



Appeal Decision

Site visit made on 14 November 2023

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/J1535/W/22/3296440
Wyldingtree, 66 The Plain, Epping CM16 6TW

- 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 Manor Properties (Bishop's Stortford) Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/0384/21, dated 25 January 2021, was refused by notice dated 9 March 2022.
 - The development proposed is demolition of existing bungalow and construction of 2x pairs of semi-detached houses with associated parking and gardens.
 - This decision supersedes that issued on 2 February 2023. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Manor Properties (Bishop's Stortford) Ltd against Epping Forest District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the refusal of the proposed development, the Epping Forest District Local Plan 2011 to 2033 Part One (LP) has been adopted and has superseded the Epping Forest District Local Plan Adopted July 2006 referred to in the decision notice. The main parties have had opportunity to comment.
4. The effect of the proposal on privacy and light at 78 and 80 The Plain were not included in the refusal reasons. However, they were raised by third parties and the appellant had opportunity to comment on these matters. Therefore, they would not be prejudice by them forming part of the main issues.

Main Issues

5. The main issues of the appeal are the effect of the proposed development on:
 - The character and appearance of the area; and
 - The living conditions of the occupiers of 78 and 80 The Plain, with particular regard to outlook, privacy, daylight and sunlight.

Reasons

Character and appearance

6. There are a mix of property designs, sizes and spacing in the nearby streets. Properties range from three storey blocks of flats to bungalows. The scale of the appeal property and it being set in from its boundaries with a hipped roof, gives a spaciousness and break in the built form. Although untypical, this contributes positively to the area and is experienced from various public vantage points within The Plain and Kings Wood Park as well as from properties themselves.
7. The proposed properties would fill a large proportion of the plot with only small gaps to the built form either side or between the pairs themselves. This would erode the existing greater spaciousness of this part of the streetscene. Nevertheless, the streets in front and backing onto the site often have relatively small gaps between many of the properties. As a result, the scheme would not be significantly different to that of the more tight-knit layout nearby and the harm would be minor.
8. While taller and with higher eaves than the property they replace and some of those nearby, there are similar height blocks of built form that the proposed dwellings be seen with. There are 3 storey buildings at the B road frontage and other 2 storey properties at The Plain. Kings Wood Park backs on to the site with vegetation between. However, while being semi-detached, the footprint of each proposed pair would not be of a dissimilar bulk and appearance to some of the detached properties with accommodation in the roof space at Kings Wood Park. As such, the massing of the pairs would not be incongruous with the scale of the nearby built form.
9. The external materials would draw on those at the properties already present in the area. Although examples of dormer windows were not frequent in The Plain, they are present, albeit of a different design, at the existing property. Though not in the same street, numerous dormers at Kings Wood Park can be seen from various locations within The Plain and as such, those proposed, would not be an alien feature. Moreover, their size and spacing across the roofs mean they would not appear bulky. There are a variety of roof shapes nearby and no consistency to the roofscape. So, while the external appearance of the proposed properties would not mirror any nearby, they would still not be discordant.
10. Landscape features to the front of the site would be replaced by hard surfaced parking areas. However, frontage parking is not uncommon and already takes place at the site and to a lesser degree elsewhere in The Plain. Were the appeal to be allowed, conditions relating to the retention of landscape features and proposed planting could be imposed.
11. Nonetheless, the proposed development would cause minor harm to the character and appearance of the area. It would therefore be contrary to Policies SP2 and DM9 of the LP where they require schemes to maintain, enhance and respond positively to local character.

Living conditions

12. The existing property has first floor accommodation and the proposal would not substantially increase the maximum height of the built form at the site.

Nevertheless, the proposed pairs of properties would fill much more of the width of the site. This would result in a significant expanse of built form stretching across much more of the plot, especially at upper floor levels than the existing dwelling. Moreover, the proposed dwellings would be positioned closer to 78 and 80 The Plain with gable rather than partly hipped roofs.

13. These factors, along with the steeper sloping rear roof slope, crown roof and higher eaves, would result in 2 imposing blocks of built form as experienced from the gardens of 78 and 80 The Plain. Currently the lower height and greater set in from the boundaries of the site means there is an outlook either side and beyond the appeal property even with lower ground levels behind. In contrast, having visited them, from the rear garden and rooms at 78 and 80, whose windows face directly towards the appeal site, the proposed properties would become the dominant feature. Even if existing boundary features were retained, and with future planting that would take time to mature, the scheme would result in an oppressive and unacceptable outlook for the occupiers of these properties.
14. The existing rear first floor windows at the appeal site facing 78 and 80 The Plain result in some degree of overlooking into their gardens and rear rooms. Some overlooking also takes place from the 3 storey properties nearby. However, these are more distant or angled than the first and second floor windows proposed. The appeal scheme would introduce additional windows, across more of the site and at a higher level with the dormers. As the rear first and second floor windows serve bedrooms, it would not be appropriate to require them to be obscure glazed and non-opening. Along with the position of the proposed dwellings, the appeal scheme would cause additional overlooking at a closer distance and greater height over and between boundary treatments and landscape features. The scheme would result in an unacceptable reduction of privacy for the occupiers of 78 and 80 The Plain.
15. Given the orientation of the existing and proposed properties and the direction of travel of the sun, the effect on sunlight, would be limited to later in the day. Although wider, the height of the properties would not be substantially different from the existing one. There would be some reduction in sunlight and daylight reaching the rear of the adjacent properties and their gardens at certain times of the day and year. However, I saw that the existing property, others nearby and the existing landscape features already cause shading at the rear of the properties behind. Consequently, given the separation distances involved, the proposal would not lead to excessive loss of daylight and sunlight at 78 and 80 The Plain.
16. Nevertheless, the proposed development would significantly harm the living conditions of the occupiers of 78 and 80 The Plain with regard to outlook and privacy. It would be contrary to Policy DM9 of the LP where it seeks to protect the quality of amenity.

Other Matters

17. The effect on the living conditions of the occupiers of nearby properties was not a reason for dismissing the first appeal at the site¹. Such considerations and the views from the streetscene of the gaps/spacing between buildings were not

¹ APP/J1535/W/19/3239786

specifically addressed by that Inspector. Therefore, my findings on these matters are not inconsistent with the previous appeal decision.

18. That the Council made their decision against the officer recommendation does not alter my findings.

Planning Balance

19. The LP was adopted in March 2023 and therefore, in line with footnote 40 of the Framework is no longer considered a recently adopted plan with regard to paragraph 75 of the Framework for demonstrating a five-year supply of deliverable housing sites, with the appropriate buffer. The evidence before me indicates that historic completions have primarily been below the average housing requirement set out in the development plan.
20. Notwithstanding this, there is no compelling evidence before me that the Council are currently unable to demonstrate a five-year supply of housing sites. In any event, the Housing Delivery Test figure, at 35% means that paragraph 11d of the Framework is engaged.
21. There would be economic and social benefits from the additional supply of housing and from the build and occupation of the properties. Given the scale of the scheme and in light of the delivery figures above, such benefits would be moderate.
22. Even if I were to agree there was no harm with regard to highway safety, biodiversity, and that the site is in an accessible location with appropriate space for future occupiers, a lack of such harm would only be a neutral factor.
23. During the appeal a planning obligation was submitted relating to contributions towards mitigation measures relating to the effects on the Epping Forest Special Area of Conservation (SAC). The planning obligation has not been dated. However, notwithstanding the planning obligation, there is no need to consider the implications of the proposal on the protected site because the scheme is unacceptable for other reasons. In any event, a satisfactory planning obligation to secure mitigation for effects on the SAC would only be a neutral factor.
24. I have found there would be minor harm to the character and appearance of the area and significant harm to the living conditions of certain nearby occupiers. The policies that the scheme conflicts with are broadly consistent with the National Planning Policy Framework (Framework). As such, and due to the degree of harm I have identified, I give the conflict with these policies minor (character and appearance) and substantial (living conditions) weight. The proposal conflicts with the development plan as a whole.
25. The proposal would align with the aim of the Framework to significantly boost the supply of housing. It would accord with the economic policies of the Framework from the build and occupation of the dwellings and where it recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. Taking account of the scale of the scheme and the delivery figure, such benefits would be moderate. It would conflict with the Framework where it requires schemes to be sympathetic to local character and a high standard of amenity for existing users. These conflicts attract minor and substantial weight respectively.

26. Even with the level of shortfall in delivery and any possible lack of supply, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the scheme does not benefit from the presumption in favour of sustainable development as set out in the Framework.

Conclusion

27. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.

28. Therefore, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR