



Appeal Decisions

Site visit made on 16 May 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2023

Appeal A Ref: APP/J1535/C/22/3300111

Appeal B Ref: APP/J1535/C/22/3300112

Land at "Aura" 179-181 High Road, Loughton IG10 4LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr V Yigit (Appeal A) and Mr Umut Demir (Appeal B) against an enforcement notice issued by Epping Forest District Council.
 - The notice was issued on 27 April 2022.
 - The breach of planning control as alleged in the notice is: without planning permission: the erection of a metal framed structure shown in the approximate position edged in black and with a "X".
 - The requirements of the notice are:
 1. Remove the metal framed structure shown in the approximate position on the attached plan as "X".
 2. Remove all resultant debris from the land in compliance with Step 1.
 - The period for compliance with the requirements is: One (1) month.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission (DPA) is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the insertion of the words "on the attached plan" after the existing words in section 3 of the notice. Subject to that correction, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. It is directed that the enforcement notice is corrected by the insertion of the words "on the attached plan" after the existing words in section 3 of the notice. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. Section 3 of the notice, which describes the breach of planning control, refers to the approximate position of the structure with reference to the location marked with a "X". However, it does so without reference to the plan which contains the "X". No injustice would be caused to either party arising from correction of the

notice by insertion of the words “on the attached plan” after the existing words in Section 3.

Preliminary and Procedural Matters

4. The appeal site is a restaurant on ground and upper floors, accessed by customers from High Road. At the rear there is vehicular access from Station Road, and the metal framed structure (the structure), which is described by the appellant as a pergola, has been erected in the rear outdoor area.
5. In the reasons given for issuing the enforcement notice, reference was made to policies of the ‘Epping Forest Local Plan (1998) and Alterations (2006)’, and of the Submission Version of the (then) draft Epping Forest District Local Plan. The Epping Forest District Local Plan 2011-2033 (2023) (EFDLP) was adopted on 6th March 2023 and supersedes the 1998 and 2006 policies stated in the enforcement notice. The appellant and the Council have had an opportunity to comment on this change.
6. At the site visit on 16th May 2023 no representative of the appellants attended. Considering the extent of visibility from the street, I proceeded with the visit unaccompanied from public areas, and am satisfied that I have all the information necessary for my decision.

Appeal A – ground (a) and the DPA

Main Issues

7. The main issues are the effects of the development on:
 - The character and appearance of the area;
 - The integrity of the Epping Forest Special Area of Conservation (SAC); and
 - The living conditions of nearby residential occupiers, with particular regard to sound levels.

Character and appearance

8. In the vicinity of the appeal site High Road is a commercial area, within a wider residential one. Station Road also contains commercial buildings close to the junction with High Road, but is predominantly residential in the vicinity of the rear of the appeal site.
9. In this location, Station Road has a distinct residential character, with two- and three-storey detached and semi-detached dwellings set back from the road behind hedgerows. A small doctors’ surgery, which appears to be a converted dwelling, retains a residential character and scale, with a boundary hedgerow.
10. With the exception of Lopping Hall, which has public-facing frontages on both High Road and Station Road, upper elements of the rear of buildings on High Road can be seen from Station Road where space between buildings allows it. One such space is that at the rear of the appeal site, between the surgery building and 9 Station Road.
11. The plans show the structure to be 12.5m in width with an average length of 13.2m, an eaves height of around 2.3m and a ridge height of 3.4m. In its context, the structure is a large building, enclosing much of the rear yard.

12. From Station Road, the structure's eaves and roof are seen over the intervening hedges, gates, and fences. It is green in colour and seen above hedgerows and other planting. Moreover, its gable end is of a larger scale than neighbouring buildings on Station Road, and its large smooth panels contrast with the surrounding residential character. Despite the shallow pitch of the roof, the large light coloured roof panels contrast with the residential design and scale of buildings on Station Road. Although larger buildings are visible, none are as close to Station Road, or as closely aligned with an adjacent dwelling.
13. In conclusion, the structure is harmful to the character and appearance of the area, and contrary to the relevant aspects of EFDLP Policy DM9, which requires high quality design which contributes to the distinctive character of the local area.

The Epping Forest SAC

14. The Council alleges potential adverse impacts on the Epping Forest SAC in terms of recreational pressure and air pollution. It advises that, in the absence of evidence from the appellant demonstrating that the development will not have an adverse impact, and of a s106 planning obligation to mitigate any such impacts, the development would conflict with development plan policies and the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
15. The Habitats Regulations require me to determine whether the development is likely to have a significant effect on the SAC, alone or in-combination with other plans or projects, applying a precautionary approach. Where it would be affected, consent can only be granted if there are no alternative solutions, there are imperative reasons of overriding public interest (IROPI), and suitable compensatory measures are provided.
16. I have been provided with only limited information concerning the SAC and its objectives. However, the text supporting EFDLP Policy DM2 states that Epping Forest SAC has particular importance as a bird habitat, and was identified primarily for its value in respect of beech trees, wet and dry heaths, and its population of stag beetle. It also states that the Epping Forest SAC is currently assessed as being of 'unfavourable conservation status', in part as a result of the effects of air-borne pollutants, including from traffic.
17. The appellant advises that the structure can accommodate up to 90 diners. Although no customer parking is provided on site, there are a number of car parks in the surrounding area. Given the size of the restaurant compared to the scale of the settlement of Loughton, it seems likely that the development generates a significant number of additional car journeys.
18. In relation to air pollution, in the absence of an assessment demonstrating otherwise, and given the scale of the structure and its proximity to the SAC, I therefore cannot be certain that the development does not have a likely significant effect on the integrity of the SAC, either alone, or in combination with other projects and plans. I note the appellant has expressed a willingness to provide a s106 planning obligation. Nevertheless, insufficient evidence has been provided for the purposes of Appropriate Assessment under the Habitats Regulations, and suitable mitigation measures through a completed s106 Planning Obligation or otherwise have not been provided.
19. In relation to visitor pressure, the text supporting EFDLP Policy DM2 advises that the potential impacts primarily arise from new residential development, as a

