



Appeal Decision

Site visit made on 10 January 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/J1535/W/23/3329931

Land and garages at Whitehills Road, Loughton, Essex IG10 1TS

- 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 Dal Sumal against the decision of Epping Forest District Council.
 - The application Ref EPF/1506/23, dated 4 July 2023, was refused by notice dated 7 September 2023.
 - The development proposed is described as 'existing garages enlarged, extended and reduced from 27no garages to 21no garages.'
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Dal Sumal against Epping Forest District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. During the appeal process, the Council confirmed that it had reconsidered its position and would no longer be pursuing its third reason for refusal in respect of the effect of the proposal on housing delivery. I have considered the appeal on this basis.
4. I have taken into account the revised version of the National Planning Policy Framework ('the Framework') published in December 2023. While there have been changes to paragraph numbers since the previous iteration, the parts of the Framework most relevant in this case have not significantly changed and I am satisfied that the revised version of the Framework does not raise new considerations necessitating further submissions from the parties.

Main Issues

5. The main issues are:
 - i) the effect of the proposal on the living conditions of nearby occupiers in respect of outlook; and
 - ii) the effect of the proposal on the integrity of the Epping Forest Special Area of Conservation.

Reasons

Living Conditions

6. The appeal site formerly accommodated 27 garages, although these had been demolished at the time of my visit. The 21 garages now proposed would have a

maximum height of 2.95m at the rear which the appellant asserts is consistent with the height of the former garages.

7. In support of their position, the appellant has provided photographs which they say show the former garages as 'much higher' than surrounding fencing. However, while vegetation makes it difficult to gauge accurately, the photographs appear to me to show the rear of the former garages projecting only a relatively small distance above adjacent fencing, certainly less than I would expect to see if the height was indeed 2.95m. In addition, where the slope to the roofs is visible, it appears to me to be gentler than is indicated on the 'Existing Elevations'. Acknowledging that the photographic representation of the roof slope could be affected by view angle and perspective, this is not determinative. Nevertheless, the appearance of the garages in the photographs and the arrangement of panels to the side wall are certainly very similar to garages to the rear of Debden Broadway that I was directed to by interested parties as an example of garages of like design. Based on my observations, the maximum height of the Debden Broadway garages is less than 2.95m.
8. Furthermore, I note that the photographs show the height of the row of former garages along the boundary with properties on Church Lane is not consistent, with the roofline stepping up every few garages towards Whitehills Road. The steps are not large, but they are nevertheless discernible. The fact that they are not shown on the 'Existing Elevations' introduces some doubt in my mind about the accuracy of these plans and reliance on them to determine the height of the former garages.
9. I have been provided with copies of correspondence between the appellant and an occupier of 1 Elmores which neighbours the site. This refers to the height of a wall which has been rebuilt along the boundary being lower than the original wall. However, photographs mentioned in the correspondence have not been provided and I cannot be sure from the text alone what height the wall had been built to at the time of the correspondence. Nor how this relates to the height of the garages now proposed. In addition, the occupier of 1 Elmores had objected to the proposal, including in respect of the height of the development commenting that it would be higher than the previous garages which had a maximum height of 2.5m. The appellant's correspondence with an occupier of 1 Elmores is not therefore decisive.
10. From the information before me, I am unable to draw any firm conclusions as to the height of the former garages. In light of the above factors however, I do not consider the details submitted by the appellant to be sufficiently compelling evidence to demonstrate the former garages were in the order of 2.95m high. On balance, I consider that the proposal would result in an increase in the height of built form closest to the boundaries of the site.
11. The difference in height may not be large, but it would still increase the visual dominance of built form along the boundaries with neighbouring properties. The development would extend along nearly the entire length of the rear garden of 1 Elmores and in my judgement, its height and depth would give rise to a considerable degree of enclosure when viewed from this neighbouring property. The appellant comments that the brickwork and felt and bitumen roof would be preferable to the concrete section and fibre cement roofing of the former garages. Even so, the flat brick would offer little visual relief, and I consider that the solid mass of development at greater height would present a

more imposing feature when seen at such close range. The effect would be modest relative to the former site condition, but I find given these factors that there would be harm to outlook for the occupiers of 1 Elmores.

12. The proposal would also infill gaps that were present between the former rows of garages, including to the rear of 72 Church Lane, to form a single building. Noting large single-storey buildings at Oak View School adjacent to the site, the overall scale of the development would not be exceptional in the local area. I am also satisfied having regard to the relationship with 66-72 Church Lane, including the depth of their gardens, that the greater height and width of development along the boundary would not be unduly overbearing so as to cause a meaningful loss of outlook for the occupiers of these dwellings. However, this does not offset or outweigh the adverse effect of the proposal on outlook for occupiers of 1 Elmores.
13. For these reasons, I conclude that the proposal would cause harm to the living conditions of the occupiers of 1 Elmores in respect of outlook. It would therefore conflict with Policy DM9 of the Epping Forest District Local Plan 2011-2033 Part One 2023 ('The LP') insofar as it requires proposals to take account of neighbouring amenity and seeks to ensure appropriate outlook.

Epping Forest Special Area of Conservation

14. The Epping Forest Special Area of Conservation ('SAC') is a European Site designated under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). In circumstances where a proposal is likely to have a significant effect on a European Site, the Habitats Regulations impose a duty on the competent authority to consider implications for the conservation objectives of the Site within the framework of an Appropriate Assessment. This duty would now fall to me.
15. The Epping Forest SAC is designated for the presence of stag beetle; and Atlantic acidophilous beech forest with *Ilex* and sometimes also *Taxus* in the shrublayer, European dry heath, and Northern Atlantic wet heath with *Erica tetralix* habitats. The conservation objectives for the SAC seek broadly to ensure that the integrity of the site is maintained or restored and that the site contributes to achieving the favourable conservation status of its qualifying features.
16. The information before me indicates that qualifying features of the SAC are vulnerable to impacts from recreational pressure as well as changes in air quality, primarily in relation to atmospheric pollution generated by vehicles travelling on roads within 200m. Given the non-residential use proposed, I agree with the Council that there would not be a likely significant effect on the SAC through recreational pressure. However, while the site itself is more than 200m from the SAC, it is still relatively close at around 1km from the boundary. Given its proximity, traffic may well be likely to use routes within the zone where increased atmospheric pollution could affect SAC qualifying features.
17. I have not been provided with firm details setting out average daily traffic flows for either the former or proposed garages. However, the appellant notes that the former garages were unsuited to modern vehicles and had fallen into disuse. They also highlight comments in a Council report on a planning application made for the site in 2016 that 19 of the garages were vacant and several boarded up. On that basis, active use of the site, and thus the level of

associated traffic, appears likely to have been limited for some time. In this context, I find that while there would be a reduction in the number of garages on the site from 27 to 21, the proposal would be likely to result in an increase in traffic levels in comparison to the actual levels prior to the development. No substantive information is before me to robustly demonstrate otherwise.

18. The appellant operates 3 other garage sites where they advise that the majority, if not all, occupiers live or work within 800m of the site and that the vast majority of use is for storage of mainly classic or vintage cars. Be that as it may, these other sites are not in Loughton or the immediate vicinity of the appeal site and I have not been provided with substantive evidence of specific demand for garages in this location. I can therefore have little confidence that occupiers of the garages on the appeal site would be local. