
Appeal Decision

Site visit made on 11 May 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/J1535/W/22/3296307

38 Queens Road, Buckhurst Hill, Essex IG9 5BY

- 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 38 QR Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/2149/21, dated 2 August 2021, was refused by notice dated 2 February 2022.
 - The development proposed is alterations and extension to create three flats, with amended retail space to the front.
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Decision

1. The appeal is allowed and planning permission is granted for alterations and extension to create three flats, with amended retail space to the front at 38 Queens Road, Buckhurst Hill, Essex IG9 5BY in accordance with the terms of the application, Ref EPF/2149/21, dated 2 August 2021, subject to the conditions set out in the attached schedule.

Procedural Matters

2. Since the Council's decision was issued, the Epping Forest District Local Plan 2011-2033 Part One (2023) (LP) was adopted, replacing the Local Plan (1998) and Alterations (2006) and Local Plan Submission Version 2017. Further comments on this have been submitted by both parties and I have had regard to these when reaching my decision.
3. The site is located within 3km of the Epping Forest Special Area of Conservation (SAC), designated under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Although not included as a reason for refusal by the Council, as the competent authority, I must consider whether the proposal would be likely to have a significant effect on the integrity of the SAC either alone or in combination with other plans or projects. I have therefore considered this matter as a main issue.
4. The appellant has provided a final signed Unilateral Undertaking (UU) dated 14 June 2023 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended). This secures contributions towards the mitigation of air pollution, green infrastructure enhancement projects and recreation contributions. I will return to this in due course.

Main Issues

5. The main issues are:

- whether the conversion of the annex building would provide acceptable living conditions for future occupiers with regard to living space and access; and
- the effect of the development on the integrity of the SAC.

Reasons

Living Conditions

6. The appeal site consists of a two storey property in retail use at ground floor with residential accommodation above and a garden behind. At the end of the garden is a single storey building which extends along the rear of the garden and the gardens of 40, 40a and 42 Queens Road. It also sits to the rear of residential properties on Princes Road, albeit at a higher level.
7. The appeal proposes the conversion of this annex to a flat, with associated external alterations. Access would be taken from Queen Street, through an internal passageway. The flats in the proposed extension would take access directly from this passageway, while the occupier of the annex would have to walk along the garden.
8. There is no substantive evidence before me setting out why this would be unsuitable, nor did I observe anything at my site visit that would lead me to conclude such an access would be unsuitable. The site is not accessible from the rear due to the changing ground levels. While there was not a boundary treatment in place to one of the neighbouring properties, this could be changed at any time. Furthermore, the gardens appeared to be generally enclosed, and there is no substantive evidence before me to suggest that such an access would give rise to any safety concerns.
9. While the Council's reason for refusal did not refer to LP Policy DM10, it was referred to in their officer report. This policy requires all new housing development to meet the nationally described space standard. The evidence before me concludes that the scheme is compliant with this standard. I have no reason to disagree. The policy also requires ground floor family housing to provide access to private garden/amenity space but does not prescribe a minimum. A private amenity space is provided for the annex, and this would be accessed via a bi-folding door from the open plan living space and as such would be well related to the internal accommodation. I therefore do not consider that the proposed development would result in cramped or unfavourable living conditions for future occupiers.
10. The conversion of the annex building would provide acceptable living conditions for future occupiers with regard to living space and access. It would therefore be in accordance with LP Policies DM9 and DM10 and paragraphs 126 and 130 of the National Planning Policy Framework (the Framework) which, amongst other things, require high quality development which will function well with a high standard of amenity for future users.

Epping Forest SAC

11. The appeal site lies within the zone of influence of the Epping Forest SAC. The SAC comprises wood-pasture with habitats of high nature conservation value

including ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland. The woodland represents one of the largest continuous semi-natural blocks in the country, characterised by groves of over-mature pollards. The plains contain a variety of unimproved acid grasslands uncommon elsewhere in Essex and the London area. The Forest supports a nationally outstanding assemblage of invertebrates, holds major amphibian interest and has an exceptional breeding bird community.

