



Appeal Decision

Site visit made on 8 November 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/J1535/W/22/3311889

Forest Lodge, High Road, Epping, CM16 5HW

- 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 Little Adventurers Nursery against the decision of Epping Forest District Council.
 - The application Ref EPF/0750/19, dated 21 March 2019, was refused by notice dated 27 July 2022.
 - The development proposed is change of use to children's nursery (D1); 2-storey side extension including internal and external alterations.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are:
 - Whether the proposal would be inappropriate development in the Green Belt;
 - Whether the proposed would minimise the need to travel or promote opportunities for the use of sustainable transport modes; and
 - The effect on highway safety arising from the proposed 'drop off' parking arrangements.

Reasons

Whether inappropriate development

3. The appeal site includes a dwelling that is sandwiched between a collection of commercial buildings and woodland within Epping Forest. It is proposed to be used as a nursery for up to 58 children and would employ 12 people. As part of the proposal, an existing conservatory would be removed and replaced by a two-storey side extension.
4. According to Policy DM4 of the Epping Forest District Local Plan 2011-2033 Part One, the re-use of buildings is not inappropriate development within the Green Belt. This is provided that they preserve its openness and do not conflict with the purposes of including land within it. These provisions replicate the National Planning Policy Framework. The policy also confirms that the extension of a building is not inappropriate provided it does not result in a disproportionate addition over and above the size of the original building. This is also in line with national policy.

5. The appellant's explanation of the planning history of Forest Lodge and The Cottage behind it is not disputed. Neither is the calculation that the proposed extension would cumulatively increase the floor area of the original building by almost 43%. As it would occupy an area already occupied by the conservatory, there would not be a spread of built form. Although bulkier than the existing side addition, the proposed extension would be set back from the frontage and would be subservient in scale to the original house. Overall, its size, together with that of the earlier infill extension to the rear, would be in proportion to that of the original building.
6. In relation to Policy DM4 D. the existing building is of permanent and substantial construction. The extension would be part of the cluster of development and activities adjoining Forest Lodge and would not project towards the Forest itself. It would also be seen against the backdrop of the existing building and so would not intrude into the countryside or an otherwise undeveloped area. As such, when viewed as a whole, the proposal would preserve Green Belt openness and would not conflict with any of its purposes.
7. Therefore, the proposal would not be inappropriate development and there would be no conflict with Policy DM4.

Sustainable transport

8. Amongst other things, Local Plan Policy T1 indicates that development should minimise the need to travel and promote opportunities for sustainable transport modes. In this respect, the appellant's case is that children would be dropped off and picked up by vehicles already travelling along High Road or using the busy Wakes Arms roundabout. The unchallenged statistical evidence is that 139 parents with children aged 0-4 are already passing the site. In theory, this means that all of the proposed places would be taken up by existing commuters and so the proposal would not generate additional trips.
9. However, although based on an actual traffic count, some of the data used for the calculation is generic rather than specific to the locality. For example, the national travel survey is to 2019 and therefore does not take account of any changes in the proportion of commuting trips after lockdown. Furthermore, a considerable percentage of the existing journeys are escort education trips which may already be taking a young child to a nursery elsewhere.
10. These considerations mean that this finding should be viewed with a degree of caution. In any case, it is unrealistic to assume that additional car journeys associated with the proposal would be nil. Whilst the nursery could be attractive to a pool of potential users on the way to another destination, it cannot be certain that they would be in this category. It is suggested that a Travel Plan could be required to include strategies for marketing to passing commuters and monitoring the percentage of users on existing journeys. This might provide useful information but would not control how, in practice, trips to and from the site were made.
11. The operator's expectation is that, on average, only 80% of places would be taken up across the week. Furthermore, the number of trips might be reduced by car sharing or if siblings attended. However, even allowing for this, the likely number of vehicle journeys required to bring children to and from the site would not be small due to the number of places proposed. There is no

suggestion that, for reasons of convenience and safety, small children would travel to the appeal site by means other than private vehicle.

12. It is difficult to 'second guess' the choices that would be made by individual families about childcare for under fives. In particular, as other establishments in the area are very busy with no vacancies, parents may be willing to travel to a new nursery if that is their only option. The growth of home working also means that individuals may not make the same journey to work past the appeal site every day. On some occasions, it may not be feasible for the person who currently passes the site to both drop off and collect the child. Not all children would necessarily attend for five days a week meaning that more than 58 families might use the nursery. All of these scenarios could result in additional trips. Finally, the nursery would become a destination in its own right which might encourage vehicle travel to it, especially given its visibility from a main road. As well as new trips, its accessibility by car could prompt some to make detours thereby increasing their journey length.
13. Therefore, for all these reasons, the proposal would be unlikely to only be used by those already travelling in the area but rather would result in additional trips by private vehicles.
14. If the aspirations in local and national policy to promote sustainable transport are to be achieved then a use of this kind and size would be best placed within an urban settlement. There is no empirical evidence from the appellant's existing premises in Upminster and Shenfield about how children travel to and from them. However, a children's nursery close to a resident population is likely to offer scope for walking or cycling which the appeal proposal does not.
15. The rationale for the proposal is to target existing commuters. That is an understandable strategy and might bear fruit but there is no guarantee of the extent to which it would be successful. The appellant's calculation of the potential for linked trips is not definitive. Decisions about whether to take up a place at a nursery at Forest Lodge would not just be based on travel issues. In any case, the practicalities of childcare arrangements mean that new or longer trips would be likely to occur. Given the number of places proposed, the likelihood is that there would be a significant number of additional journeys. Therefore, the proposal would not minimise the need to travel or promote opportunities for the use of sustainable transport modes and so would not fulfil the requirements of Policy T1.
16. The way that staff members travel to the site could be more readily controlled by a Travel Plan and the numbers involved are not great. Some may use cars but car sharing or use of electric vehicles could be incentivised. There are bus stops within 300m for regular services to surrounding settlements including Waltham Abbey, Debden and Loughton. Cycling along the busy roads leading to the appeal site would not be an attractive option. Nevertheless, the objectives of Local Plan Policy T1 could be met for staff members.
17. However, because of its scale, that is not the case for those bringing children to and from the appeal site and this is an objection to the proposed use. There would be conflict with Policy T1.

