



Appeal Decision

Site visit made on 3 January 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2024

Appeal Ref: APP/J1535/W/23/3330219
128 Manor Road, Chigwell, Essex, IG7 5PR

- 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 Group One Investments Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/1458/23, dated 23 June 2023, was refused by notice dated 22 August 2023.
 - The development proposed is the demolition of an existing detached dwelling and the construction of a new apartment block providing 5no. apartments, including associated amenity, parking, landscaping and other associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 which is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few notable changes albeit that the numbering of paragraphs has changed. Furthermore, the parties have been given an opportunity to refer to the revised Framework as part of the appeal process. Hence, I am satisfied that no one would be prejudiced by this change to the national policy context.
3. Refusal reason 3 on the Council's decision notice refers to the absence of acceptable mitigation in relation to the effects on the Epping Forest Special Area of Conservation (SAC). A Unilateral Undertaking pursuant to section 106 of the Town and Country Planning Act 1990 (UU) dated 29 November 2023 has been provided. The UU includes obligations for financial contributions per net dwelling towards strategies designed to counter adverse recreational impacts and air pollution at the SAC. The Council has confirmed its acceptance of the UU and raises no objection to its contents. Therefore, this refusal reason falls away. I shall consider the UU later in my decision.

Main Issues

4. The main issues are the effect of the proposal on:
 - Housing mix and accommodation types having regard to local and national planning policies;
 - The living conditions of future occupants having regard to the provision of external amenity space, and;

- If harm arises, whether this is outweighed by other material considerations.

Reasons

Housing mix and accommodation types

5. Paragraph 63 of the National Planning Policy Framework (the Framework) states, amongst other things, that the size and type of housing needed for different groups in the community should be assessed and reflected in planning policies, including for older people and people with disabilities.
6. The Framework defines older people as people over or approaching retirement age, including the active newly retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs. It separately explains that for its purposes, people have a disability if they have a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
7. Planning Practice Guidance (PPG) reinforces the importance the Government places on planning for the housing needs of older and disabled people. With respect to the former it describes the need as critical¹ given that people are living longer and the proportion of older people in the population is increasing.
8. Consequently, the housing needs of older people are diverse and dynamic and not all older people will necessarily need specialist accommodation. The PPG outlines that the planning system has a part to play in providing a better choice of accommodation to suit the changing needs of this group. Furthermore, although some older people will have health requirements such that there is likely to be some overlap with the needs of disabled people, the needs of these groups are not always the same and should not automatically be conflated. This is reflected in the distinction made in the Framework and further nuances outlined in the PPG.
9. PPG² also recognises that many older people may wish to stay or move to general housing that is already suitable, such as bungalows, or homes which can be adapted to meet a change in their needs. It states that plan-makers will need to identify the role that general housing may play as part of their housing needs assessment.
10. The approach advocated in national policy and guidance is evident in policy H1 of the relatively recently adopted Epping Forest District Local Plan 2011-2033, Part One, March 2023 (LP). The policy wording and explanatory text sets out the Council's expectations in relation to providing the right mix and type of homes, which it states³ is to ensure the creation of mixed and balanced communities. The various sub-sections of policy H1 address the mix and need of different groups within the community. Sub-section H1(E) states that the loss of bungalows and specialist accommodation will be resisted.

¹ Paragraph 001, Reference ID: 63-001-20190626

² Paragraph 012, Reference ID: 63-012-20190626

³ Paragraph 3.2

11. The supporting text explains that policy H1 responds to evidence in the Strategic Housing Market Assessment as to the quantum, type, size and tenure of new homes needed in the district over the plan period. Reference is made both to the need for accessible housing and the ageing profile of the district's population. It outlines the Council's position that bungalows can play an important role in addressing the needs of these groups because of their potential ease of adaptation, and so they can enrich the choice of accommodation. However, evidence contained in the Council's Authority Monitoring Reports shows that there has been a gradual erosion of the existing stock of bungalows.
12. There is no dispute between the parties that 128 Manor Road is a bungalow. The appeal proposal is for a building that would provide five apartments over three floors, thereby displacing the present bungalow. Hence, the proposal would conflict with policy H1(E) of the LP which seeks to resist such losses.
13. The appellant contends that the bungalow does not meet modern accessibility standards, is in poor condition, has too large a footprint and would not be easily adaptable. As such, it is asserted that it is not suitable to address the housing needs of older or disabled people. By comparison the five apartments proposed would be built at least in accordance with Building Regulations Requirement M4(2) Accessible and Adaptable Dwelling standards, and in some respects, exceed it.
14. However, limited technical evidence is provided regarding the condition of the existing bungalow. Comprehensive survey evidence has not been advanced to substantiate the assertion that significant and/or structural alterations would be required for the property to be made adaptable. Hence, I am not convinced that the issues highlighted around levels and door widths at the bungalow could not be reasonably addressed to improve accessibility.
15. Furthermore, notwithstanding the absence of a layout plan of the existing bungalow, the evidence that is provided combined with my observations of the footprint of the structure mean that the present dwelling would allow for generously proportioned rooms. Given the likely diverse range of needs and preferences, there is little basis to suppose that a notable proportion of older people, or those with disabilities, would not appreciate spaciousness. Hence, there is little to support the appellant's assertion that the existing dwelling would not be conducive to the needs of such groups owing to the size of its footprint.
16. In any event, the wording of policy H1(E) of the LP is unequivocal and is not subject to restrictions that require bungalows to achieve a certain condition, size or accessibility standard to qualify for the protection afforded. Neither does the policy suggest an exception to support the substitution of bungalows by other types of residential accommodation even if they provide living accommodation over a single storey. Rather, the resistance to the loss of bungalows is explicit and relates to evidence that the existing stock of this type of accommodation has reduced.
17. Although the explanation to policy H1(E) mentions some of the attributes often held by bungalows, there are likely to be other intrinsic qualities associated with this type of accommodation that hold value for groups of people within the community. Hence, even if the bungalow at the appeal site is not presently ideal or fully adapted to meet the needs of wheelchair users or some disabled

