



Appeal Decision

Site visit made on 5 July 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/J1535/W/22/3302493

233-235 Fencepiece Road, Chigwell, Essex, IG7 5DY

- 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 Wistone Ltd. against the decision of Epping Forest District Council.
 - The application Ref EPF/0633/20, dated 18 March 2020, was refused by notice dated 8 June 2022.
 - The development proposed is the demolition of two semi-detached dwellings and replacement with 6no. apartments with basement car park.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For clarity, I have included reference to the basement car park in the description of the proposed development, as per the Council's Decision Notice.
3. The Epping Forest District Local Plan 2011 to 2033 was adopted by the Council on 6 March 2023. This has replaced the Epping Forest District Local Plan (1998) and the Epping Forest District Local Plan Alterations (2006). The Council confirmed that the relevant policies for the appeal are DM9, DM10, DM21 and T1. The Council also have commented that any previous references to the Submitted Version Local Plan should now be taken to mean the Local Plan 2011-2033. In terms of the Epping Forest Special Area of Conservation, the Council's evidence also refers to Policies DM2 and DM22. I have therefore determined the appeal having regard to these policies. The appellant was given the opportunity to comment on the new policies.

Main Issues

4. The main issues are the effect of the proposed development on 1) the character and appearance of the area, 2) the living conditions of occupants of surrounding residential properties with regard to privacy, noise and disturbance, 3) highway safety with regard to parking provision, and 4) the Epping Forest Special Area of Conservation, with particular regard to any mitigation measures required.

Reasons

Character and appearance

5. The appeal site currently comprises a pair of semi-detached properties and their associated front and rear gardens. The site is located on a relatively busy

road where there is a wide range of residential properties of different designs and sizes with the majority being of two-storeys. Many properties, including both properties on the appeal site, have been extended or altered.

6. The proposed development would involve the demolition of the existing pair of semi-detached dwellings and the construction of a new two-storey building, including accommodation in the roof-space, to provide a total of 6no. apartments.
7. The Council consider that the proposed development would be out of keeping with the street scene due to its design and materials. As I have identified, this section of Fencepiece Road contains a wide range of designs of properties of various sizes, with most being two-storeys. There is a range of materials used including brick and render with most properties having pitched or hipped roofs. There is also a wide range of design detail across the surrounding properties. These include bay windows, hanging tiles, mock-Tudor exposed timber and patterned brick work.
8. The proposed development takes many cues from the surrounding built environment. It incorporates a double storey bay window to the front with hanging tiles and hipped roof, exposed feature timberwork to part of the first floor, render to the first floor and part of ground floor, with brick and clay tiles elsewhere. It would have a pleasant fenestration arrangement with the aforementioned bay windows and a distinctive central glazed feature above the entrance.
9. Overall, the building would be well-designed and uses the most positive aspects of the detailed and architectural features of the surrounding area. Although it would be greater in scale and mass than the existing buildings it would replace, the submitted plans show that this is not by an excessive amount, and the building would appear as a large, detached dwelling as opposed to a purpose-built block of flats.
10. The building would contain a slight step in its design. This reflects a gradual incline in the street in a northward direction. This step in the design sees the proposed development incorporate an upward slope in the roof in the mid-section of the building. It also results in the fenestration being slightly higher on one side of the building. I do not, however, find that this approach would cause harm. There is no intention to display symmetry across the building, and the variation adds positively to the visual interest.
11. The proposed development would be of a high-quality design and use materials entirely appropriate in the overall context. It would not cause harm to the character or appearance of the street-scene. It would comply with Policies DM9 and DM10 of the Epping Forest District Local Plan (2023) which require, amongst other things, that new development must achieve a high quality of design, relating positively to its context drawing on local character.

Living conditions

12. The appeal site sits between 237 Fencepiece Road and 231 Fencepiece Road which are a detached property and a semi-detached property respectively. Like the existing dwellings on the appeal site, and the proposed building, both properties either side are two storeys in height.

13. The submitted plans show the siting of the proposed development relative to the properties on either side. These plans also show that the proposed development would not breach a 45-degree line when drawn from the closest windows in the front and rear elevations of the properties to either side.
14. A number of rooms in the proposed development would overlook the rear gardens of surrounding properties. This is not uncommon in the area where there is already an existing element of mutual overlooking of rear gardens from surrounding properties. The proposed development would be no different in this regard. For the windows closest to the gardens of surrounding properties a slatted screen is proposed to restrict oblique views.
15. There are some windows shown in the side elevation of the proposed development. These are either secondary windows or windows serving bathrooms. In order to ensure that these windows do not result in an unacceptable level of overlooking, it would be appropriate to impose a planning condition requiring that these windows are fitted with obscure glazing were the appeal to be allowed.
16. Given the position of surrounding dwellings and the separation distances that would be maintained, including having regard to the make-up of the surrounding area, the proposed development would not have an unacceptable impact on the levels of privacy of occupants of surrounding residential properties.
17. The Council also raised concern in relation to noise and disturbance, including from the operation of the proposed car lift. In general terms, the proposed development would introduce an additional four dwellings above the current arrangement. This would increase the amount of comings and goings and general activity than the present situation. However, none of these activities would be unusual in a predominantly residential area such as this, and having regard to the background noise level from traffic and other general comings and goings and residential activity, it is not considered that there would be an unacceptable impact in this regard.
18. In terms of the proposed car lift, concern is expressed in relation to noise and disturbance caused by its operation. The Officer's report to the Planning Committee identifies that the operation of the car lift has the potential to generate noise, however that it is considered that any unacceptable impacts could be overcome through imposing appropriate planning conditions relating to noise levels. I concur with the assessment. The car lift would be at the frontage where I noticed noise levels, from passing traffic, were typically higher than at the rear. Through the imposition of conditions relating to the noise level of the equipment, the car lift would not have an unacceptable impact in terms of noise and disturbance.
19. I therefore conclude that overall, the proposed development would not have an unacceptable impact on the living conditions of the occupants of surrounding residential properties with regard to privacy, noise and disturbance. It would comply with Policy DM9 of the Epping Forest District Local Plan (2023) which requires, amongst other things, that developments avoid overlooking and loss of privacy, and addresses noise, which would be detrimental to the living conditions of neighbouring occupiers.