Parking

18. The layout includes two 'drop off' parking spaces. However, the appellant has identified that two further vehicles could be accommodated in front of the staff parking spaces without blocking access to adjoining uses.
19. It is anticipated that 85% of children (49) would be dropped off between 0730 and 0830 hours. Whilst it is reasonable to assume that vehicles would not linger for long, there would also be likely to be times when all the spaces were full as arrivals would not be spread out evenly. In terms of the implications of this, High Road is subject to a Clearway Order which would prevent ad hoc parking along it. In practice, drivers would be most unlikely to leave their vehicles there given the volume of passing traffic. Furthermore, the entrance to the nursery is at the rear which would be a further disincentive.
20. More likely is that there could be occasions when there would be vehicle conflict along the access road or within the adjoining areas outside the appeal site. This could be managed on a day-to-day basis but, even then, might give rise to inconvenience and annoyance. However, there is nothing to indicate any specific concerns about the function or operation of the vehicle access or how this would be dangerous. Therefore, the proposed drop off parking arrangements would not compromise highway safety and there would be no conflict with Local Plan Policy T1.

Other Matters

21. One of the reasons for refusal referred to a loss of a residential use contrary to the objectives of Policy SP2 of the submission version of the Local Plan of 2017. However, Policy SP2 as adopted contains no provisions relating to the loss of housing accommodation and therefore there is no objection to this aspect of the scheme.
22. Policies SP1 and SP2 refer to maximising opportunities for jobs growth, to providing a variety of jobs and to helping growing businesses. The proposal adheres to these aims but on a relatively small scale. Therefore, its economic benefits do not offer strong support for the proposed development.
23. There would be advantages in providing an additional facility for community use as demand currently appears to outstrip supply. However, there is nothing to indicate that the proposal is the only way to meet current needs. Local Plan Policy D1 requires new development to be served and supported by appropriate infrastructure. Whilst there is no unacceptable impact in this regard, neither does the proposal gain clear support from this policy.
24. The existing conservatory is an unsympathetic addition to the 1930s house but is not visually prominent. Its replacement by a well-integrated extension therefore does not significantly favour the proposal. Closing the existing entrance/exit onto High Road would reduce the number of places where turning movements can occur but there is no evidence that this access is intrinsically hazardous. The location of the existing dwelling is slightly anomalous but there is nothing to suggest that it is no longer suitable for that purpose or that its presence has actually hampered activities on the adjoining commercial land.
25. These matters support the proposal but they are not of sufficient strength to outweigh the objection to the location of the proposed use on transport grounds.

26. The appellant is justifiably frustrated by the Council raising new objections at a late stage despite the extensive communication that took place over a 3-year period and the content of pre-application advice in 2018. Whilst circumstances may have changed during the life of the application, it is reasonable to expect that advice provided is comprehensive and consistent. If it is not, then this does not assist the effectiveness and efficiency of the planning application system. However, I have to assess the proposal afresh and so the Council's actions have little bearing on the outcome of the appeal.
27. Epping Forest Special Area of Conservation (SAC) is identified primarily for its value in respect of beech trees and wet and dry heaths and for its population of stag beetle. New development has the potential to increase pollutants of concern. As such, in combination with other development, there would be a likely significant effect on the SAC as a result of the proposal.
28. The unilateral undertaking dated 28 April 2023 includes provisions to secure a contribution to mitigate the impact of the development on air pollution. This is to comply with the Epping Forest Air Pollution Mitigation Strategy and Local Plan Policies DM2 and DM22. The sum has been calculated on a 'worst case' scenario in terms of additional trip generation and has been equated to the figures used for residential dwellings. Specific mitigation measures are also on the table.
29. However, it is expected that the impact of proposals should be assessed cumulatively alongside other developments. The Council remains uncertain that a combination of the contribution and reasonable practical measures could effectively mitigate the harmful effects arising from a net increase in traffic movements. The Mitigation Strategy explains that the final step of the assessment process should be air quality modelling. However, this has not been undertaken by the Council and it has provided no clear advice as to the package of mitigation that it expects. As a result, the appellant has become stuck in what is described as a "bureaucratic quagmire". Indeed, the Council's stance is not at all helpful.
30. However, as the appeal is to be dismissed, there is no need to consider whether the obligation would ensure beyond reasonable scientific doubt that the proposal would not adversely affect the integrity of the SAC as required by the Conservation of Habitats and Species Regulations.

Conclusion

31. The proposed development would not accord with the development plan and there are no other material considerations that outweigh this finding. Therefore, for the reasons given, the appeal should fail.

David Smith

INSPECTOR