of this contribution.
22. The UU provided also includes an Electric Vehicle Charging Point (EVCP) contribution of £9,029.92 based on a quotation to cover the cost of equipment, groundworks, installation and services for two off-site charging stations.
23. However, the extract of the emerging policy T1 of the LPSV provided by the appellant only refers to EVCPs being required for new developments which make provision for car parking for vehicles. This has not been disputed by the Council. There is nothing before me to suggest that the Council has an adopted policy or document which requires EVCP contributions to me made in lieu of on-site EVCPs. NE have not suggested that off-site EVCP contributions are required as part of the mitigation package. Furthermore, the provision of EVCPs in terms of the locality as a whole is now dealt with under Part S of the Building Regulations. Therefore, I am not persuaded that this contribution would be

² APP/J1535/W/19/3238169

justified in this instance. In the circumstances, this particular contribution within the UU should not apply.

15. I conclude, the contributions in the appellant's UU would satisfactorily address the likely significant adverse effects of the proposed development on Epping Forest SAC in this instance. Accordingly, it would comply with the habitat conservation and air pollution mitigation requirements of Policy NC1 of the Epping Forest Local Plan (1998) (LP) Policies DM2 (Epping Forest SAC and the Lee Valley SPA) and DM22 (Air Quality) of the LPSV and the Habitats Regulations.

Other Matters

24. In considering the concerns raised by third-parties on matters not covered under the main issue, I have had regard to the previous appeal on the appeal site which covered very similar matters, together with my own observations on the current scheme.
25. The scheme before me would be of a very similar footprint and scale to the previous appeal scheme. The stepped roofline and relative spacing are also comparable to the previous proposal. As with the previous scheme, the development would be set further from the boundary with No 74 than the current house and there would remain separation to the boundary with the adjacent garage on Lower Park Road. As the previous Inspector pointed out, there is no consistency in the scale of buildings nearby and the existing flatted blocks at the corners of Algers Road with Lower Park Road similarly wrap around those corners with frontages of greater width than buildings in their immediate vicinity. I also saw for myself that there is a more irregular layout of buildings close to the appeal site due to the junction and nearby bends in both roads.
26. The elevational treatment includes a canted bay window, an arched porch and mock timber detailing which reflects some of the features commonly seen in the area. In contrast to the previous proposal, the end of the building closest to No 53 Lower Park Road incorporates a hipped roof, reducing the mass of the building towards that end. Together with the stepped elevations and roof form, I reach similar findings to the previous Inspector that these design features would successfully break up the built form. Overall, all these factors persuade me that there would be appropriate transitions between the development and the neighbouring dwellings on Algers Road and Lower Park Road, that the building would sit comfortably within its plot and would have an acceptable effect on the character and appearance of the area.
27. In terms of the relationship with neighbouring properties, my site visit confirmed to me that the previous Inspector's observations in respect of neighbouring living conditions remain applicable to the current proposal. Indeed, the separation distances between the current proposal and No 53 Lower Park Road would be sufficient to ensure that there would be no harm to the living conditions of occupiers of this neighbouring dwelling.
28. Furthermore, from what I saw on site and having regard to the appellant's Daylight and Sunlight Assessment (November 2020), the current proposal would also provide acceptable levels of outlook and light when experienced from the windows and garden serving No 74 Algers Road. As was suggested by the previous Inspector, I am also of the view that the use of obscure glazing

and non-opening parts to upper floor windows and rooflights on the current scheme which face No 74 would be sufficient to avoid any material loss of privacy and could be secured by condition.

