



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: 8 September 2023

Appeal Ref: APP/J1535/W/22/3298387

Rear of 75, 75a-c, 77, Queens Road, Buckhurst Hill IG9 5BW

- 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 S Moore of ROK Projects Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/2808/20, dated 29 November 2021, was refused by notice dated 2 March 2022.
 - The development proposed is demolition of structures to the rear of 75-77 Queens Road, and erection of 8 new dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of structures to the rear of 75-77 Queens Road, and erection of 8 new dwellings at Rear of 75, 75a-c, 77, Queens Road, Buckhurst Hill IG9 5BW in accordance with the terms of the application, Ref EPF/2808/20, dated 29 November 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) which is a habitats site 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. I have therefore considered this matter as a main issue.
4. The appellant has provided a final signed Unilateral Undertaking (UU) dated 20 January 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 the effect of the development on:
 - the character and appearance of the area;

- the living conditions of existing occupiers with regard to outlook and privacy and proposed residents with regard to the provision of amenity space; and
- the integrity of the SAC.

Reasons

Character and Appearance

6. Although the red line includes the buildings that front onto Queens Road, the proposed development would take place to the rear of those properties. At present, this area consists of various extensions and partially open structures which would be demolished, and an open area used for parking. Immediately adjacent in the terrace is an extended property, with access to a flat. Beyond that is an outside seating area serving the commercial property that fronts on to Queens Road. To the remaining sides are residential properties on Kings Avenue and Westbury Lane.
7. The area appears to already have a degree of activity, as it appeared at my site visit that at least one residential and one commercial property are accessed from the rear. An external seating area serving a commercial premises on Queens Road was also readily accessible over this space. When combined with activity from the existing parking spaces, I consider this area to already form a relatively active part of the area. Normal residential use of the site would not have a material impact on the levels of noise in the area.
8. I also observed another use that sat behind the commercial properties along Queens Road. While there is a strong pattern of frontage development along Queens Road, it is not to the exclusion of uses behind that frontage.
9. There is no one consistent or predominant style of building or materials. The proposed development would be of a modern appearance, with its shallow pitched grey zinc roof. It would not be readily visible from the street and any visual relationship would be with the properties fronting Queens Road. These are of modern appearance and include properties with flat roofs. The appeal proposal would therefore not appear visually incongruous or harm the appearance of the area.
10. The proposed development would have an acceptable effect on the character and appearance of the area. It would be in accordance with LP Policy DM9 which requires development to respond positively to their locality and draw on local character.

Living Conditions

11. The proposed building would be separated from the rear gardens of the properties on Kings Avenue by the access to the site. This separation, along with the reasonable length of the gardens on Kings Avenue and the limited height of the proposed development are sufficient to ensure that there would not be an adverse effect on the outlook from those properties or on the levels of sunlight and daylight they would receive.
12. Notwithstanding, the proposed development would introduce a new relationship of overlooking between the appeal site and the residential properties on Kings Avenue, and this would give rise to a sense of increased overlooking. The

effects of this would be limited given three flats are proposed at first floor level. The Council has suggested that the windows could be obscure glazed, and I consider this would be reasonable approach. It would not be unduly adverse to future occupiers of the flats as the windows would serve bedrooms. This matter could be secured by condition.

13. While the Council's reason for refusal did not refer to LP Policy DM10, it was referred to in the Council's 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 and I have no reason to disagree.
14. There is no requirement in this policy for private garden/amenity space to be provided for non-family housing. While neither the policy or its supporting text define family housing, I consider it reasonable to assume that a single bedroom property, would not fall within this definition. Notwithstanding, the proposed development does provide private garden spaces for the ground floor properties and small balconies for the first floor properties. Those balconies would overhang the gardens by only a limited extent and would not unduly enclose them or restrict light to the windows serving the ground floor properties. There would be acceptable levels of light to other windows. I therefore do not consider that the proposed development would result in cramped or unfavourable living conditions for future occupiers.
15. The proposed development would therefore have an acceptable effect on the living conditions of existing occupiers with regard to outlook and privacy, and proposed residents with regard to the provision of amenity space. It would be in accordance with LP Policy DM9 which requires development to take account of the privacy and amenity of the development's occupiers and neighbours.

Epping Forest SAC

16. 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.
17. 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.
18. 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.

