

Appeal Decision

Site visit made on 28 March 2023

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2023

Appeal Ref: APP/J1535/W/22/3301219

26 High Street, Epping, Essex CM16 4AE

- 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 Archco Property Developers against the decision of Epping Forest District Council.
 - The application Ref EPF/1504/20, dated 13 July 2020, was refused by notice dated 16 December 2021.
 - The development proposed is change of use from A1/A3 to (C3) residential comprising 3 x 2-bed & 1 x 1-bed units.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from A1/A3 to (C3) residential comprising 3 x 2-bed & 1 x 1-bed units at 26 High Street, Epping, Essex CM16 4AE in accordance with the terms of the application, Ref EPF/1504/20, dated 13 July 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Epping Forest District Local Plan 2011 to 2033 (Local Plan) was adopted by the Council on 6 March 2023. This has replaced the Epping Forest District Local Plan (1998) and the Epping Forest District Local Plan Alterations (2006) such that the policies of these plans are no longer part of the development plan and have no weight. I have therefore determined the appeal having regard to the relevant policies within the Local Plan. Both main parties have had the opportunity to comment on this during the appeal.
3. I have also been referred to the Epping Neighbourhood Plan. However, from the evidence before me it is not at an advanced stage and since it is unknown whether it will be made (adopted) and could be subject to change, I give it limited weight.
4. The appellant has provided a final signed Unilateral Undertaking (UU) dated 3 May 2023 pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). The UU is concerned primarily with providing financial obligations for an Air Pollution Contribution and a Recreation Contribution. I shall return to these matters and the UU later in my decision.

Main Issues

5. The main issues are the effects of the proposal on:
 - The vitality and viability of the Epping Town Centre; and
 - The integrity of the Epping Forest Special Area of Conservation (SAC).

Reasons

Epping Town Centre

6. The appeal site is located within, but toward the edge of, the Epping Town Centre (the Centre) as defined in the Local Plan. It lies outside of any Primary Shopping Area and Primary and Secondary Commercial, Business and Service Frontage. Policy E2 of the Local Plan supports main town centre uses as defined by national planning policy, within defined centres such as the Centre. The Policy broadly seeks to maintain the vitality and viability of Town and District Centres, and, in this regard, it is consistent with the provisions of paragraph 86 of the National Planning Policy Framework (the Framework).
7. Even if previous local planning policies sought to resist ground floor residential uses in town centres, I have not been referred to any adopted policy that seeks to resist residential development in ground floor locations such as the appeal site. Moreover, I am mindful that paragraph 86(F) of the Framework recognises that residential development often plays an important role in ensuring the vitality of centres and encourages residential development on appropriate sites.
8. The appeal premises have been marketed since 2016, initially by Noble Harris estate agents, and more recently by Clarke Hillyer estate agents. During this time, the appellant obtained planning permission to change the use of the premises to office use. The marketing by Clarke Hillyer reflects this, by advertising that the premises would be suitable for a broad range of uses, including offices and could also be divided into smaller units.
9. The appeal premises have been marketed for a considerable period and, despite attempts to find a user, the premises remain vacant. I have no reason to question the marketing undertaken and, in the absence of any substantive evidence to the contrary, it strikes me that the appellant has proactively attempted to find a user that would operate a main town centre use. There is also no evidence before me to indicate that the lack of demand in the appeal premises will change, or that it will become attractive to the market.
10. The appeal site is located toward the edge of the Centre and within an area characterised by a mixture of uses including a petrol station, main town centre uses and residential uses (flats and two storey houses). In such a mixed environment, the presence of ground floor flats would be compatible with the surrounding uses. Moreover, bringing the units into an active residential use would mean future occupiers could contribute to local spend within the Centre.
11. Considering all these factors together, I find that the proposal would not have a harmful effect on the vitality and viability of the Centre. As such, I find no conflict with the requirements of Policy E2 of the Local Plan or the Framework, when taken together and insofar as they relate to this main issue.

Epping Forest SAC

12. The appeal site falls within the zone of influence for the Epping Forest SAC Habitats Site (a European designated site). The interest features at the SAC include Atlantic Beech forests on acids soils, Northern Atlantic wet heath with cross-leaved heath, European dry heath, and the presence of Stag beetle.
13. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require the competent authority to ensure that there are no significant adverse

effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of European designated sites. The effects arising from the proposal need to be considered in combination with other developments in the area and by adopting a precautionary approach.

14. 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 zone of influence have the potential to generate increased traffic using roads in the vicinity of the SAC and therefore, either alone, or in combination with other schemes, could adversely affect the SAC. In addition, an increase in residents could generate additional recreational activity within the SAC.
15. The proposal is for 3 x 2-bed & 1 x 1-bed units. As such, the amount of additional recreational visitors would be small and the likely effects on the SAC from the proposed development alone would not be significant. However, in combination with other developments the proposal would likely have significant effects on the European designated site. In this regard, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
16. Falling within the zone of influence, the proposed development is likely to result in recreational pressure and traffic, and its associated air pollution at the Epping Forest SAC, both alone and in combination with other development within the zone of influence. As such, the development would have an adverse effect on the integrity of the SAC, but regard can be had to whether these adverse effects can be mitigated.
17. The Council has adopted interim strategies for mitigating recreational pressure and air pollution. These are set down within the Council's Interim Epping Forest Air Pollution Mitigation Strategy and Access Management and Monitoring Strategy for Epping Forest SAC (the interim strategies).
18. The interim strategies establish a strategic approach to mitigation and detail the mitigation measures that would be funded by financial contributions based on a specified tariff per dwelling. These include a range of measures such as management of paths, communication, and monitoring, and have been endorsed by Natural England. As such, I am satisfied that the measures set down in the interim strategies would adequately overcome any adverse effects of the proposal on the identified European designated site.
19. The appellant's final UU, signed and dated 3 May 2023, includes financial obligations amounting to £1340 (4 x £335) for the Air Pollution Contribution, £7410.52 (4 x £1,852.63) for the Recreation Contribution and a Monitoring Contribution of £437.53 (5% of the combined air pollution and recreation contribution). Natural England have been consulted during the appeal and have raised no objections to the appeal scheme and the mitigation offered in the UU.
20. I am satisfied that the submitted UU would be effective as an obligation. Moreover, the financial contributions are necessary to make the development acceptable in planning terms, directly related to it, and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations.

