



Appeal Decision

Site visit made on 21 November 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal Ref: APP/J1535/W/23/3314592

Land adjacent to 10 Higham View, North Weald, Essex CM16 6DD

- 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 Paul Hale against the decision of Epping Forest District Council.
 - The application Ref EPF/2672/21, dated 28 September 2021, was refused by notice dated 24 October 2022.
 - The development proposed is the construction of a new detached dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have omitted the words "Resubmission of refused application: EPF/2973/20" from the description of the development in the banner heading above, as a resubmission is not an act of development.
3. The Epping Forest District Local Plan 2011 to 2033 Part One (the LP) was adopted by the Council in March 2023 and replaced the Epping Forest District Local Plan 1998 and Alterations 2006. As such, the policies of those replaced plans are no longer part of the development plan and have no weight in determining this appeal. The Council has provided copies of the new LP policies with its statement of case, confirming that it finds the appeal proposal to be contrary to LP Policies DM2, DM9, DM10, DM15 and DM22.
4. In taking account of Section 38(6) of the Planning and Compulsory Purchase Act 2004, I am required to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. I have therefore taken account of the LP Policies referred to above in determining this appeal. The appellant has had an opportunity through final comments to comment on the relevance of the LP Policies to this appeal. Therefore, I am satisfied that determining the appeal against the LP would not prejudice the appellant.
5. The appeal site lies within the Zone of Influence of the Epping Forest Special Area of Conservation (EFSAC), which is protected as a European site of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended). I will return to this matter later in this decision.
6. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. All references to the Framework in this decision relate to the revised document. The main parties have had the

opportunity to comment on the relevance of the revised Framework to this appeal.

Main Issues

7. The main issues are:

- Whether the site is suitable for the development proposed, having regard to flood risk.
- The effect of the proposed development on the character and appearance of the area.

Reasons

Flood risk

8. There is no dispute between the main parties that the Environment Agency (EA) flood zone map shows the appeal site as located within Flood Zone 2. This corresponds to a medium probability of flooding.
9. Framework Paragraphs 165 and 168 seek to direct inappropriate development away from areas at the highest risk of flooding and steer new development to areas with the lowest risk of flooding through application of the Sequential Test. Planning Practice Guidance¹ (PPG) states that the Sequential Test ensures that new development is steered to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
10. The Framework Paragraph 173 requires planning applications for all development in Flood Zones 2 and 3 to be supported by a site-specific flood risk assessment (FRA). The objectives of a FRA, as set out in the PPG² include establishing the evidence for the local planning authority to apply the Sequential Test. Development should only be allowed in areas at risk of flooding where, in light of the site specific FRA (and the sequential and exception tests, as applicable), it can be demonstrated that it meets the requirements of Framework Paragraph 173.
11. The appeal proposal is not supported by either a site specific FRA or any substantive evidence of reasonably available sites in areas at a low risk of flooding to enable application of the Sequential Test. I note the appellant's willingness to accept pre-commencement conditions securing a FRA and Sequential Test. However, a FRA establishes the evidence for the application of the Sequential Test and is also necessary to demonstrate that the proposed development would be safe through its lifetime and would not increase flood risk elsewhere. As such, a FRA and application of the Sequential Test are fundamental to the substance of this appeal and it would be unreasonable and unacceptable to defer them to future consideration under planning conditions. Furthermore, to do so could unfairly deprive any party with an interest in the outcome of this appeal with an opportunity to comment on the evidence, thus leading to injustice.

¹ Paragraph: 024 Reference ID: 7-024-20220825

² Paragraph: 020 Reference ID: 7-020-20220825

12. The Council has arrived at the conclusion that there are other sites available for open market housing elsewhere in its area at a lower risk of flooding. This conclusion is not contradicted by the appellant's evidence, and I have no substantive evidence to reach a contrary conclusion. Based on the limited evidence before me, I find that the proposal has not been informed by a site specific FRA and it would not pass the Sequential Test. It would therefore fail to avoid the risk of flooding to future occupiers and ensure that flood risk is not increased elsewhere.
13. For these reasons, I conclude on this issue that the appeal site is not suitable for the development proposed, having regard to flood risk. As such, it is contrary to LP Policy DM15, in so far as it seeks to ensure, amongst other requirements, that development avoids the risk of flooding to future occupiers and is informed by a site specific FRA, and that the Sequential Test has been satisfied.

Character and appearance

14. The appeal site is a plot of land situated within a residential area. It fronts the road and is flanked by a wide fronted bungalow on one side and a narrow residential garden on the other, beyond which is a two storey link-detached house.
15. The character and appearance of the area is generally defined by relatively tightly spaced rows of two storey dwellings and bungalows, that are set on discernible building lines fronting the roads. The dwellings consist of similar style detached, link-detached and semi-detached dwellings that are generally arranged in rows of the same dwelling type. Although the facades of the dwellings vary in width, they are mostly set in coherent rows of buildings of comparable widths and set in plots of a similar widths. Together these characteristics establish a repetitive rhythm and pattern to the street scene, giving the area a distinctive character and appearance.
16. The appeal proposal is to erect a single storey dwelling with a long and narrow plan form that responds to the shape of the plot. Bungalows are common in the area and the design and materials of the proposed dwelling would reflect the architectural styles of buildings in the locality, which include gabled facades. However, the proposed dwelling would occupy a plot considerably narrower than nearly all others in the locality and its façade would be considerably narrower than the relatively wide front facades of the existing dwellings fronting the roads in the area. Consequently, the relatively narrow front facade of the proposed dwelling would be out of keeping with the broadly consistent scale and massing of the wider fronted facades of the dwellings in the area. As such, the proposed dwelling would appear incongruous within the street scene and would erode the characteristic pattern of generally wide fronted buildings set within commensurately wide plots.
17. The proposed dwelling would respond to the established building line. The proposed spacings between it and the side boundaries of its plot would be broadly consistent with the spacings between the existing dwellings and their boundaries. The proposed dwelling would be separated from the closest two storey dwelling by the flanking rear garden. For these reasons, the proposed dwelling would not appear cramped within its plot and its scale and massing would not be dominant in the street scene. However, these factors would not outweigh the harm that I have identified above.