12. The SAC is designated for three Annex I habitats (Northern Atlantic wet heaths, European dry heaths, and Atlantic acidophilous beech forests), as well as one Annex II species (Stag Beetle). The conservation objectives of the SAC include ensuring that the integrity of the site is maintained or restored as appropriate and ensuring that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features and Species.
13. The SAC and its qualifying features are at risk from increases in oxides of nitrogen, ammonia and nitrogen deposition, primarily from vehicular traffic. It is also at risk from recreational disturbance which can give rise to a range of effects including eutrophication, damage and disturbance to flora and fauna, harvesting of fauna and spread of disease and alien plants. The proposed development would, in combination with other residential development, have a likely significant effect on the integrity of the SAC as a result of the increased population and associated activity which would give rise to the above effects. In these circumstances, the Habitats Regulations require me to undertake an Appropriate Assessment (AA) of the implications of the proposed development for the SAC in view of its conservation objectives before deciding to grant permission.
14. Strategic mitigation measures to address these effects are set out in the Air Pollution Mitigation Strategy, the Epping Forest District Green Infrastructure Strategy and the Epping Forest Strategic Access Management and Monitoring Strategy. These set out tariff based contributions to contribute to the delivery of the mitigation strategies outlined in each document.
15. An executed UU has been submitted by the appellant. The Council has confirmed that the proposed development would give rise to two net additional dwellings and expressed no concerns with the UU. This would provide financial contributions of £670 (£335 per dwelling) as the air pollution contribution, £1432 (£716 per dwelling) as the green infrastructure enhancement projects contribution and £3705.26 (£1852.63 per dwelling) as the recreation contribution. These contributions are consistent with those set out in the relevant strategies.
16. Natural England, in its role as the Statutory Nature Conservation Body, has confirmed that with these contributions secured prior to the commencement of the development, the potential adverse effects that would arise would be suitably mitigated.
17. I am satisfied that the above financial contributions are necessary to make the proposed development acceptable in planning terms. The obligation would contribute to established mitigation schemes. Given the location of the appeal site within 3km of the SAC, the contribution is directly related to the appeal scheme. As it relates to a standard charge based on the residential development proposed, I consider it to be fairly and reasonably related to the proposal in scale and kind. For these reasons, I am satisfied that the planning

obligation would meet the requirements of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) and paragraph 56 of the Framework. I therefore give it significant weight in the determination of this appeal.

18. A monitoring contribution of £290.36, equivalent to 5% of the total contribution is also proposed. Regulation 122 of the CIL Regulations allows for a contribution to be secured towards the costs of monitoring and reporting provided the sum to be paid fairly and reasonably relates in scale and kind to the development and does not exceed the authority's estimate of its cost of monitoring the development. I have no reason to conclude that the monitoring contribution secured through the planning obligation would not comply with these tests.
19. I am satisfied that with the proposed mitigation measures in place, secured through the planning obligation, the potential adverse effects of the development would be adequately mitigated, respecting the integrity of the Epping Forest SAC. The development would therefore comply with the Habitats Regulations. It would also be in accordance with LP Policy DM2 which requires all relevant development proposals to ensure there is no adverse effect on the site integrity of the Epping Forest SAC.

