



Appeal Decision

Site visit made on 22 September 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

Appeal Ref: APP/J1535/W/22/3308464

140 High Street, Epping CM16 4AG

- 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 L Jones of Octagon Developments Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/0028/22, dated 22 December 2021, was refused by notice dated 10 June 2022.
 - The development proposed is demolition of the existing buildings on the site and the erection of 20 flats and one commercial unit with associated car and cycle parking and additional landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the appeal the Council have adopted the Epping Forest District Local Plan 2011 to 2033 (the LP). The Epping Forest District Local Plan 1998 and Epping Forest District Local Plan Alterations 2006 have effectively been revoked, and the Council states that they should not be used in decision making. This appeal is determined in accordance with the current development plan.

Main Issues

3. The main issues are:
 - the effect of the development proposed on the character and appearance of the area including the Epping Conservation Area;
 - the effect on the living conditions of occupants of adjoining properties;
 - whether the proposal would provide appropriate contributions to affordable housing and infrastructure, and;
 - whether the proposal would provide a suitable standard of accommodation for future occupiers, with particular regard to the quality of the outdoor amenity spaces.

Reasons

Character and Appearance

4. The entirety of the site lies in the Epping Conservation Area (ECA) which covers the vast majority of the High Street and the buildings which surround it, as well as those on the north western side of Hemnall Street which runs parallel to the High Street. The buildings which address the High Street are generally larger in their scale and include active frontages at the ground floor level which contribute to the vitality of this busy commercial centre. In the area surrounding the appeal site, the buildings addressing the High Street are varied in their appearance and architectural styles. Their heights are predominantly two storeys, with occasional taller buildings rising to three storeys and with varying roof forms. There are taller buildings surrounding Station Road to the south, which exhibits a different character as a result of the scale of the buildings which enclose it.
5. By contrast, Hemnall Street has a quieter and more domestic character, comprising predominately two storey houses and a narrow carriageway bound by traditional boundary treatments. Again, there are some taller buildings surrounding its junction with Station Road.
6. While the spaces between the buildings fronting the High Street and Hemnall Street have been infilled to varying degrees, these infill structures are generally lower level, and are interspersed with spaces including parking areas, service yards and connecting lanes. These result in the buildings fronting the High Street and Hemnall Street generally remaining the prominent building forms. This pattern of development, where the taller buildings address the street frontages, forms an important attribute of the ECA which contributes positively to its character and appearance, and to the appreciation of its development over time.
7. The ECA Character Appraisal and Management Plan 2009 sets out that 140 High Street has a neutral impact on the ECA. Based on the evidence before me I have no strong reason to reach a different view. There is also not substantive evidence that the buildings on the appeal site detract from the setting of the nearby listed buildings.
8. The proposal would introduce development across the depth of the site. While including some variation in the roof detailing close to the High Street and Hemnall Street, the vast majority of the central section of the site would comprise an unrelieved and flat roof structure of three storeys. The resulting configuration of roof levels across the depth of the site would be heavily at odds with the prevailing pattern of development in the area through including lower level buildings addressing the roads with a higher section in the centre.
9. These effects would be exacerbated by the design of the central section, incorporating external walkways and extensive areas of glazing to its side elevations. These would add visual prominence and draw additional attention to the residential character of the central portions of the site and its contrast with the more low key nature of the other central areas.
10. This stark contrast with the surrounding pattern of development would be apparent in views from the roads, from where the higher roofs would be visible behind the lower elements, and in glimpses from the surrounding accesses and lanes which exist between the two roads. As a consequence of the above

factors, the appeal scheme would cause harm to the character and appearance of the ECA and the level of harm would be significant.

11. The existing warehouse on the site does not adhere to the prevailing pattern of development between the High Street and Hemnall Street, extending higher than some of the buildings with a street frontage. However, its coverage of the appeal site is less than the appeal scheme and its elevational treatments are plain, reflecting its functional relationship to the active frontage on the High Street. As such the presence of the existing building would not provide a justification for the above effects.
12. Historic maps demonstrate that the site has previously been more densely developed, including an array of buildings of varying footprints and small spaces between, together covering much of the appeal site. While appearing to demonstrate the absence of a service yard, this does not satisfactorily demonstrate that the site was previously developed in a manner at odds with the prevailing building patterns set out above, or that the scale of buildings within the site exceeded those of the buildings on the street frontages.
13. The proposal would provide some improvements to the character of the ECA. This would include a more traditionally detailed building addressing the High Street, which would be more consistent with the character of its neighbour to the south, and repairing the break in the frontage on Hemnall Street. These would be public benefits arising from the scheme which are considered further in the heritage balance below.
14. For the reasons set out above, the proposed central section of the development would cause harm to the character and appearance of the area and the ECA. It would conflict with policies SP2 and DM9 of the LP which, among other things, require development to maintain and enhance the character of settlements and respond positively to context and local character, as well as the historic environment. The proposal would also conflict with the National Planning Policy Framework (the Framework) where it requires development to be sympathetic to local character and history including the surrounding built environment.
15. For the purposes of assessment under the heritage objectives of the Framework and Policy DM7 of the LP, the harm to the significance of the designated heritage asset in this case is less than substantial. Accordingly, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. This is a matter I return to below.