or older people, it does not follow that it would fail to be attractive to other occupiers within those groups who may value accommodation at ground floor level.

18. My general observations of the exterior were that the bungalow was in a habitable condition and at my visit it was occupied. Moreover, it possesses a generous outdoor rear garden that could facilitate gardening and relaxation. As a detached single storey property there would likely be considerable flexibility and potential to make physical adaptations that could respond to changing needs. It is probable that such qualities would resonate with the housing needs of many older people and enhance their choice of housing options. In addition, it is not convincingly demonstrated that the property would be unsuitable for some people with disabilities as defined within the Framework. Therefore, the bungalow at the appeal site makes a small but valuable contribution towards the overall mix of housing types within the district.
19. My attention is drawn to a planning appeal⁴ at 8 Stanmore Way for the demolition of an existing bungalow and its replacement with two chalet bungalows. In that case the Inspector gave weight to the arguments that the proposed dwellings were also bungalows. Furthermore, a relevant fallback position had been established. Additionally, the appeal was determined prior to the adoption of policy H1(E) of the LP. Cumulatively, these represent considerable differences with the proposal before me. Therefore, although it lends limited weight in favour of the proposal, it would not be sufficient to lead me to find otherwise regarding the conflict with policy H1(E) that I have identified.
20. Accordingly, I find that the proposal would displace an existing bungalow in direct conflict with policy H1(E) of the LP which aims to resist the loss of such accommodation. Hence, the development would harmfully undermine the Council's explicit and evidenced strategy in the development plan that seeks to provide choice in terms of housing mix and accommodation types in response to differing housing needs, including those of older and disabled people.

Living conditions

21. Amongst other matters required to achieve high quality design, policy DM9(I) of the LP expects proposals to take account of the amenity of the proposed occupiers of new development. Policy DM10(B) further requires ground floor family housing to provide access to private garden/amenity space. In addition, family housing on upper floors should have access to a balcony and/or terrace of a usable size or to shared communal amenity space and children's play space.
22. The five apartments would each have three bedrooms and therefore, it is reasonable to suppose they would be capable of providing family housing for the purposes of policy DM10 of the LP.
23. Both ground floor units would have direct access to an exclusive external paved area, with access to the communal garden space beyond. The first floor apartments would each have a rear balcony, which although modestly proportioned would be able to accommodate some outdoor furniture to enable sitting out. The second floor apartment would have access to a roof terrace⁵.

⁴ Reference APP/J1535/W/21/3283846

⁵ Drawings 6283-PL-106 & 6283-PL-107

The units on upper floors would also be able to access the rear communal garden via a passage to the side of the building.

24. The communal garden would comprise a sizeable, flat, broadly rectangular space measuring⁶ approximately 320m² that could be secured for the use of the occupants of the proposed apartment block. As such, it would allow for a good level of daylight and sunlight with sufficient space for a reasonable range of outdoor play activities as well as some gardening opportunities.
25. The Council suggests that each unit should have private garden space larger than its floorspace. However, neither local nor national planning policy specifies a minimum quantum of external amenity space. Therefore, there is no policy basis that would make this mandatory, nor am I aware that this is recommended in any adopted planning guidance. Furthermore, the Council does not clearly articulate how the overall outside space provision proposed would be deficient for the intended future occupants such that their living conditions would be unacceptably compromised.
26. Concerns were raised in representations received that the outdoor space provision may not suit wheelchair users, that the rear balconies and patios face north and access to the communal garden would be via a relatively narrow side passage. It is also highlighted that many parents would need to supervise young children in their access and use of the communal garden area. Hence, I accept that the external space configuration would not be perfect for some occupants. Even so, that is not the expectation set in national or local planning policies.
27. Based on the information before me, I am satisfied that the combination of private and communal external space would address the requirements of policy DM10(B) of the LP and appropriately take account of the amenity of future occupants. Moreover, the proposal would provide a suitable standard of amenity space consistent with the high standard of amenity for future users advocated in paragraph 135f) of the Framework.
28. Therefore, with regards to the living conditions of future occupiers and the provision of external space, I find no conflict with policies DM9 or DM10 of the LP.

