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## Appeal Decision

Site visit made on 10 May 2023

**by J Downs BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 July 2023**

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**Appeal Ref: APP/J1535/W/22/3304910**

**2 The Uplands, Loughton IG10 1NH**

- 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 Stone against the decision of Epping Forest District Council.
  - The application Ref EPF/2928/20, dated 10 December 2020, was refused by notice dated 8 June 2022.
  - The development proposed is demolition of existing garage structure. Erection of 2 semi-detached 2 bedroom (3 person) dwellings to rear of retained host dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Since the decision was issued, the Epping Forest District Local Plan 2011-2033 (LP) has been adopted superseding the 1998 Epping Forest District Local Plan and the Epping Forest District Local Plan Alterations (2006). The main parties have had the opportunity to comment on the situation. I have had regard to their responses and determined the appeal according to the adopted development plan at the time. In addition, the Council has confirmed that it can demonstrate a five year supply of deliverable housing land. I have no compelling reasons to disagree. I have proceeded on these bases.

### Main Issues

3. The main issues are the effect of the proposed development on:
  - the character and appearance of the area;
  - the living conditions of neighbouring occupiers with particular regard to outlook and privacy;
  - flood risk with specific regard to surface water; and
  - the safe operation of the highway.

### Reasons

#### *Character and Appearance*

4. Dwellings on The Uplands are substantial in the main and set in large plots. Whilst densely built up as a frontage, there is overall a pleasant sense of spaciousness to the character of the immediate area owing mainly to the length of gardens and reinforced by blocks of flats and the cricket club opposite. The

adjacent property has the appearance of a large detached bungalow although it is occupied as flats. This, along with the host property and the nursery are consistent with the prevailing character of substantial buildings.

5. The proposed dwellings would be clearly at a much smaller scale than those surrounding due to their reduced height and more limited width. As a result, they would appear as cramped and poorly related to the prevailing development type in the area. This would be reinforced by the compact plot sizes which would be uncharacteristic of the area, making the proposed development incongruous in the surrounding context, reducing the quality of the area's spaciousness and thus harming the character and appearance of the area.
6. It would therefore be contrary to LP Policy DM9 which requires, amongst other things, development to contribute to the distinctive character of the local area and relate positively to its context. It would also be contrary to Section 12 of the National Planning Policy Framework (the Framework) which requires, amongst other things, development to add to the overall quality of the area.

#### *Living Conditions*

7. The rear gardens in the proposed development would be quite short. While I have not been directed to any policies which specify a minimum length of garden, the new dwellings would be sited only a short distance from the boundary with the rear garden of 4 The Uplands and immediately adjacent to the boundary with the rear garden of the host dwelling at 2 The Uplands.
8. The proposed dwellings have been designed to minimise their height and massing when viewed from the rear, which would also serve to reduce the effect of the side elevations. However, they would nonetheless be prominent when viewed from the rear gardens of Nos 2 and 4 due to their proximity to the boundaries. This would increase the sense of enclosure felt by occupiers when using those gardens and adversely affect their outlook. This would harm the living conditions of occupiers of those properties.
9. The proposed dormer windows on the rear elevation are shown to be obscure glazed. This could be secured by condition to ensure there would not be a loss of privacy to neighbouring occupiers. Alterations were made following pre-application advice to omit windows on the side elevations to further reduce the potential for overlooking. However, these would not overcome the harm I have identified above with respect to outlook.
10. The proposed development would therefore have an unacceptable effect on the living conditions of neighbouring occupiers with particular regard to outlook. It would thus be contrary to LP Policy DM9 which requires, amongst other things, proposals to not result in an over-bearing form of development which materially impacts on the outlook of occupiers of neighbouring properties. It would also be contrary to Section 12 of the Framework which requires, amongst other things, development to provide a high standard of amenity for existing residents.

#### *Flood Risk*

11. LP Policy DM16 confirms that surface water flooding is the greatest source of flood risk within the area and the supporting text to LP Policy DM15 sets out that the Council has a surface water management plan in place for Loughton.

In the absence of any evidence before me as to the level or extent of that risk, I have taken a precautionary approach given the advice at paragraph 152 of the Framework that the planning system should take full account of flood risk, minimise vulnerability and improve resilience.

12. DM15 requires all development proposals to demonstrate that they avoid and reduce the risk of all forms of flooding and that development proposals must be accompanied by a site specific flood risk assessment (FRA) where required by national planning policy. Footnote 55 of the Framework sets out the circumstances in which this would apply. This includes land that may be subject to other sources of flooding where its development would introduce a more vulnerable use. Dwellings are such a use therefore an FRA would be necessary in this case. However, there is no FRA before me. In its absence, there is insufficient evidence to allow me to conclude that flood risk would not be increased elsewhere.
13. The proposal would therefore have an adverse effect on flood risk in the area with regard to surface water flooding. As a result, it would not be in accordance with LP Policy DM16 which seeks, amongst other things, to ensure that surface water is managed using the most appropriate sustainable drainage solution. It would also not be in accordance with Section 14 of the Framework which requires, amongst other things, that applications should be supported by site-specific flood-risk assessment and that development should not increase flood risk elsewhere.