21. To conclude on this main issue, the financial contributions would constitute mitigation toward maintaining the integrity of the Epping Forest SAC site. I therefore find no conflict with the requirements of Policies DM2 and DM22 of the Local Plan, the Habitat Regulations or the provisions of the Framework, when taken together and insofar as they relate to this matter. These stipulate, amongst other things, that the Council will expect all relevant development proposals to ensure that there is no adverse effect on the site integrity of the Epping Forest SAC.

Other Matters

22. I have considered the arguments that any grant of planning permission would set a precedent for similar residential developments in the centre. However, each application and appeal must be determined on its own individual merits. In this case, I have had regard to the evidence before me and the location of the appeal site toward the edge of the centre in an area characterised by a mix of uses. As such, a generalised concern of this nature does not amount to a reason to withhold planning permission.
23. Whether the site is in use for commercial purposes or residential purposes there would be the potential for vehicle parking demand. The site is in a sustainable location near services and facilities in the centre, including public transport options. Moreover, there is no substantive evidence before me to demonstrate that levels of parking stress in the area are such that the proposed development would have an unacceptable effect on local roads.

Conditions

24. I have adapted the Council's suggested conditions where necessary, in the interests of precision and brevity. In addition to the standard time limit condition (1), I have imposed a condition requiring that the development is carried out in accordance with the approved plans (2) in the interests of certainty.
25. A condition relating to the details of materials (3) is necessary in the interests of the final appearance of the development. A condition relating to water efficiency measures (4) is necessary in the interests of managing the demand on the water environment in accordance with Policy DM19 of the Local Plan.
26. As the appeal site comprises of a change of use of part of a modern building, with a small amount of external works, conditions relating to wheel washing facilities, contamination or remediation are not necessary in this instance.
27. As the submitted Arboricultural report outlines several trees to be retained it is reasonable and necessary to include a condition requiring details of their protection (5) and requiring replacement planting (6) if such retained trees die during or after construction. However, as the proposal relates to a change of use of a modern building with existing landscaping the Council's other proposed landscaping conditions are not necessary in this instance.
28. A condition limiting the hours of construction and associated activity (7) is necessary in the interests of the existing occupiers of other residential units within the building. Conditions requiring a strategy to facilitate super-fast broadband (8), electric charging points (9) and the provision of Residential Travel Information Packs for sustainable transport (10) are reasonable in the interests of sustainability, reducing the need to travel and supporting

improvements to air quality in line with the Council's commitments to protect the integrity of the Epping Forest SAC.

Conclusion

29. To conclude, the proposal would accord with the development plan and there are no material considerations that indicate the appeal should be determined other than in accordance with it.
30. Accordingly, and for the reasons set out the appeal is allowed, subject to conditions.

Mr R Walker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 911-CYA-AA-00-DR-A-00001 Rev A; 11-CYA-AA-00-DR-A-00002 Rev A; 11-CYA-AA-00-DR-A-00003 Rev A; 11-CYA-AA-00-DR-A-00004 Rev A; 11-CYA-AA-00-DR-A-00005 Rev A; 11-CYA-AA-00-DR-A-00006 Rev A; 11-CYA-AA-00-DR-A-00007 Rev B; 11-CYA-AA-00-DR-A-00008 Rev B; 11-CYA-AA-00-DR-A-00009 Rev B; and 11-CYA-AA-00-DR-A-00010 Rev A.
- 3) No development above slab level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the first occupation of the development hereby approved, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 5) No development above slab level shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 6) If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports 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 or an alternative as agreed in writing with the Local Planning Authority, shall be planted within 3 months at the same place. 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.

- 7) 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.
- 8) 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 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.
- 9) Prior to any above groundworks, details and location of the parking spaces equipped with active and/or passive Electric Vehicle Charging Point (EVCP) shall have been submitted to and approved in writing by the Local Planning Authority (LPA). The details shall demonstrate that the development will deliver active EVCPs from occupation. The details shall include:
 1. Location of active and passive charging infrastructure;
 2. Specification of charging equipment; and
 3. Operation/management strategy.The operation/management strategy for the charging points shall clearly address:
 1. Which parking bays will have active and/or passive charging provision, including disabled parking bays;
 2. How charging point usage will be charged amongst users;
 3. The process and the triggers for identifying when additional passive charging points will become activated; and
 4. Electricity supply availability.The electricity supply shall be confirmed by the Network Provider so that the supply does not need to be upgraded later. The installation of EVCP shall be completed in accordance with the approved details and made operational prior to first occupation of the development hereby permitted.
- 10) Prior to the first occupation of the development hereby approved, the details of a Residential Travel Information Pack for sustainable transport (the Pack) shall have been submitted to and approved in writing by the Local Planning Authority. The Pack shall include six one day travel vouchers for use with the relevant local public transport operator. The details shall include the means of distribution to each dwelling. The details of the Pack and its distribution shall be carried out in accordance with the approved details.

End of Schedule