



Appeal Decision

Site visit made on 15 August 2023

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

Appeal Ref: APP/J1535/W/22/3304061

Highgrove Close, formerly land to the rear of 33-37 Hillyfields, Loughton IG10 2PT

- 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 Tappenden of SJT Developments Limited against the decision of Epping Forest District Council.
 - The application Ref EPF/1586/21, dated 4 August 2021, was refused by notice dated 27 April 2022.
 - The development proposed is the construction of a 4 bedroom two storey dwelling with associated parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a 4 bedroom two storey dwelling with associated parking and landscaping, at Highgrove Close, formerly land to the rear of 33-37 Hillyfields, Loughton, IG10 2PT, in accordance with the terms of the application, Ref EPF/1586/21, dated 4 August 2021, and the plans submitted with it, subject to the conditions in the Schedule at the end of this Decision.

Applications for costs

2. An application for an award of costs was made by Mr S Tappenden of SJT Developments Limited against Epping Forest District Council. This is the subject of a separate Decision.

Preliminary Matters

3. The application form identified the site address as 'Land to the rear of 33-37 Hillyfields'. However, I have taken the description from the decision notice and appeal form, as Highgrove Close provides the site's direct access.
4. The Epping Forest District Local Plan 2011-2033 (LP) was adopted in March 2023. The previous Local Plan, referenced in the appeal evidence as 'the adopted Local Plan (1998) and Alterations (2006)', has been revoked with all policies superseded, including those cited in the decision notice.
5. An unsigned version of a Deed of Unilateral Undertaking (UU) was before the Council at the time of its decision. A signed UU of 27 March 2023 was submitted for the appeal, which in all other respects has the same content. In accordance with the Holborn Studios Ltd¹ judgement, accepting the signed UU as the basis for the appeal therefore meets both the substantive and

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

procedural tests whereby in the interests of natural justice no parties would be prejudiced.

6. In September 2023, Natural England and the Council provided advice that this UU no longer stated the correct level of contributions. In response, the appellant submitted a Supplemental Deed of Unilateral Undertaking (SDUU), dated 29 September 2023. Although a very late submission on which other parties have not had a chance to make comment, I also find that it would meet the substantive and procedural tests as the difference only relates to this increased contribution requirement, which could not have been foreseen at the time of submitting the appeal. There is no injustice to the Council as it reflects the current level of contributions.
7. The elevations and floor plans drawing submitted with the original application includes the title and reference 'Proposed New House 1946.16'. The most recently revised version of this plan on which the Council based its decision, no longer includes an identifying reference number, although the electronic version indicates reference 194.16 Rev B. For the avoidance of doubt, the approved plan shows a fully hipped roof to the proposed dwelling.

Main Issues

8. The main issues are the effect of the proposed development:
 - on the living conditions of occupiers of neighbouring properties, with particular regard to outlook including with reference to a garden tree, and to safety matters with reference to a retaining wall; and
 - on the integrity of the Epping Forest Special Area for Conservation (SAC).

Reasons

Living Conditions

9. Highfield Close has recently been developed for 7 terraced dwellings. The appeal site comprises the gap remaining between the most easterly dwelling and the wider site boundary. The proposal is to erect a detached dwelling and front parking spaces, continuing the frontage line of the existing terrace. This is almost identical to a previous scheme for the site, dismissed on appeal in 2021². That decision considered the effect of the proposed dwelling and landscaping arrangements on the living conditions of adjoining residents, and identified no significant harm.
10. The appeal decision did not directly consider whether the dwelling would place additional stress on the adjacent tree and the existing retaining wall, which were new issues raised within the reason for refusal for the current appeal. The Arboricultural Assessment assessed the impact on a large willow tree in the neighbouring garden. However, my site visit identified that this tree is no longer present above the fence height. Therefore, the proposal's potential impact on the tree is no longer of concern.
11. With relation to the wall, the Council states that its Planning Committee Members noted its condition during their site visit, and that it forms a significant function in ensuring the safety of the adjoining properties. Members considered that there was insufficient evidence that it would not be adversely

² Appeal Ref: APP/J1535/W/20/3256223.

affected. Although no substantive evidence has been provided, I find it reasonable that any potential impact on the wall could be addressed and mitigated through the imposition of a suitable condition.

12. The only visual change from the previous appeal proposal, is from a gable end roof form to a hipped roof. This would reduce the massing at the roof level, and therefore would not cause any additional harmful impact on outlook or dominance. The dwelling would not be excessive in scale, and would be set well away from the rear elevations of the neighbouring properties due to their long gardens.
13. I therefore conclude that the proposed development would not be harmful to the living conditions of occupiers of neighbouring properties. It would comply with the LP Policy DM9, which amongst other matters, seeks to protect amenity, including outlook. It would also comply with paragraph 130 of the National Planning Policy Framework ('the Framework') (2023) regarding the need to ensure that developments function well and create places which have a high standard of amenity for existing and future users.

