



Appeal Decision

Site visit made on 11 October 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2023

Appeal Ref: APP/J1535/W/22/3309937

Richmond Farm, Parsloe Road, Epping Green, Epping CM16 6QB

- 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 Aaron Mercer against the decision of Epping Forest District Council.
 - The application Ref EPF/0460/21, dated 18 February 2021, was refused by notice dated 3 October 2022.
 - The development proposed is continued use of the land for storage and sale of motorhomes and retention of existing hardstanding.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This is subject of a separate decision.

Preliminary Matters

3. The appeal site is laid to hardstanding and is being used for the storage and sale of motorhomes. I am therefore considering this appeal retrospectively.
4. Although not specified in the description of the development or the application form, the evidence supporting the application states that the permission being sought is for a temporary period of three years. This is to allow the appellant time to find a suitable location to relocate the business. I have considered the appeal on this basis.
5. Since the application was refused by the Council, the Epping Forest District Local Plan 2011-2033 (2023) (Local Plan 2023) was adopted on 6 March 2023. It replaces the saved policies of the Epping Forest District Local Plan (1998) and Local Plan Alterations (2006) referred to in the Council's reasons for refusal. It is mandatory for me to take account of the most relevant and up to date information in reaching a decision. I have therefore assessed the appeal against the policies in the Local Plan 2023. The main parties have had an opportunity to comment on the relevant policies contained in the Local Plan 2023 and therefore neither party would be prejudiced by me determining the appeal on this basis.
6. The Local Plan 2023 removes the appeal site from the Green Belt. Given this, the Council no longer wishes to pursue this reason for refusal. From the evidence before me, I can find no reason to disagree.

Main Issue

7. The main issue is therefore the effect of the development on the integrity of the Epping Forest Special Area for Conservation.

Reasons

8. Epping Forest District contains a significant proportion of the Epping Forest Special Area for Conservation (EFSAC). I must therefore have regard to the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). These regulations require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives.
9. The EFSAC is one of only a few remaining large-scale examples of ancient wood-pasture in lowland Britain. It consists of broadleaved deciduous woodland and supports a nationally outstanding assemblage of invertebrates, a major amphibian interest and an exceptional breeding bird community.
10. It is designated for its Habitats Directive Annex I habitats of beech forest on acid soils with *Ilex* and sometime *Taxus* shrublayer; wet heathland with cross-leaved heath; and dry heath, as well as the Habitats Directive Annex II species Stag beetle *Lucanus cervus*. The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features and Species.
11. The Council published a Habitats Regulations Assessment (2019) (Local Plan HRA) to support the examination of the Local Plan 2023. The Local Plan HRA concludes there to be two Pathways of Impact whereby development within the District is likely to result in significant effects on the EFSAC. These are disturbance from recreational activities arising from new residents and atmospheric pollution as a result of increased traffic using roads through the EFSAC.
12. The appeal development is not residential and therefore would be unlikely to increase recreational disturbance. However, it does involve daily vehicle movements. While the appeal site is more than 5km away from the EFSAC and there is a likelihood that the traffic from the development would travel to junction 7 of the M11, which would avoid the EFSAC and its 200m buffer, there is no way to control this. Thus, the development has the potential to result in a net increase in traffic using roads through the EFSAC and therefore could have a likely significant effect on the EFSAC in relation to atmospheric pollution. Although the temporary nature of the development would reduce the extent of these effects, it would not fully mitigate them.
13. The Council's Air Pollution Mitigation Strategy¹ (APMS) was prepared to manage the effect of air pollution on the EFSAC. It sets out the level of financial contribution that needs to be secured by certain types of residential and non-residential development in order to mitigate any effect on the EFSAC. In terms of the appeal development the APMS explains that other trip generating

¹ Epping Forest Interim Air Pollution Mitigation Strategy: Managing the Effect of Air Pollution on the Epping Forest Special Area of Conservation (December 2020).

proposals will be considered on a case-by-case basis. Appendix 2 of the APMS sets out the site-specific assessment process, which requires the appellant to review the traffic generating characteristics of the site in further detail and assess any potential adverse effects on the EFSAC over and above that accounted for in the APMS.

14. To review the traffic generating characteristics of the site and assess any potential adverse effects on the EFSAC, as part of the application the appellant submitted a Shadow Habitat Regulations Assessment (Shadow HRA)², which takes account of the APMS. It calculates the annual average daily traffic (AADT) of the development as 5.7 movements. It identifies the most appropriate and beneficial mitigation to be a financial contribution and uses the required contribution for smaller residential windfall sites, set out in Appendix 1 of the APMS, to calculate an appropriate equivalent contribution for the development. While no further analysis or traffic modelling was undertaken to determine the volume and distribution of development trips, the financial contribution is based on a worse-case scenario with all the 5.7 vehicle movements being generated by the development affecting the EFSAC.
15. Given this, it is not entirely clear why the Council considers the evidence set out in the Shadow HRA to be insufficient for it to be able to conclude, beyond reasonable scientific doubt, that the development would not have an adverse effect on the integrity of the EFSAC.
16. I note that the independent Transport Planner recommended that, based upon the information presented within the Shadow HRA, it was accepted that there were no outstanding HRA matters on the basis that the applicant agreed an appropriate methodology and level of financial contribution with the Council.
17. Moreover, in terms of the methodology used in the Shadow HRA, Natural England, as the appropriate nature conservation body, considers it to be sufficiently precautionary and for the level of financial contribution proposed to be sufficient to mitigate potential adverse effects on the integrity of the EFSAC in relation to air quality impacts.
18. From the evidence before me, I am therefore satisfied that the financial contribution proposed in the Shadow HRA would be sufficient to mitigate potential adverse effects on the integrity of the EFSAC. Nevertheless, there is no mechanism before me to secure the financial contribution and therefore no certainty that the required mitigation would be delivered. To ensure the certainty required by the Habitats Regulations this could not be secured by condition.
19. Accordingly, in the absence of a Section 106 Legal Agreement to secure the financial contribution, I cannot rule out adverse effects on the integrity of the EFSAC. The development would therefore conflict with Policy DM2 of the Local Plan 2023, which seeks to protect the integrity of the EFSAC, and Policy DM22 of the Local Plan 2023, which seeks to ensure that the District is protected from the impacts of air pollution. It would also be contrary to the Habitats Regulations.

² 'Shadow' Habitat Regulations Assessment, Richmond Farm, Epping Green, by Tyler Grange, dated 30th November 2021, TG Report No. 14172_R01_CA_CW.

Other Matters

20. Given the nature of the case, had I been allowing the appeal, I would have gone back to the main parties to seek their views as to whether a temporary permission is necessary. However, given that I am dismissing the appeal on the main issue above, I have not considered this further.

Conclusion

21. The development would conflict with the development plan, read as a whole. Having had regard to all relevant material considerations, it has not been demonstrated that there are any of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. Moreover, the Habitats Regulations confirm that I cannot approve development where likely significant effects cannot be ruled out. The appeal is therefore dismissed.

Hannah

Guest

INSPECTOR