



Appeal Decision

Site visit made on 21 August 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2023

Appeal Ref: APP/J1535/W/22/3306722

121 Honey Lane, Waltham Abbey EN9 3AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Huseyin Arnavut against Epping Forest District Council.
 - The application Ref EPF/0182/22 is dated 24 January 2022.
 - The development is described as "the proposal is for a 2 bedroom new build bungalow of similar appearance to that built at the rear of 119 Honey Lane. The site position, height, massing will be identical to the neighbouring property".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It has been brought to my attention that Epping Forest District Local Plan 2011-2033, Part One ('the LP') was adopted in March 2023. The LP replaces Epping Forest District Local Plan, Submission Version 2017, adopted December 2017 and the Council have advised that Policies SP1, H1, T1, DM2, DM3, DM5, DM9, DM10, DM15, DM16, DM19, DM21 and DM22 have superseded Policies CP2, CP7, DBE1, DBE8, DBE9, ST4, ST6, LL10 and LL11 referred to in the officer report. It is mandatory for me to take account of the most relevant and up-to-date information in reaching a decision and I have therefore dealt with the appeal on this basis. The main parties have been given an opportunity to comment on the relevant policies contained in the LP and have therefore not been prejudiced.

Background and Main Issue

3. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted a delegated report for a similar proposal for a dwelling on the appeal site¹ that they recommended permission be granted subject to conditions and a Section 106 Agreement to secure financial contributions towards the Epping Forest Special Area of Conservation ('the SAC'), including monitoring fees.
4. Consequently, had the Council had the opportunity to make the decision, the proposed development would have been considered acceptable, subject to a Section 106 Agreement to secure financial contributions towards the SAC, as it would have been in accordance with the policies within the LP. Based on the

¹ Planning Ref: EPF/0314/20

submitted evidence and following an assessment of the proposed development during my site visit, I find no reason to disagree with the Council's conclusion. The appellant has had the opportunity to comment on the Council's submission and has therefore not been prejudiced.

5. Accordingly, the main issue is the effect of the proposed development on the integrity of the Epping Forest SAC.

Reasons

6. The appeal site is located within the 0-3km Zone of Influence (ZoI) of the Epping Forest SAC which 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 Forest supports a nationally outstanding assemblage of invertebrates, major amphibian interest and an exceptional breeding bird community. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations').
7. The Habitats Regulations impose a duty on me, as the competent authority, to 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 and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment, rather than at the screening stage². This responsibility now falls to me as the competent authority.
8. Evidence shows that the SAC is under significant pressure from visitors and atmospheric pollution from vehicles travelling through it. Visitor and vehicle numbers will increase due to the delivery of new housing and employment developments in the surrounding area. The increase in recreational pressure can lead to such issues as a rise in wildfires, the introduction of incompatible plants, nutrient enrichment from dog fouling, loss of vegetation, damage to trees from trampling and climbing, and soil erosion and compaction. Furthermore, air pollution arising from an increase in vehicles can lead to issues such as acid rain, nutrient enrichment, and soil and freshwater acidification. Accordingly, disturbance by humans and their pets, and emissions from vehicles, can have an adverse effect on the SAC.
9. The proposal would result in an increase in one dwelling. There would be a likelihood of future occupiers of the proposed dwelling visiting the SAC and travelling through the SAC to access facilities to meet their day-to-day needs. Consequently, the proposed development would be likely to result in recreational disturbance and air pollution that would have a harmful effect on the qualifying features of the habitat site. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on the habitat designation through increased disturbance arising from recreational activity and air pollution. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SAC. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated.

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

10. I have been provided with evidence that the Council has been operating two strategies for the protection of the SAC, which are set out in the Epping Forest Strategic Access Management and Monitoring (SAMM) Strategy, adopted 2021 ('the SAMM') and the Epping Forest Interim Air Pollution Mitigation Strategy: Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation, adopted December 2020 ('the Air Pollution Strategy'). The SAMM indicates that the mitigation should be secured by a planning obligation.
11. Policy DM2(B) of the LP states that contributions towards off-site measures to mitigate the likely impacts of air pollution and adverse recreational effects arising from a development will be sought. Furthermore, it is clear from the Council's officer report that this is to be undertaken by the satisfactory completion of a Section 106 Agreement. The appellant has stated that a Section 106 Agreement for the financial contribution towards the mitigation measures has been done. However, this is in respect of a different scheme³ and is therefore not applicable to the appeal proposal.
12. The appellant states they have no objection to the planning obligation being conditional should the appeal be allowed. However, the Planning Practice Guidance (PPG) states that a positively worded condition which requires the applicant to enter into a planning obligation is unlikely to pass the test of enforceability, and a negatively worded condition limiting the development that can take place until a planning obligation has been entered into, is unlikely to be appropriate in the majority of cases. Only in exceptional circumstances, where there is clear evidence that the delivery of the development would otherwise be at serious risk (such as in the case of particularly complex development schemes) would a negatively worded condition be acceptable. The proposal before me would not meet this exception. Consequently, the use of a condition to secure a planning obligation for a financial contribution to mitigate the adverse effects of the proposal on the integrity of the SAC would not meet the six tests for conditions as detailed at paragraph 56 of the National Planning Policy Framework.
13. In respect of the main issue, insufficient information has been submitted to verify that the proposal would not harm the integrity of the SAC. The proposal would therefore be contrary to Policy DM2 of the LP which, amongst other things, seeks to ensure there is no adverse effect on the integrity of the SAC from development proposals; and where a development would have likely significant effects, contributions towards off-site mitigation measures will be sought to make the development acceptable.

Conclusion

14. For the reasons given above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR

³ Planning Ref: EPF/0314/20