29. No policies are before me setting out minimum off-street parking requirements. While I accept my site visit only provided a snapshot of the on-street parking situation in the area, there were opportunities to park on the road in close proximity to the site. Notwithstanding my observations under the main issue in respect of the likely trip generation of the development, the site's sustainable location close to public transport options and the services and facilities in Loughton does have the potential to reduce reliance on vehicle ownership to some extent. Other than anecdotal evidence provided by third-parties, there is no detailed evidence before me to demonstrate that levels of parking stress in the area are such that development of the quantum proposed would have a material effect on local roads.
30. Overall, there is no firm evidence in this instance to suggest that the absence of provision for parking on the site would result in any significant inconvenience for local residents, or that the development would adversely affect pedestrian or highway safety.
31. The previous Inspector was not persuaded that the existing building on the appeal site was of notable architectural merit, or that it is remarkable within its context as an example of Edwardian suburban development. Having regard to the factors that were considered in that instance and that there is nothing before me which suggests I should reach an alternative view, I agree that the heritage interest of the building is of insufficient significance to warrant its consideration as a non-designated heritage asset. Therefore, there is no presumption against the loss of the existing building.
32. In considering the previous appeal, the Inspector considered the usable amenity space proposed at that time was likely to be closer to 100 square metres (sq m). The Council's Committee report accepts that the amenity space has now been rationalised and is in excess of 150 sq m. I have no reason to find that this is not accurate or that the amenity space would not be generally in line with the figure of 25 sq m per unit in the supporting text to Policy DBE8 of the LP.
33. Furthermore, unlike the previous appeal proposal, the roof of the building would be hipped towards the northern end of the garden. Evidence has been provided within the appellant's Daylight and Sunlight Assessment with details of the area considered indicating that 54.1% of this area would receive two hours of direct sun on 21 March, complying with BRE guidance. I agree with the previous Inspector that the need to exit the building to access the garden gate off the street would not present a significant barrier to occupiers of the upper floors of the development given the small distance involved. Taking all these factors into account, I find that the communal garden would provide a suitable external living environment for occupiers of the development.
34. There is no objective evidence before me to suggest that the development would cause harm to neighbouring occupiers through noise or disturbance nor that there would be insufficient capacity within local services or infrastructure to meet needs generated by the development.

35. Third-parties have suggested that a legal obligation be secured to fund a Restricted Parking Zone (RPZ) for the area. However, there is no detailed evidence before me to suggest that this would be necessary as a direct consequence of the appeal proposal nor that the Highway Authority is seeking such a contribution. Therefore, the placement of such an obligation on the appellant would not be justified in this instance.
36. The appellant has provided a letter dated 11 March 2021 from Kingfisher Ecology Ltd which reviews as Preliminary Ecological Appraisal, Preliminary Roost Assessment and Preliminary Ground Level Roost Assessments undertaken in 2018. This review includes a walk over survey in March 2021. From the evidence provided the overgrown vegetation on the site provides suitable habitat for reptiles. The main house and outhouse were considered to provide low potential and negligible potential respectively for roosting bats. No evidence of the presence of any protected species was identified. In the circumstances I consider a pre-commencement condition requiring precise details of an ecological work programme, incorporating the recommendations at page 11 of the letter and requiring its subsequent implementation, would sufficiently address the potential for any ecological constraints on the site.
37. I therefore find no reason to conclude differently to the Council that the appeal proposal would be acceptable in all other respects not covered by the main issue.

Conditions

38. I have had regard to the Council's suggested conditions. I attach the standard timescale for implementation and an approved drawings condition in the interests of certainty. I have included the amended drawings referred to within the preliminary matters to this decision.
39. No policies or site-specific justification has been provided to indicate that a scheme for ecological enhancement, quantified using a Biodiversity Impact Assessment Calculator, would be necessary or achievable in this instance. Therefore, I have not attached this suggested condition. The aforementioned pre-commencement condition requiring an ecological work programme is reasonable in the interests of protecting any ecological interest on the site.
40. A condition requiring confirmation of the external material details is attached in the interests of ensuring the materials suitably responds to the local vernacular.
41. I have amended the suggested condition relating to windows in the flank elevation facing No 74 Algers Road to relate to first floor windows and rooflights to this elevation only in the interests of retaining suitable levels of privacy for occupiers of this neighbouring dwelling. Boundary treatments between the site and No 74 will be sufficient to retain suitable levels of privacy at ground floor level.
42. I have attached the suggested surface water disposal condition in the interests of ensuring an acceptable drainage solution is incorporated. I have amended the suggested condition requiring water efficiency measures to be incorporated to include requirements for details to be first approved and then installed accordingly. This condition is included in the interests of sustainability.

43. The suggested condition requiring a strategy to facilitate super-fast broadband is reasonable in support of sustainability and reducing the need to travel and this consequently also has the potential to support improvements to air quality in line with the Council's commitments to protect the integrity of the Epping Forest SAC.
44. A requirement for wheel washing or other cleaning facilities for vehicles to be installed on the site during construction is included in the interests of highway safety.
45. I have included the Council's suggested landscaping, contamination, hours of work and levels conditions. These conditions are respectively required in the interests of ensuring the external areas of the site are of an acceptable appearance; to ensure the site is suitable for habitation; to protect the living conditions of neighbouring occupiers during construction works; and to ensure the levels appropriately respond to their surrounding context.