18. For these reasons, I conclude on this issue that the appeal proposal would harm the character and appearance of the area, contrary to LP Policy DM9, which seeks, amongst others, to ensure that development contributes to an area's distinctive local character and relates positively to its context, having regard to the rhythm of plots and building widths.
19. Although LP Policy DM10 is cited in the Council's statement of case this policy relates to factors including internal space standards and access to private amenity space. The Council's Officer Report states that the proposal would meet internal space standards and provide satisfactory living space for future occupiers. I find no substantive evidence of any conflict with the objectives of LP Policy DM10, and therefore this Policy is not determinative to my assessment of this main issue.

Other Matters

20. Uncontested evidence indicates that the EFSAC has an 'unfavourable conservation status' arising from recreational pressure associated with visitor numbers and from air pollution associated with road traffic. Based on evidence in the Council's statement, occupation of the proposed development is likely, given its location, to contribute to increased recreational pressure on the EFSAC, and air pollution arising from an increase in traffic levels. The proposed development is therefore likely to have significant adverse effects on the rare habitats and species for which the EFSAC is internationally designated as a site of nature conservation importance.
21. The appellant has expressed a willingness to make payment of the requisite tariff-based contributions towards the delivery of the Council's strategies to mitigate the potential adverse effects of new housing developments on the qualifying species and habitats within the EFSAC. The appellant suggests this can be secured by a planning condition.
22. The PPG³ states that no payment of money or other consideration can be positively required when granting planning permission. However, in exceptional circumstances the PPG⁴ advises that a negatively worded condition could be imposed requiring a planning obligation to be entered into before certain development can commence. The evidence before me does not demonstrate any exceptional circumstances in the context of the PPG that would justify imposing such a planning condition. Nevertheless, in light of my findings on the main issues above, it is not considered necessary to look at the harm to the EFSAC in detail, given that the proposal is unacceptable for other reasons.
23. My attention is drawn to a nearby infill bungalow on Higham View and back garden development on High Road North Weald. However, the bungalow referred to appears to be considerably wider than that proposed in this appeal. The appeal proposal is not for back garden development. As such, these developments are materially different in scale and context to the appeal proposal and are of limited relevance to my considerations in this appeal.
24. I acknowledge the appellant's concerns over the Council's processing of the planning application, which followed an earlier planning application and pre-application advice. However, these concerns fall outside the scope of my considerations and have not influenced my determination of the appeal.

³ Paragraph: 005 Reference ID: 21a-005-20190723

⁴ Paragraph: 010 Reference ID: 21a-010-20190723

Planning Balance and Conclusion

25. The Council's evidence suggests that the LP demonstrates a 5.4 year housing land supply, including a 20% buffer. However, in the event that I was to accept the appellant's contention that the presumption in favour of sustainable development in Paragraph 11.d) of the Framework was to apply, then planning permission for the proposed development should be granted. That is unless, under Framework Paragraph 11.d)i., the application of the policies in the Framework that protect areas or assets of particular importance (footnote 7) provides a clear reason for refusing the development or, under Framework Paragraph 11.d)ii., 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.
26. The list of protected areas or assets of particular importance to which Framework Paragraph 11.d)i. applies, includes habitats sites such as the EFSAC and areas at risk of flooding. For the reasons given above, I am unable to conclude that the proposal would not harm the integrity of the EFSAC. Furthermore, I have found that the appeal site is not suitable for the development proposed, having regard to its location in an area at risk of flooding. Therefore, the Framework's policies for the protection of habitats sites and development in areas at risk of flooding within Footnote 7 to paragraph 11.d)i. would provide clear reasons for refusing to grant planning permission.
27. Even if Framework's presumption under Paragraph 11.d)ii. applied to the appeal proposal, the benefits attributed to the construction and occupation of the proposed small dwelling, and its contribution to housing supply and making efficient use of land within an existing settlement, would be relatively small. These benefits would be outweighed by the importance the Framework attaches to the expectation that biodiversity sites of value should be protected, inappropriate development in areas at risk of flooding should be avoided and that development should be sympathetic to local character, which the appeal proposal fails to achieve. For these reasons, I find that the appeal proposal's adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. It follows that the appeal proposal would not benefit from the presumption in favour of sustainable development under Paragraph 11 of the Framework.
28. For the reasons given above and having considered all matters raised, I conclude that the proposed development conflicts with the development plan as a whole. The material considerations do not carry sufficient weight to outweigh the harm, nor do they indicate that the appeal should be determined other than in accordance with the development plan. The appeal should be dismissed.

G Sylvester

INSPECTOR