result of the increase in the number of residents living in the area. The structure does not increase the number of residents, and with the information before me, it is difficult to see how an additional structure associated with the restaurant might increase visitor pressure on the SAC. I therefore have no reason to believe the development would have a significant adverse effect on the SAC in this respect.

20. In conclusion, with the information before me, although I have not found harm in relation to recreational pressure, I cannot be certain that the development does not harm the integrity of the Epping Forest SAC in relation to air pollution.
21. As a consequence, the development conflicts with the requirements of the Habitats Regulations, which are described above, and the relevant aspects of EFDLP Policies DM2 and DM22. Together these policies permit development only where it is possible to conclude there is no adverse effect on the integrity of the SAC, alone or in combination with other plans or projects, and require consideration of air pollution risks and adequate mitigation to ensure sensitive receptors are not adversely impacted.

Living conditions of nearby occupiers

22. Being located at the rear of the appeal site, the structure is closer to residential dwellings than other buildings on High Road. The appellant's Acoustic Technical Note by RBA Acoustics, identifies 9 Station Road as being around 5m away, the rear of 173 High Road around 10m, and 10 Station Road around 35m. Residents of other properties have also raised concerns relating to noise and disturbance.
23. The very close proximity of No 9 and the occupiers of flats either side of the appeal site on High Road, in particular, make occupiers of those dwellings vulnerable to any increase in noise arising from the development.
24. The appellant advises the structure contains triple-glazed windows, but I have not seen details of the acoustic properties of the structure's walls and roof. The appellant describes the structure as a pergola, and it appears to be of light-weight construction.
25. The sound from up to 90 diners is likely to be significant at times, and the appellant advises the dining area is normally closed by midnight. The Council advise noise complaints have been received since the structure was erected, although the appellant advises otherwise. Overall, I have not seen compelling evidence that the building would suitably contain the sound of 90 diners, or reduce it to levels suitable for the residential area.
26. The appellant's Acoustic Technical Note compares the sound levels from 90 diners within the structure, to 90 diners in the open in the same location. But the Council and other parties suggest the numbers previously utilizing the outside area were significantly lower. Whatever the case, it seems unlikely that large numbers would dine outside on a regular basis, and I have not seen convincing evidence that that has been the case. It seems more likely that the structure facilitates larger numbers and longer lengths of stay.
27. The appellant suggests that 'acoustic treatment options' could reduce sound levels. The Council also suggests planning conditions could limit hours of entry and use of the structure by customers, require a scheme for sound insulation for external windows and doors, and limit access for customers from Station Road. Although some, or all, of these measures may assist in reducing sound levels to a degree, I am not satisfied that the acoustic evidence before me demonstrates

that they could be reduced to, or maintained at, levels appropriate for the residential area.

28. In conclusion, with the information before me, the development is likely to be harmful to the living conditions of nearby residential occupiers, with particular regard to sound levels. It is therefore contrary to the relevant aspects of Epping Forest District Local Plan 2011-2033 (2023) (EFDLP) Policy DM9, which requires development to take account of the amenity of neighbours and address issues of noise likely to arise from the development.

Other Matters

29. I note the significant investment put into the business, in refurbishing and expanding the building, and installing the structure. The appellants state that the structure supports economic growth and productivity, and is required to make the business viable, and that customers are seeking exterior dining alternatives. I have not seen any supporting financial information, and with the information before me can attribute only limited weight to these considerations in favour of the development. The matters in favour of the development therefore do not outweigh the harm I identify above in relation to the main issues.
30. Other matters have been raised, including the extent to which the structure prevents compliance with the parking and turning condition of the original permission for the restaurant use, and the effects of parking by customers. As I am dismissing the appeal for other reasons, and these matters would not weigh in favour of the development, I have not considered them further.

Conclusion

31. For the reasons above, I conclude the development would conflict with the development plan as a whole, and there are no other material considerations that require a decision to be made other than in accordance with the development plan. The appeal on ground (a) therefore fails, and the DPA is refused.
32. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals A and B – ground (g)

33. The notice requires compliance with its requirements within one month. The appellants advise that no less than six months would be more appropriate, given the impact on the business. However, the nature of that impact has not been set out for my consideration.
34. With the information before me, including my site visit, I have not seen any apparent reason why the steel framed structure could not be dismantled within one month, or that its components could not be removed from the land. Neither have I seen a compelling operational justification for a longer period.
35. The appeals on ground (g) therefore fail.

Peter White

INSPECTOR