Living Conditions- Adjoining Properties

16. 30 Hemnall Street exists to the north and is separated from the appeal site by a vehicular access to a parking area behind the building line. This is a two storey historic property with rear extension and some private outdoor space. The proposal would introduce a substantial area of glazing and new raised amenity spaces at the first and second floor level of its north facing elevation. Despite being separated from the appeal site by an access and tall boundary treatment, these features would not reduce overlooking which could occur from future occupants looking down onto the rear elevation of no.30 and its private outdoor space.

17. While the appellant asserts that a 45 degree line would be maintained from the rear facing windows of no.30, there is not evidence of this, and even if this were the case, this would not prevent the harmful effects of the extent of overlooking proposed. As there is not substantive evidence that a satisfactory solution could be achieved, both in terms of the visual and privacy effects of any screening, it would not be appropriate to condition details of screening for consideration at a later date.
18. The Council's appeal statement clarifies that where it referred to properties to the south, their concerns related to the occupants of the neighbouring building on the High Street, Empire House. This building has a staggered rear building line and includes windows in its rear elevation which have outlook towards the appeal site. There is little evidence relating to the use of the rooms which those windows serve, or the effects of the development on them. Those windows within the recessed section of the rear elevation (annotated on the site plan as no.134a) would become heavily enclosed as a result of the proposed development, having a harmful impact on the outlook from those windows and creating oppressive conditions for future occupants. In the absence of evidence relating to those effects, it cannot be established with certainty that those occupiers would experience acceptable living conditions as a result of the proposed development.
19. The appellant has provided a daylight assessment, which considers the effects of the development on some nearby windows, however this does not include consideration of the above mentioned properties. I note the Framework requires a flexible approach in applying policies and guidance relating to daylight and sunlight, however this would not alleviate the above concerns which relate primarily to outlook.
20. For the reasons given, and in the absence of evidence to the contrary, the proposal would not have acceptable impacts on the living conditions of those nearby properties. The proposal would not comply with Policy DM9 of the CS where it requires proposals to take account of the amenity of neighbours, nor with the Framework insofar as it requires a high standard of amenity for existing users.

Affordable Housing and Infrastructure

21. Policy H2 of the LP requires sites that provide more than 11 homes to provide 40% affordable housing on site. If they do not accord with this requirement they should be accompanied by a viability assessment and the policy lists options which will be considered if the scheme is shown to be unviable. It also allows for exceptional circumstances where it may be inappropriate to provide affordable homes on site.
22. The appeal before me contains no commitment to the provision of affordable housing. While I note the appellant would be willing to pay the costs associated with a legal agreement for appropriate contributions, there is no mechanism before me which would secure affordable housing if I were to otherwise grant planning permission. I have considered whether this could have been dealt with by a negatively worded condition, however, given the lack of clarity and agreement as to the level and type of affordable homes which would be secured, such a condition would not be reasonable.

23. In terms of infrastructure, the LP includes policies to secure financial contributions to ensure investment in infrastructure to keep pace with growth. Policy D1 states that the delivery of infrastructure either directly or through contributions will be sought where this is necessary to make the development acceptable, is directly related to the development and is fairly and reasonably related in scale to the development, and with regard to the Infrastructure Delivery Plan Schedules.
24. With regard to a health services contribution, the Council rely on the consultation response of East of England Ambulance Service, which finds a contribution to be necessary to mitigate the effects of the development on the service. I have no reason to doubt those conclusions. However, it is not clear how the resultant amount has been derived and the contribution appears to be based on 14 new dwellings, rather than the 20 proposed. On this basis I cannot be satisfied that the amount sought is fairly or reasonably related in scale to the development and it would not meet the test for an obligation.
25. In respect of contributions to active transport, open space and green infrastructure, and community facilities, these are referred to in the consultation response from the Planning Obligations Officer. However, this contains a generalised summary of the types of contributions which might be sought. Based on the evidence which has been put before me, it has not been satisfactorily demonstrated that such contributions are necessary to make this particular development acceptable, nor that the amounts sought are reasonably related in scale to the proposal.
26. While there is no mechanism with the appeal to secure any contributions to infrastructure, for the reasons given there would not be conflict with Policy D1 insofar as it gives criteria for contributions.
27. However, the proposal would not provide affordable housing and would conflict with Policy H2 of the LP and the provisions of the Framework where it requires a degree of affordable home ownership on major development. I do not find conflict with policy H1, which does not relate to these matters.