Other Matters

20. The appeal also proposes a substantial two storey rear extension to the existing property which would provide a further two flats and amendments to the retail space. The Council has not alleged that any harm would arise from these aspects of the development. From my observations on site, I have no reason to conclude differently. Furthermore, permission has been granted for this aspect of the development since the Council issued its decision on the appeal scheme. Even if I were to have found harm, the approved scheme provides a realistic fallback position that could be implemented that would have the same effect with respect to the two storey extension.
21. Given the size of the rear garden and the separation between the building fronting onto Queens Road and the annex, there are options for refuge in the event of an emergency. Space for communal bin storage is shown on the approved plans and can be secured by condition. There are controls through other legislation to require development to be carried out in a safe manner, and for restitution should damage occur.
22. No parking is proposed as part of the development. While it does not guarantee that occupiers will not have a car, the site is very well located for access by foot to services and facilities to meet day to day needs. There is also access to the wider public transport network, and the proposed development makes provision for cycle parking which can be secured by condition. No substantive details of the parking controls in the surrounding area are before me, however this does provide the Council with a separate means to manage levels of on-street parking. It has not been suggested that it would be necessary to require the proposed development to be car free, and I have no reason to impose such a requirement. The proposed development would not adversely affect the future provision of, and demand for, on-street electric vehicle charging facilities given its location and limited scale.

23. Once in use, the proposed residential flats would be unlikely to give rise to additional noise beyond that typical to residential areas. Similarly, the noise experienced by future occupiers of the property would be that typical in residential areas. Other legislation exists to address excessive noise should this occur. Construction access would be no different to that required were the landowner to undertake repairs or maintenance to the annex building. No openings are proposed to the annex which would look directly towards the properties on Princes Road and the installation of further openings could be restricted by condition. There is no evidence before me to show that any permission or consent would be required to remove the existing trees. There would not be a material effect on biodiversity. Other legislation provides controls to ensure the site would be adequately drained.

Conditions

24. The Council's officer report recommended conditions were permission to be granted. I have had regard to these in light of the tests set out in paragraph 56 of the Framework and I have made amendments to some of them for consistency and clarity purposes. In the interests of certainty, I have imposed a condition stipulating the approved plans and the timescale for the commencement of works.
25. The landscaping condition suggested by the Council was not reasonably related to the development being permitted in the extent of detail that was being sought given the limited area of land available for landscaping, none of which would be visible from any public area. I have replaced it with a condition which meets the tests within the Framework to secure landscaping of the site.
26. It is reasonable and necessary for the materials of the proposed development to match those of the existing building. It is reasonable to require investigations to be carried out should any contaminated soils be found during the development process as the proposed development is for a sensitive end use. I have replaced the suggested condition with one that more precisely sets out the necessary requirements.
27. The cycle storage and refuse areas should be made available for use prior to occupation and retained and it is reasonable and necessary to secure this by condition for functional purposes. It is also reasonable and necessary to limit the hours of operation when construction works take place which could cause disturbance to surrounding occupiers. I have removed the tailpiece requirement in the interests of certainty.
28. It is a requirement of the recently adopted LP that water consumption be limited to 110 litres or less per person per day, therefore this condition is reasonable and necessary. I have amended it to require details of the measures to be approved by the Council to ensure that the condition is enforceable and to require their retention to ensure the measures are effective.
29. There is the potential for overlooking to occupiers of residential properties to the rear of the site on Princes Road. The effect of any such overlooking would be significant given the changes in levels between Queens Road and Princes Road. I am mindful of the advice in the Planning Practice Guidance with regard to the removal of permitted development rights, however it is justified in this case. I have removed the tailpiece requirement in the interests of certainty.

Conclusion

30. For the reasons set out above, the appeal is allowed, subject to the conditions set out.

J Downs

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: QUE-001, TBU/002 Rev A, TBU/003 Rev A, TBU/111 Rev A, TBU/112 Rev A, TBU/113 Rev A and TBU/114 Rev A.
- 3) No development shall take place above ground level until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 4) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those in the existing buildings.
- 5) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed.
- 6) The refuse stores and cycle stands shown on the plans hereby approved shall be fully installed and available for use prior to the first occupation of any of the residential units and thereafter retained.
- 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.
- 8) No development shall take place above ground level until a scheme setting out measures to ensure a water efficiency standard of 110 litres (or less) per person per day has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme and the approved measures thereafter retained.
- 9) Notwithstanding the provisions of Schedule 2, Part1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows [other than those expressly authorised by this permission] shall be inserted in the south, west and/or east elevations.