Conclusion

46. In accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.
47. I have found that the significant adverse effects of the proposal on the Epping Forest SAC would be suitably mitigated. Accordingly, the proposal would meet the requirements of the development plan and the Habitats Regulations in this regard. I have also found that the proposal would be acceptable in all other respects.
48. There are no material considerations that indicate the application should be determined other than in accordance with the development plan.
49. I therefore conclude that the appeal should be allowed.

M Russell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out strictly in accordance with the following approved plans: Drawing Nos 3930/1 (Site Location Plan), 2022.AR.SP.P (Proposed Site Plan - April 2022) and 1653/01 Revision A (Proposed Algers Road and Lower Park Road, Street Elevations – February 2022) all of which were provided with an email to PINS dated 12 May 2022 to account for the omission of a strip of land adjacent to the garage serving No 53 Lower Park Road; and Drawing Nos 2631.2, 2631.3 (Ground Floor Plan), 2631.4 (First Floor Plan), 2631.5 (Second Floor Plan), 2631.6 (Algers Road and Lower Park Road Elevations) and 2631.7 (Rear of Algers Road and Lower Park Road Elevations).

- 3) Before development commences on the site, precise details of an ecological work programme, including a timetable for submission of details to address the recommendations at page 11 of the Kingfisher Ecology Ltd letter dated 11 March 2021, will be submitted to and approved in writing by the Local Planning Authority. Once approved in writing, the development shall only be undertaken in accordance with the approved ecological work programme.
- 4) No construction works above ground level shall take place until (documentary and photographic) details of the type and colours of the external finishes of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) The development hereby permitted shall not be occupied until the upper floor windows and rooflights in the flank elevations facing No. 74 Algiers Road have been fitted with obscure glass with a minimum privacy level 3 obscurity, and no part of those windows that are less than 1.7 metres above the internal floor level of the room in which they are installed shall be capable of being opened. Once installed, the windows and rooflights shall only be retained in accordance with these specifications thereafter.
- 6) Prior to preliminary ground works taking place, details of surface water disposal shall be 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 development. The means of surface water disposal shall then be retained for the lifetime of the development.
- 7) Prior to first occupation of the development, details of measures to be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the water efficiency measures shall be installed in accordance with the approved details.
- 8) Prior to the commencement of development, 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.
- 9) Prior to any above ground works, full details of both hard and soft landscape works (including tree planting) and an implementation programme (linked to the development schedule) shall be submitted to and approved in writing by the Local Planning Authority. Once approved, all hard and soft landscape works shall be carried out in accordance with the approved details. The landscape works shall be carried out prior to the occupation of the building or completion of the development, whichever is the sooner. 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 layouts; 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 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; planting of the same species and size as that originally planted shall be planted in the same place, unless the Local Planning Authority gives its written consent to any variation.

- 10) The proposed use of this site has been identified as being particularly vulnerable if land contamination is present, despite no specific former potentially contaminating uses having been identified for this site. 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 the adoption of any required remedial measures be submitted to, agreed and approved in writing by the Local Planning Authority prior to the commencement of development works. In such instances, following the completion of development works and prior to the first occupation of the site, sufficient information must be submitted to demonstrate that any required remedial measures were satisfactorily implemented or confirmation provided that no unexpected contamination was encountered.
- 11) No deliveries, external running of plant and equipment or demolition and construction works, other than internal works not audible outside the site boundary, shall take place on the site other than between the hours of 07:30 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays without the prior written permission of the Local Planning Authority.
- 12) No ground works shall take place until details of levels have been submitted to and approved by the Local Planning Authority showing cross-sections and elevations of the levels of the site prior to development and the proposed levels of all ground floor slabs of buildings, roadways and accessways and landscaped areas. The development shall be carried out in accordance with those approved details.
- 13) Prior to any above groundworks, a strategy to facilitate super-fast broadband for future occupants of the site shall have been submitted to and approved in writing by the Local Planning Authority (LPA). The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway, unless evidence is put forward and agreed in writing by the LPA that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure. The development of the site shall be carried out in accordance with the approved strategy unless otherwise agreed in writing by the LPA.