



Appeal Decision

Site visit made on 25 January 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal Ref: APP/J1535/W/22/3294816

93 Manor Road, Chigwell IG7 5PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Brian Dalziel against the decision of Epping Forest District Council.
 - The application Ref EPF/2769/18, dated 10 October 2018, was refused by notice dated 3 November 2021.
 - The development proposed is use of land for the erection of three detached dwellings (Existing dwelling to be removed).
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Decision

1. The appeal is allowed and outline planning permission is granted for use of land for the erection of three detached dwellings (Existing dwelling to be removed) at 93 Manor Road, Chigwell IG7 5PN in accordance with the terms of the application, Ref EPF/2769/18, dated 30 October 2018, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The proposal is in outline form with all matters of detail reserved for subsequent approval. Therefore, I have considered the site layout and site entrance details provided on the basis that they are indicative only for the purposes of my assessment.
3. The description on the planning application form includes 'Resubmission of proposals considered under EFDC Reference:- EPF/2669/17'. However, I have removed this text for the purposes of my banner heading and decision as this is not a description of development.
4. Since the appeal was submitted the Council has adopted the Epping Forest District Local Plan 2011 – 2033 (March 2023) (the LP). This supersedes the policies of the Epping Forest District Local Plan Alterations (2006) and the Epping Forest Local Plan (Submission Version) 2017 both of which are referred to on the Council's decision notice. Therefore, I have assessed the appeal against the up-to-date development plan in terms of the relevant policies of the LP identified by the Council.

Main Issues

5. The main issues are the effect of the proposal on:
 - (i) the Epping Forest Special Area for Conservation (SAC);
 - (ii) the character and appearance of the area; and

- (iii) highway safety.

Reasons

Epping Forest SAC

6. The site is located within 3km of the SAC and is therefore within the zone of influence (ZoI) of this 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.
7. From the information before me, 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.
8. 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 are likely to generate such traffic and are therefore, either alone or in combination with other schemes, likely to have a significant effect on the quality features of interest of the SAC. In addition, an increase in residents would generate additional recreational pressure upon the SAC that could affect its integrity.
9. The net increase of two dwellings has the potential to have an adverse impact on the SAC in terms of increased 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.
10. The mitigation measures to counter such impacts are set out in the following strategies adopted by the Council:
 - an Interim Air Pollution Mitigation Strategy (IAPMS),
 - an Interim Strategic Access Management and Monitoring Strategy (SAMMS) and
 - an Interim Green Infrastructure/Suitable Alternative Natural Greenspace Strategy (GI/SANGS Strategy).
11. 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.

12. The appellant has provided a Unilateral Undertaking (UU) dated 24 April 2023. This UU includes financial obligations of £670 (ie £335 per net dwelling) in line with the IAPMS and £3,705.26 (i.e. £1852 per net dwelling) which reflects the updated apportionment for SAMMS for new dwellings within 3km distance of the SAC to address the anticipated costs of additional recreational pressure due to new housing within the ZoI. Natural England have confirmed that these contributions reflect the expectations of the above strategies and have raised no specific objections to the proposals in light of this. NE have also confirmed that the GI/SANGS Strategy would not require mitigation for this particular proposal. The UU also includes the monitoring contribution of £218.76 requested by the Council.
13. In the context that the proposal results in a net increase of two dwellings at the site and that the UU meets the expectations of the adopted mitigation strategies, I am satisfied in this instance that the contributions that would be secured would be acceptable mitigation in this instance. Accordingly, the proposal would not adversely affect the integrity of the SAC, either alone or in combination with other plans and projects.
14. I have also attached the conditions suggested by the Council requiring electric vehicle charging points and a high-speed broadband connection to be provided, both of which accord with additional measures identified in the IAPMS.
15. I conclude, the contributions in the appellant's UU and the above conditions are sufficient in this instance to satisfactorily address any effects associated with the proposed development and its likely effects on the SAC. Accordingly, it would comply with Policies DM2 (Epping Forest SAC and the Lee Valley SPA) and DM22 (Air Quality) of the LP, the Habitats Regulations and Paragraph 180 of the National Planning Policy Framework (the Framework).