Other Matters

Epping Forest SAC

29. The SAC designation reflects its international importance for nature conservation and is recognised under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations). The SAC comprises a mosaic of habitats including former beech wood-pasture, and both wet and dry heathland. These host important habitats and species including wood-pasture with many old pollards and associated beech and oak as well as various rare moss, lichens and stag beetle.
30. Evidence shows that the SAC is under significant pressure from human activity. As the population of people living nearby grows, damaging impacts from

⁶ Paragraph 5.3.5 Appellant's Planning Appeal Statement

recreational visits and associated dog walking have the potential to cause ongoing adverse effects on the protected habitats and species. Similarly, the deterioration of air quality from traffic emissions within the SAC owing to an increase of certain chemical compounds is compromising the health of the protected habitats and species.

31. Policy DM2 of the LP confirms that development will only be permitted where it would not lead to any adverse effects upon the integrity of the SAC. It further states, amongst other things, that in designing mitigation measures regard should be had to the Epping Forest Strategic Access Management and Monitoring Strategy and the Air Pollution Mitigation Strategy for the Epping Forest. Contributions towards off-site measures to mitigate the likely impacts from air pollution and adverse recreational effects arising from the development may be sought where necessary. Policy DM22 of the LP, which relates to air quality, reinforces that adequate mitigation should be provided to protect against the adverse effects of air pollution.
32. The signed and dated UU contains planning obligations that secure financial contributions per net dwelling amounting to £1852.63 with regards to recreational effects, and £335 in relation to air quality measures. The Council do not dispute that these amounts would accord with the established mitigation strategies. I am satisfied that the obligations in the UU meet the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).
33. In the absence of other significant concerns, it would have been necessary to consult Natural England under Regulation 63(3) of the Habitat Regulations and complete an appropriate assessment. However, given the harm found in relation to the first main issue, I consider this would be unnecessary as it is unlikely to be determinative to the outcome of the appeal.

Other considerations

34. There is no dispute between the parties that the Council is able to demonstrate a five year supply of deliverable housing land⁷. However, it is brought to my attention that the Housing Delivery Test (HDT) measurement published in January 2022 indicated that the Council's housing delivery was 35% of its requirement over the previous three years and that the recently published HDT 2022 shows the most recent figure to be 30%. Footnote 8 to paragraph 11 of the Framework confirms that this triggers the application of the balance in paragraph 11d). I shall return to this in the overall planning balance.
35. The proposal would provide an additional four dwellings, with all five apartments built to modern accessible and adaptable standards. This would make more efficient use of the land and assist in boosting the overall supply of housing in a reasonably accessible location. Paragraph 70 of the Framework recognises the important contribution that small and medium sized sites can make to meeting the housing requirement, and notes that they are often built-out relatively quickly.
36. Nevertheless, the encouragement given to the efficient use of land in paragraph 128 of the Framework is qualified. Amongst other matters, it states

⁷ Paragraph 6.2.6, Appellant's Planning Appeal Statement

that account should be taken of the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it. Given my findings on the first main issue, this tempers the favourable weight given to this benefit.

37. Some economic benefits would flow from the construction of the development, and economic and social benefits would be likely to derive from future activity of the occupants. Even so, the extent of cumulative benefits accrued from the relatively modest development would be limited.
38. The appellant points out that the Council did not raise objections in other respects, including highway safety and the living conditions of nearby residents. Be that as it may, I am not persuaded that the Council's finding of an absence of harm in relation to other planning matters amounts to a positive benefit of the proposal, as these are requirements of other local and national planning policies. Furthermore, I am aware of representations received which, notwithstanding the Council's findings, raise concerns in relation to highway and neighbour impacts. However, given my findings on the first main issue, it is unnecessary to consider these matters in further detail as they are unlikely to be determinative.

Planning balance and conclusion

39. Paragraph 11d) of the Framework states that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Based on the evidence before me, it is the latter limb of paragraph 11d) that would apply in this instance.
40. I previously outlined benefits that would arise from the development. Cumulatively, I attribute them limited favourable weight. The adverse impacts of granting permission would significantly and demonstrably outweigh those benefits when assessed against the policies in the Framework taken as a whole. This is because paragraph 63 of the Framework requires planning policies to reflect the size, type and tenure of housing needed for different groups in the community. Based on local housing needs evidence, policy H1 in the LP seeks to do this, in part by preventing the stock of bungalows from further erosion. It follows that the proposal would undermine the government's objective⁸ that the needs of groups with specific housing requirements are addressed. Given this finding, the presumption in favour of sustainable development does not apply in this instance.
41. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁹.

⁸ Paragraph 60, NPPF

⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

42. The proposal would conflict with policy H1 of the LP which is consistent with the Framework. Consequently, the appeal scheme would be contrary to the development plan as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

INSPECTOR