Epping Forest Special Area for Conservation (EFSAC)

14. The EFSAC is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Permission may only be granted after having ascertained that the proposed development would not affect the European site's integrity.
15. The EFSAC designation reflects the presence of the Stag beetle as a qualifying species, and 3 qualifying habitats; Northern Atlantic wet heaths with cross-leaved heath, European dry heaths, and Atlantic beech forests on acid soils. The site's conservation objectives are to ensure that its integrity is maintained or restored. It should also contribute to achieving the favourable conservation status of its qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats and the habitats of qualifying species; the supporting processes on which these rely; and the population and distribution of the qualifying species.
16. The pathways of impact are disturbance from recreational activities from new residents, and atmospheric pollution including ammonia and oxides of nitrogen resulting from increased nearby traffic and the age and mix of those vehicle types. The appeal site lies about 0.85km from the EFSAC and therefore within its 'Zone of Influence'. Given this proximity, although the effect from one dwelling would be small, when combined with other plans and projects there would be likely to be a significant effect on the interest features of the site.
17. In these circumstances as the competent authority, I am required to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the EFSAC, and whether measures could be put in place to avoid or mitigate these impacts.
18. With relation to air pollution, a strategic mitigation approach is set by the Interim Air Pollution Mitigation Strategy for EFSAC (IAMPS) (2020). This includes measures to secure payments from new residential development to deliver mitigation, in the form of a package of strategic measures which are being further developed. With relation to recreational pressure, the Strategic Access Management and Monitoring Strategy (SAMMS) identifies that financial

contributions will be secured for access management schemes, monitoring proposals, and identified Infrastructure Enhancement Projects in the Council's Green Infrastructure Strategy.

19. I have consulted with Natural England in respect of this appeal, which confirmed its involvement with and endorsement of these mitigation strategies, which are also supporting documents of the adopted LP.
20. The appellant's original UU secured the provision of an air pollution contribution, a recreation contribution, and a monitoring contribution, in accordance with the mitigation strategies. The payment of these fees has already been made and confirmed by the Council's legal representative. In April 2023 the Council increased the required level of such contributions across the Zone of Influence. The SDUU provides for this increased level, with a total of £335 as an air pollution contribution, £1852.63 as an updated recreation contribution, and £109.38 as an updated monitoring contribution.
21. Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) sets out three tests for planning obligations. They must be necessary to make the development acceptable in planning terms, be directly related to the development, and be fairly and reasonably related in scale and kind to the development. I am satisfied that the financial contributions are necessary as they would contribute towards the provision of the relevant mitigation. Given the site's proximity to the EFSAC, the contributions are directly related. They relate to a standard charge based on the scale and type of residential development proposed, and so are fairly and reasonably related to the proposal in scale and kind.
22. The UU and SDUU would secure the necessary contributions, and Natural England also accepts this mitigation. I am satisfied that the mitigation would meet the requirements of the Framework and the CIL Regulations. I therefore give it significant weight in the determination of this appeal. Although interested parties mention that mitigation should require the implementation of a Clean Air Zone, I have already found it to be acceptable for the above reasons.
23. Having considered all of the potential significant effects that could arise from the appeal scheme, I am satisfied, in light of the mitigation measures set out above, that the proposed development would not, either by itself or in combination with other plans and projects, result in an adverse effect on the conservation objectives or the qualifying features of the EFSAC. Therefore, I find no conflict with Policies DM2 and DM22 of the LP, which together aim to conserve and enhance the EFSAC, and to mitigate against the impacts of air pollution. In addition, there would be no conflict with Paragraph 180 of the Framework.

Other Matters

24. An interested party has commented that the site access is too narrow. However, this access already exists, and I have no evidence that it would be unsuitable to serve an additional dwelling. The Highway Authority did not object. Therefore, I conclude that there would be no harm to highway safety.
25. Interested parties also objected that the proposed dwelling would be on land approved for soft landscaping as part of the terrace row. I do not find any harm

from the loss of this landscaping compared to the provision of a dwelling which would be cohesive with the remainder of the site, including through new frontage landscaping. The need to improve biodiversity would be addressed via a condition. There would be no harmful effect on living conditions, as any effect on outlook would predominantly only be felt at the bottom end of the extensive Coteford Close gardens, and the fence limits views in between. The proposal would therefore not conflict with Policy DM10 with regards to the appropriate provision of landscaped areas.