19. 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 the mitigation strategies outlined in each document. As the proposal is for greater than 6 dwellings, further assessment of the air quality impacts was necessary. This concludes that the effects would be acceptable subject to the measures above and the provision of electric vehicle charging points and high speed broadband being secured. These matters can be appropriately addressed through the imposition of conditions.
20. A signed UU has been submitted by the appellant and which the Council has expressed no concerns with. This would provide financial contributions of £2680 (£335 per dwelling) as the air pollution contribution, £5728 (£716 per dwelling) as the green infrastructure enhancement projects contribution and £14,821.04 (£1852.63 per dwelling) as the recreation contribution.
21. 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.
22. 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.
23. A monitoring contribution of £1161.50, 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.
24. I am satisfied that with the proposed mitigation measures in place, secured through the planning obligation and the imposition of conditions, 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

25. I note the Council refused permission for a previous scheme for the development of this site, however I have determined this appeal on its own merits.
26. The local highways authority has not expressed any concern with the use of the single width access. As this serves a number of properties in addition to the appeal site, and there are currently commercial uses on the site, I consider there would be a neutral effect on highway safety. The proximity of the site to the services and facilities on Queens Road and to public transport links are such that future occupiers of the site could have a limited need for the private car to meet day to day needs. Furthermore, there are parking controls in the surrounding area to manage the effects of the demand for on-street parking. I have not been directed to any requirement for the development to provide visitor or disabled parking spaces. As such, I consider the parking provision to be acceptable.
27. At my site visit I observed an outside seating area associated with a commercial property on Queen Street in proximity to the site. The dwellings would also be in proximity to the access and parking space. These could give rise to disturbance to future occupiers arising from noise. However, I have no reason to think these could not be addressed through suitable mitigation measures. I have no reason to consider adverse levels of noise would arise from the proposed dwellings.
28. There is no substantive evidence before me that the proposal would give rise to localised air quality impacts on the surrounding area. While the bin storage area is shown close to the boundary, it would provide for adequate refuse storage such that the potential for smells would be limited.

Conditions

29. The Council has suggested conditions should I be minded to allow the appeal. I have had regard to these in light of the tests set out in paragraph 56 of the National Planning Policy Framework and I have made amendments to some of them for consistency and clarity purposes. In the interests of certainty, I have imposed conditions stipulating the timescale for the commencement of works and the approved plans. I have removed a reference requiring the development to be retained as per the approved plans as this is not justified. I have not been provided with a proposed south elevation. However, I have been able to satisfactorily assess the effects of the proposed development and this matter can be rectified via a condition which would be reasonable and necessary to define the terms of the permission.
30. It is reasonable and necessary to ensure that there will be satisfactory surface water drainage of the site. However, prior to preliminary ground works lacks precision. I have therefore amended the trigger for the condition.
31. The proposed development affects the extraction and ventilation systems on the retained properties. It is reasonable and necessary in the interests of living conditions of future occupiers to ensure such measures would be effective. However, I consider this matter is not so fundamental to need to be pre-

commencement and could be required prior to any above ground works taking place. As the application is for new dwellings, these measures should be provided prior to any of those dwellings first being occupied.

32. It is reasonable to ensure any contaminated soils are addressed as the proposed development is for a sensitive end use. I have replaced the suggested condition with conditions that more precisely set out the necessary survey and remediation requirements. As the site is previously developed, I also consider it reasonable and necessary to provide for the circumstance that previously unidentified contamination is found and have imposed a further condition to control this matter.
33. The provision of electric vehicle charging facilities and broadband are reasonable and necessary to mitigate the likely significant effects of the development on the integrity of the SAC. As such, it is necessary that acceptable schemes have been agreed prior to the development commencing and that the approved measures are retained. I have removed the tailpiece clause to provide the certainty necessary to ensure there would be retention of these measures. I have also amended the broadband condition to remove extraneous detail. I consider both to be related to planning and the development to be permitted, enforceable and reasonable in all other respects. I have amended the conditions to ensure they are suitably precise.
34. It is reasonable and necessary for the materials of the proposed development to be agreed. For the reasons given above, it is reasonable and necessary to require obscure glazing to those windows facing Kings Avenue. I have amended the condition to relate it directly to those first floor dwellings. However, given the building is separate from those dwellings by the access that serves a number of properties on Queens Road, it is not necessary to prevent the windows from opening. I have amended the condition accordingly.
35. It is a requirement of the recently adopted LP that water consumption be limited to 110 litres or less per person per day, therefore the condition is reasonable and necessary. I have amended the condition to require the details of the measures to be approved by the local planning authority to ensure that the condition is enforceable and to require their retention to ensure the measures are effective.
36. It is reasonable and necessary to require biodiversity enhancements and the recently adopted LP mandates the use of the Biodiversity Impact Assessment Calculator. However, given the very limited open space available within the development, it is likely that any such measures may need to be incorporated within the built fabric of the building. The details should therefore be approved before the development gets above ground level.
37. For the reasons given above, it is reasonable and necessary to ensure there would not be an adverse effect to future occupiers from noise disturbance.
38. I have not been directed to any policy in the development plan that requires residential travel information packs to be provided. This development lies within an established area with good public transport links which would be readily apparent to future occupiers. As such, I do not find this condition to be reasonable or necessary.