Character and appearance

16. In dealing with a previous appeal on the site¹ which also related to an outline proposal for three dwellings, the Inspector in that instance also considered the effect of the proposal on the character and appearance of the area. In that instance, indicative details similar to those before me were provided showing a replacement of the existing dwelling to the front of the site and a vehicular access adjacent to the eastern boundary that would provide access to 2 additional dwellings to the rear.
17. On my site visit, I saw that the character and appearance of the area is much the same as it was when the previous appeal was considered. The replacement dwelling and vehicular access point would be seen in the context of the existing houses along this part of Manor Road which vary in terms of scale, mass, and external appearance. The presence of large trees and other mature landscaping to the front of the existing houses and the variety of boundary treatments makes it difficult to appreciate any rhythm in spacing and built form. As the previous Inspector identified, the prevailing character of the street scene is of

¹ APP/J1535/W/18/3194783

architectural variety and mature landscaping. I agree with the findings in the previous decision that in this context, a replacement dwelling to the site frontage and vehicular access could be suitably designed so as to at least preserve the character and appearance of the area.

18. As was the case when the previous appeal was considered, the current proposal would necessitate the removal of a number of trees within the site to facilitate the development to the rear. Even so, I concur with the view taken then that, given the volume of large trees within the perimeter block, the effect on the wider surroundings would be difficult to perceive as views between and over existing buildings would still reveal glimpses of large and mature trees.
19. I also concur with the previous Inspector that while backland development is not typical of the character and appearance of the area, the site is a somewhat secluded and anonymous parcel of land. Their observation that the backland site cannot be distinguished from the public realm remains pertinent to my own considerations. In this respect, I also find that the backland development would not be harmful in this instance subject to suitable details of design and layout being provided at the reserved matters stage. The Council's statement of case is brief in respect of this main issue and does not raise any new arguments to suggest I should reach an alternative view.
20. I conclude, the proposal would have an acceptable effect on the character and appearance of the area. In this regard it would comply with the character and context requirements of Policy DM9 (High Quality Design) of the LP and paragraph 130 of the Framework.

Highway safety

21. The Framework is clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
22. The Council's statement of case relies solely on the reason for refusal in respect of this main issue. However, a net increase in two dwellings would be likely to result in a modest increase in vehicular movements to and from the site when compared with the existing situation. No objective evidence has been provided by the Council, or by those third-parties who have raised similar concerns, to demonstrate that the levels of vehicular activity associated with the development would be such that this would have a material effect on highway safety. I note that the local highway authority has raised no such concerns.
23. Furthermore, the indicative plans show how the existing wall could be demolished and a new wall erected set further back from the boundary with the highway. From my observations on site, if a similar design is carried forward to the reserved matters stage, this has the potential to improve visibility for those exiting the site when compared with the existing situation. I also note that the highway authority has not objected to this arrangement. Therefore, I am satisfied that there is scope on the appeal site to provide safe, suitable and convenient access for all potential users of the development.
24. I conclude that subject to the envisaged access arrangements coming forward as part of the reserved matters, the proposal would not result in an unacceptable impact on highway safety. In that regard it would comply with

the highway safety requirements of Policy T1 (Sustainable Transport Choices) of the LP and paragraph 111 of the Framework.

Other Matters

25. In terms of other issues raised by third-parties, the Inspector that dealt with the previous appeal on the site specifically considered the likely relationships of the proposal with the living conditions of neighbouring properties with particular regard to privacy. I agree with the previous Inspector that even accounting for relative levels, the size of the appeal site and neighbouring gardens is such that development of the quantum proposed could achieve suitable window-to-window distances as well as protecting adjacent garden space. As was pointed out in the previous appeal decision, the ability to retain perimeter landscaping as well as the presence of neighbouring trees would also assist in reducing any perception of being overlooked for neighbouring occupiers.
26. There is no objective evidence before me to suggest that the proposal would have a material impact on the security of neighbouring properties.
27. With regards to any potential impacts on trees covered by Tree Preservation Orders (TPOs) on the site and neighbouring land, I agree with the Council's Trees and Landscape Officer that as the proposal is in outline, the relationship with TPO trees can be carefully managed through the requirement for a constraints plan as part of the reserved matters to guide the layout.

Conditions

28. I have attached similar conditions to those suggested by the Council in respect of the timescales for implementation and for the details of the reserved matters to be submitted prior to commencement of development. Given that the drawings provided are for indicative purposes only, I have not included an approved drawings condition.
29. I have attached the suggested foul and 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.
30. The suggested conditions requiring Electric Vehicle Charging Points and a strategy to facilitate super-fast broadband are reasonable in support of sustainability, reducing the need to travel and improvements to air quality in line with the Council's commitments to protect the integrity of the Epping Forest SAC.
31. A condition requiring a tree constraints plan is included to guide the reserved matter relating to layout. This is necessary in the interests of preserving trees covered by TPOs on and close to the appeal site. I have also included a simplified landscaping condition given this is a matter for the reserved matters and the subsequent implementation and maintenance thereof is a matter to be assessed at that stage. I have incorporated requirements for details of tree protection measures and for means to ensure surface water does not discharge onto the highway within this condition.