Living Conditions- Future Occupants

28. Policy DM10 of the LP states that family accommodation should have access to outdoor space. As the proposal would provide one and two bedroom units, this requirement would therefore not be applicable here.
29. A number of the proposed amenity spaces, particularly those located behind the proposed Hemnall Street buildings, would be north east facing and heavily enclosed by boundary treatments. As a result they may feel dark and oppressive. However, the availability of those spaces would nonetheless make some contribution to the wellbeing of future occupants. Furthermore, I note the presence of open spaces a short distance from the appeal site and the appellant has brought to my attention another recent development nearby where no outdoor amenity space was provided. There is not substantive evidence to suggest that noise levels within the outdoor spaces would be unacceptable due to the proximity to a neighbouring service yard, and I note the presence of existing residential windows close to that yard.

30. In respect of this main issue, the living conditions of future occupants would be acceptable and compliant with policies DM9 and DM10 of the LP and the Framework which relate to the living conditions of future occupants.

Other Matters

31. The proposal would introduce additional residents close to the Epping Forest Special Area of Conservation (SAC) and it has the ability to create adverse effects on its integrity. However, Regulation 63(1) of the Habitat Regulations¹ indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is dismissed on other grounds it is not therefore necessary to address this in any further detail.
32. The grade II* listed St Johns Church exists on the opposite side of the High Street and its setting is derived in part from the busy High Street and buildings surrounding it, of which the appeal site forms a part. The effects of the proposal on its setting are not in dispute and, notwithstanding the concerns above in terms of the ECA impacts, given the scale of the development and distance from the Church, its setting would be preserved.

Planning Balance

33. The harm to the significance of the ECA would be less than substantial for the purposes of the Framework. Paragraph 202 of the Framework requires that such harm be weighed against the public benefits of the proposal. The Framework also states that designated heritage assets are an irreplaceable resource and that great weight should be given to the asset's conservation. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the ECA, and accordingly considerable importance and weight is attached to that desirability.
34. The proposal would result in less than substantial harm and this carries great weight. As set out above, the degree of this harm would be significant. In terms of public benefits, the proposal would provide 20 new homes, which would contribute to the local housing supply and to the national objective to boost the supply of homes. These would be on a previously developed site and with very good accessibility to the services and facilities available in Epping including its public transport links. There could also be biodiversity enhancements to the site arising from the introduction of soft landscaping. Importantly the proposal would also deliver some heritage benefits, arising from the proposed new street frontages onto the High Street and Hemnall Street, and these are also public benefits.
35. While these factors weigh in favour of the development, taken together they would not outweigh the harm to the designated heritage asset, which must be given great weight. In conclusion on the heritage balance, the harm would not be outweighed by the public benefits of the proposal.
36. Turning to the matter of the presumption in favour of development at paragraph 11 of the Framework, the Council state that it can demonstrate a 5 year supply of land for housing due to its recently adopted local plan. Despite this, the Housing Delivery Test indicates that the delivery of housing was

¹ Conservation of Habitats and Species Regulations 2017

substantially below the housing requirement over the previous three years, at just 35%. As such, the provisions of paragraph 11d) apply to the appeal.

37. As the public benefits have been found not to outweigh the harm to the designated heritage asset, the heritage policies in the Framework provide a clear reason for refusing the development proposed, as set out in paragraph 11d)i) of the Framework. Consequently, the appeal scheme does not benefit from the presumption in favour of sustainable development.
38. Overall, the proposal has been found to cause harm to the character and appearance of the ECA and to the living conditions of the occupants of the neighbouring property, and it would fail to provide affordable housing. The effects of these harms would be significant and long lasting, and cause conflict with both local and national policies as set out. There are benefits which weigh in favour of the development as set out above, including some heritage improvements and delivery of housing, particularly given the low level of delivery in the District. However, these are not of sufficient weight that they would indicate a decision other than in accordance with the development plan.

Conclusion

1. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is dismissed.

C Shearing

INSPECTOR