Conditions

26. I have attached the statutory condition to limit the lifespan of the planning permission, and one to specify the approved plans to provide clarity for the terms of the permission. I have imposed most of the Council's suggested conditions, subject to slight amendment to reflect paragraph 56 of the Framework and the Planning Practice Guidance. Conditions relating to tree protection are not necessary as the willow tree is no longer present. The condition to require the Electric Vehicle Charging Point is not necessary as this is addressed by the Building Regulations.
27. Matching materials to the existing dwellings are required in order to ensure a harmonious appearance to the streetscene. Conditions relating to surface water disposal, water efficiency, and contamination are necessary in order to ensure that water usage and run off is appropriately managed, and that any contamination is appropriately identified and remediated. Details of landscaping and ecological value will ensure that the development provides appropriate landscaping and improves biodiversity. I have added a condition relating to details of the retaining wall, in order to ensure the safety of the adjoining properties.
28. The control over construction timings is necessary to protect the living conditions of neighbouring occupiers. Control over potential debris being taken onto the highway and for the parking area to be provided free from obstruction are required for highway safety.
29. The Council suggests the restriction of all works which would normally be permitted under Class A-E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). I agree that in order to protect the character of the area and the living conditions of neighbouring occupiers, particularly considering the drop in land levels to the east, it is appropriate to restrict the development to the form and details hereby approved. I have therefore restricted future works which would otherwise fall under Classes A-E. I have also restricted the insertion of any windows in the eastern elevation in order to prevent overlooking onto neighbouring properties.

Conclusion

30. For the reasons given above, and having regard to all other matters raised, I conclude the development accords with the development plan as a whole and therefore the appeal is allowed.

L N Hughes

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:
 - Site Location Plan
 - Site Layout Plan
 - Proposed Street Scene
 - Proposed New House – Layout Plan, Floor Plans, Elevations.
- 3) No development shall commence until details of surface water disposal have been submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of the development, the approved details shall be implemented, and shall then be retained for the lifetime of the development.
- 4) No development shall commence until details of the structural condition of the retaining wall and any works necessary to ensure its functional retention, including an implementation programme, have been submitted to and approved in writing by the Local Planning Authority. If any such works are necessary, they shall be carried out in accordance with the approved details and the agreed implementation programme.
- 5) 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's Guidelines for the Land Contamination: Risk Management (LCRM 2020) (or equivalent if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: (a) a survey of the extent, scale and nature of contamination; and (b) an assessment of the potential risks to: human health; property (existing or proposed) including buildings, pets, woodland, service lines and pipes; adjoining land; groundwater and surface waters; ecological systems; and archaeological sites and ancient monuments.
- 6) If any contamination is found, no development shall commence until a report specifying the measures to be taken to remediate the site to render it suitable for the approved development, including the timescale, shall be submitted to and approved in writing by the Local Planning Authority. The remediation scheme shall be sufficiently detailed and thorough to ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990.
- 7) If contamination remediation is necessary, prior to first occupation, the site shall be remediated in accordance with the approved measures and timescale, and a verification report shall be submitted to and approved in writing by the Local Planning Authority.
- 8) If during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its assessment and remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall

incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the Local Planning Authority before development resumes.

- 9) Prior to any above ground works, full details of both hard and soft landscape works and implementation programme shall be submitted to and approved in writing by the Local Planning Authority. The hard landscaping details shall include: proposed materials and finished levels or contours, car parking layout; and means of enclosure. The details of soft landscape works shall include the plans for planting to the front of the property, including full written specifications and schedules of plants. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied, in accordance with the agreed implementation programme. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or shrub, or plant of the same species and size as that originally planted, shall be planted at the same place.
- 10) Prior to any above ground works, a scheme to enhance the ecological value of the site shall be submitted to and agreed in writing by the Local Planning Authority. Prior to occupation of the development, the approved scheme shall be implemented in full.
- 11) Deliveries, external running of plant and equipment, and demolition and construction works other than internal works not audible outside the site boundary, shall take place only between 0730 to 1800 on Mondays to Fridays, between 0800 to 1300 on Saturdays, and shall not take place at any time on Sundays or on public holidays.
- 12) Wheel washing or other cleaning facilities for vehicles leaving the site during construction works shall be installed and used 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 as soon as practically possible.
- 13) Prior to first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 14) Prior to first occupation of the development, the parking area shown on the approved plans shall be provided and retained thereafter free of obstruction in order to allow for the parking of resident and visitor vehicles.
- 15) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those on the existing dwellings in Highgrove Close.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking and re-enacting that order) no development permitted by virtue of Schedule 2 Part 1 Class A-E shall be undertaken, and no windows or doors shall be inserted on the east facing elevations with the exception of those shown on the approved plans.

END OF SCHEDULE