39. It is reasonable and necessary for the vehicle parking, cycle parking and refuse storage to be available prior to the first occupation of the dwellings and thereafter retained. However, it is not reasonable to require that those parking spaces are hard surfaced and sealed in advance of the surface water drainage arrangements of the site being confirmed. I have therefore amended the condition for details of the surfacing materials to be approved. It is also reasonable and necessary to limit the hours of operation when construction works could cause disturbance to surrounding occupiers. I have removed the tailpiece requirement in the interests of certainty. Given the width of Queens Road and the busy nature of the surrounding area, it is considered reasonable and necessary to ensure debris is not deposited on the surrounding highway.

Conclusion

40. 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: 200 Rev A, 203, 204, 205, 206, 207, 208, 209, and 210.
- 3) Before the development commences, a plan showing the proposed south elevation of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved plan.
- 4) Prior to any above ground works taking place, details for the disposal of surface water shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details which shall be provided on site prior to the first occupation and shall be retained for the lifetime of the development.
- 5) Prior to any above ground works taking place, details of the arrangements for internal air extraction, odour control measures, noise levels, and discharge to atmosphere from cooking operations, including the location, appearance and finish of any external ducting and flues shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be installed before the first occupation of any of the residential units and so retained. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions for the lifetime of the development and operated at all times when cooking is being carried out.
- 6) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

The assessment shall include:

- i) a survey of the extent, scale and nature of contamination;
- ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 7) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a

description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 8) 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 [or relevant phase of development] is resumed or continued.
- 9) Before the development commences, a scheme for the provision of Electric Vehicle Charging Points to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - Location of active and passive charging infrastructure;
 - Specification of charging equipment; and
 - Operation/management strategy. The council will expect that a management plan for the charging points is set out clearly. This will address:
 - a) Which parking bays will have active and/or passive charging provision, including disabled parking bays;
 - b) How charging point usage will be charged amongst users;
 - c) The process and the triggers for identifying when additional passive charging points will become activated; and
 - d) Electricity supply availability to ensure that the supply does not need to be upgraded at a later date.

The development shall be carried out in accordance with the approved scheme and made operational prior to first occupation of any of the residential units. The approved scheme shall be thereafter retained.

- 10) Before the development commences, a strategy to facilitate super-fast broadband for future occupiers of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall ensure that upon occupation of each dwelling, appropriate measures to facilitate the provision of an operational broadband service to that dwelling are in place. The development of the site shall be carried out in accordance with the approved strategy and the approved measures thereafter retained.
- 11) Prior to any above ground works, documentary and photographic details of the type and colours of the external finishes of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 12) Prior to first occupation of any of the first floor dwellings hereby permitted, the windows in the east elevation (facing the rear of Kings Avenue) at first floor

- level, shall have been fitted with obscure glass with a minimum privacy level 3 obscurity. Once installed the obscure glass shall be retained thereafter.
- 13) Prior to any above ground works taking place, a scheme setting out measures to ensure a water efficiency standard of 110 litres (or less) per person per day shall be 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.
 - 14) Prior to any above ground works taking place, a scheme to enhance the ecological value of the site shall be submitted to and approved in writing by the Local Planning Authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator. The scheme shall be implemented in full prior to the occupation of the development hereby approved.
 - 15) The development shall not be occupied until a scheme of sound insulation for all external windows has been submitted to and approved in writing by the Local Planning Authority. The scheme of sound insulation for the external windows shall be implemented prior to the occupation of the development and thereafter permanently retained.
 - 16) Before the development commences, details of the surfacing materials for the parking spaces shall be submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of the development, the vehicle parking and turning areas as indicated on the approved plans shall be provided and marked out. The parking and turning areas shall be retained in perpetuity for their intended purpose.
 - 17) The cycle parking facilities, as shown on the approved plan, are to be provided prior to the first occupation of the development and are to be retained as such.
 - 18) The refuse storage, as shown on the approved plan, are to be provided prior to the first occupation of the development and are to be retained as such.
 - 19) 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 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.
 - 20) 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.