#### *Highway Safety*

14. There is a dropped kerb serving the existing garage for part of the length of the site. The appeal proposal would require this to be extended. Sufficient parking to meet the needs of the development itself would be provided. The needs of the host property can be met from the frontage parking to that property so there would not be a harm arising from the loss of the garage. The closest residential properties do have access to off-street parking, and there is on-street parking available on the opposite side of the street adjacent to the cricket club.
15. The majority of residential properties do have off-street parking facilities, many of which were in use at the time of my site visit. Although few of the dropped kerbs serving the residential properties had road markings in front of them, on-street parking did not appear to obstruct access to the off-street spaces.
16. There are double yellow lines at the junction of The Uplands and Church Hill, and also where The Uplands makes a 90° turn. This ensures sufficient space and visibility for vehicles to pass. As The Uplands is otherwise straight, there is good visibility to allow drivers exercising due care and attention to pass even when there are cars parked on both sides of the street.
17. I carried out my site visit in the afternoon and it was apparent that children were being collected from a nearby primary school during part of it. While I acknowledge my visit represents a short moment in time, I observed a high level of on-street parking along the length of The Uplands. Some of the on-street parking is likely to have been attributable to the primary school, as a limited number of spaces became available after this time in proximity to the junction with Church Hill. The Council has not disputed the appellant's claims that the demand for on-street parking arises from nearby commercial and

community uses, or that other parking facilities to meet this demand exist. From my observations on site, I have no reason to dispute this either.

18. No substantive evidence of how the loss of the on-street parking would be detrimental to highway safety has been placed before me. I did not observe anything during my site visit that would suggest the loss of the limited area of on-street parking would be harmful to highway safety.
19. There would therefore not be an adverse effect on the safe operation of the highway. The proposed development would thus be in accordance with LP Policy T1 which requires, amongst other things, development to not compromise highway safety. It would also be in accordance with Section 9 of the Framework which, amongst other things, only seeks to restrict development where there would be an unacceptable impact on highway safety.

### **Other Matters**

20. The site is located within the Zone of Influence for the Epping Forest Special Area of Conservation (SAC) which is subject to pressures from air pollution and recreational disturbance. From the evidence before me, establishing the extent of these effects, and the means to appropriately mitigate for them has taken some time. While I acknowledge this would be a source of frustration to the appellant, the Conservation of Habitats and Species Regulations 2017 (as amended) places legal obligations on the decision maker. It is not uncommon for it to take an extended period for such issues to be satisfactorily addressed.
21. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would likely have significant environmental effects on the integrity of the SAC. However, given my findings above, it has not been necessary for me to pursue this issue further. A finding that the proposal would not have an adverse effect on the integrity of the SAC, with or without any mitigation, would be at best a neutral matter.
22. The site lies a short distance from the York Hill Conservation Area (CA). The appellant has highlighted that this was drawn to their attention by the Council with respect to the design, materials and finish of the proposed dwelling. However, neither party has put forward that the development would affect the setting and therefore the significance of the CA. From my observations on site and for the purposes of this appeal, the significance of the CA is in its aesthetic value derived from the distinctive layout and the design quality of the buildings. Due to the intervening development separating the application site from the CA, the proposal would not affect its setting.
23. The site would be well located to access services within Loughton and public transport connections to the wider area. The proposed dwellings would provide acceptable living conditions for future occupiers. In isolation of the issues I have identified above, the design of the dwellings would be acceptable. EV charging points formed part of the proposal. The proposed development would be subservient to the host dwelling, which would retain appropriate outdoor amenity space. However, these matters amount to a policy compliant scheme and would therefore be neutral factors in the determination of the appeal.
24. Although the Council can demonstrate a five year supply of deliverable housing land and has an up-to-date development plan, the provision of additional

dwellings and the associated economic benefits that would arise from construction and occupation do weigh in favour of the proposal. However, given the proposal is for two dwellings, I attach limited weight to these benefits.

25. There is no substantive evidence before me demonstrating how the appearance of the street has declined. The garage and boundary treatment at the appeal site appeared to be well maintained and do not detract from the appearance of the area. Nor is there any substantive evidence of any historic or current issues with anti-social behaviour that would lend support to the proposal.
26. The Council is not bound by pre-application advice and Council members are entitled to reach their own view on schemes placed before them for determination at committees. Matters relating to the time taken by the Council to determine the application are beyond the scope of this appeal in any event. Compliance with building regulations is controlled through separate legislation. I have considered the appeal on the basis of the evidence before me and its planning merits.

### **Conclusion**

27. I have found the appeal proposal would have an adverse effect on the character and appearance of the area, the living conditions of neighbouring occupiers and flood risk. While I have not found harm with respect to the effect of the development on the operation of the highway, this would not outweigh the harms I have identified.
28. The proposed development would conflict with the development plan as a whole and there are no material considerations before me worthy of sufficient weight that would indicate a decision otherwise. The appeal should therefore be dismissed.

*J Downs*

INSPECTOR