32. A condition requiring a Residential Travel Information Pack has been included in the interests of sustainable travel. This condition has been amended to ensure details are first submitted for approval with a subsequent requirement to provide this to occupiers upon their first occupation of the dwellings.
33. I have included the Council's suggested contamination and hours of work conditions in the interests of ensuring the site is suitable for habitation and to protect the living conditions of neighbouring occupiers during construction works. 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.
34. The suggested condition for a scheme for ecological enhancement is included in line with the objectives of the Framework to seek opportunities to improve biodiversity in and around developments.
35. I have not included the suggested conditions requiring the access arrangements and visibility splays shown on the indicative plans to be implemented, in respect of the position of any gates at the site access or in terms of access drive surfacing materials. The detailed design of the access point and driveway are reserved for subsequent approval. Therefore, any requirements for its implementation, the provision or not of gates and surface treatment are matters to be considered at the reserved matters stage.
36. Similarly, I have not attached the Council's suggested condition to remove permitted development rights for two of the proposed dwellings. The detailed design of the dwellings will be shown on the reserved matters submissions relating to layout, scale and appearance. That will be the appropriate point to consider whether such a condition would be necessary.

Conclusion

37. 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.
38. The Council has conceded that it cannot demonstrate a five-year housing land supply. Following the recent adoption of the LP the precise housing land supply position is not clear from the evidence before me. I am therefore determining this appeal on the basis of the worst-case scenario in housing land supply terms and the presumption in favour of sustainable development under Paragraph 11d of the Framework is triggered. Planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
39. I have found that the proposal would be acceptable in terms of its effect on the Epping Forest SAC as this would be suitably mitigated. I have also found that the proposal would be acceptable in all other respects, including but not limited to its effect on the character and appearance of the area and highway safety. Therefore, this is not a situation where there would be adverse impacts which significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. There are no material considerations in this instance that indicate the application should be determined other than in

accordance with the development plan, which in this case I find the development would comply.

40. I therefore conclude that the appeal should be allowed.

M Russell

INSPECTOR

Schedule of Conditions

- (1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission or two years from the approval of the last of the reserved matters as defined in condition 2 below, whichever is the later.
- (2) Prior to commencement of the development, details of the layout, scale and appearance of the buildings, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to the Local Planning Authority for approval before the expiration of three years from the date of this permission, and the development shall be carried out in accordance with the details so approved.
- (3) Prior to preliminary ground works taking place, details of foul and 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 and shall be retained for the lifetime of the development.
- (4) Prior to any above groundworks, details and location of the parking spaces (including any garages) equipped with active Electric Vehicle Charging Points shall have been submitted to and approved in writing with the Local Planning Authority (LPA), unless otherwise agreed in writing with the LPA. The installation of EVCP shall be completed in accordance with the approved details and made operational prior to first occupation. The details must include details as follows:
 - Location of active charging infrastructure; and
 - Specification of charging equipment to be used.
- (5) 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.

- (6) The application for the reserved matter of layout made pursuant to Condition 2 of this planning permission shall include an Arboricultural Implication Assessment and Tree Constraint plan, concurrently with the detailed site layout. This should be drawn up in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction - recommendations).
- (7) The application for the reserved matter of landscaping made pursuant to Condition 2 of this planning permission shall include full details of both hard and soft landscape works. 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; means of ensuring that there shall be no discharge of surface water onto the highway; and other minor artefacts and structures, including lighting and functional services above and below ground. The details of soft landscape works shall include a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction - Recommendations), 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.
- (8) The application for the reserved matter of appearance made pursuant to Condition 2 of this planning permission shall include documentary and photographic details of the type and colours of the external finishes of the development.
- (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) Prior to first occupation of the development, a scheme to enhance the ecological value of the site shall be submitted to and agreed in writing by the Local Planning Authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator (BIAC) where appropriate. The scheme shall be implemented in full prior to the occupation of the development hereby approved.
- (11) Prior to first occupation of the proposed development a Residential Travel Information Pack for sustainable transport, shall first be submitted to and approved in writing by the Local Planning Authority through consultation with Essex County Council. Once approved in writing, the Residential Travel Information Pack shall then be provided to occupiers upon their first occupation of the dwellings hereby approved.
- (12) 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.

- (13) 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.
- (14) 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 recommencement 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.