Highway safety

20. The Council consider that the proposed development has inadequate provision for parking. The development would comprise 6no. dwellings and would provide 7no. parking spaces, 6no. of which would be located in a basement level accessible via a car lift and turntable.
21. The Council Officer's report to the planning committee sets out that the parking provision was considered to be acceptable and in line with transport policies, particularly given that the site is in a fairly sustainable location. I observed on my site visit that the site was in close proximity to bus stops on either side of Fencepiece Road with underground stations further afield. I also note that Essex County Council Highways did not raise an objection to the proposed development in terms of parking or highway safety.
22. There is limited substantive evidence that the parking provision of the proposed development would lead to unacceptable highway conditions. Therefore, having regard to the scale and type of development, the quantum of parking that is proposed, and the proximity of the site to public transport, the proposed development would not cause unacceptable harm to highway safety due to car parking provision. It would comply with Policy T1 of the Epping Forest District Local Plan (2023) which requires that development provides appropriate parking and does not result in a cumulative severe impact on the operation of the local highway network, or compromise highway safety.

Epping Forest Special Area of Conservation

23. The evidence before me indicates that the site is located within the zone of influence for the Epping Forest Special Area of Conservation (SAC) which is a European designated site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) requires the Competent Authority to ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of European designated sites. The effects arising from the proposed development need to be considered in combination with other developments in the area and by adopting a precautionary approach.
24. The supporting text to Policy DM2 of the Epping Forest District Local Plan (2023) states that the SAC has particular importance as a bird habitat and was identified primarily for its value in respect of beech trees, wet and dry heaths, and its population of stag beetle. It also states that the SAC is currently assessed as being of 'unfavourable conservation status', in part as a result of the effects of air-borne pollutants, including from traffic.
25. In its Local Plan Habitats Regulations Assessment (HRA) the Council has identified two pathways from residential development that may lead to significant adverse effects on the SAC. The pathways are Air Quality, as a result of emissions from more people driving vehicles within and in the vicinity of the SAC; and, Recreational Pressures, as a result of more people using the SAC for recreational purposes such as walking.
26. The Habitats Regulations require me to determine whether the development is likely to have a significant effect on the SAC, alone or in-combination with other plans or projects, applying a precautionary approach. Where it would be affected, consent can only be granted if there are no alternative solutions,

there are imperative reasons of overriding public interest and suitable compensatory measures are provided.

27. The proposed development would be for six dwellings and result in a net increase of four dwellings within the zone of influence. Occupants of these dwellings would create additional recreational pressures on the SAC. There would also be an increase in traffic using the road network through the SAC and an increase in emissions as a result. Given the quantum of development, the amount of additional recreational visitors would be small and the likely effects on the SAC from the proposed development alone would not be very significant. However, in combination with other developments the proposal would likely have significant effects on the European protected site.
28. As such, the development would have an adverse effect on the integrity of the SAC, but regard can be had to whether these adverse effects can be mitigated. In this regard, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
29. Policy DM2 sets out that in designing mitigation measures, regard should be had to the Air Pollution Mitigation Strategy for the Epping Forest, the District's Green Infrastructure Strategy and Epping Forest Strategic Access Management and Monitoring Strategy. Contributions towards off-site measures to mitigate the likely impacts of air pollution and adverse recreational effects arising from a development will be sought where these are necessary to make the development acceptable, are directly related to the development and are fairly and reasonably related in scale to the development.
30. In this case, there is no legal agreement before me to secure the appropriate financial contributions to ensure that no harm is caused to the integrity of the protected site. In the absence of acceptable mitigation, I therefore conclude that the proposed development would cause harm to the integrity of the SAC.
31. Consequently, the proposed development conflicts with the requirements of the Habitats Regulations, which are described above, and the relevant aspects of Policies DM2 and DM22 of the Epping Forest District Local Plan (2023) and chapter 15 of the National Planning Policy Framework (2021) (the Framework). Collectively, these policies permit development only where it is possible to conclude there is no adverse effect on the integrity of the SAC, alone or in combination with other plans or projects, and require consideration of air pollution risks and adequate mitigation to ensure sensitive receptors are not adversely impacted.

Planning Balance and Conclusion

32. The Government's objective as set out in the Framework is to support housing growth. The proposed developments would result in a slight increase in the Council's overall housing number and would be in an accessible location. They would also bring a small number of additional residents to the area who would contribute to the local economy. I give these matters moderate weight in favour of the appeal.
33. However, although I have found that there would not be unacceptable harm to the character and appearance of the area, the living conditions of occupants of surrounding residential properties, and highway safety, the failure to provide

the necessary mitigation measures means harm would be caused to the integrity of the SAC. This attracts significant adverse weight that outweighs the benefits associated with the proposed development. In addition, it is noteworthy that paragraph 180(a) of the Framework states 'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'.

34. I conclude that the proposed development would therefore conflict with the development plan for the area when considered as a whole and there are no identified other considerations that outweigh this conflict.

35. For the reasons set out above, and having had regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR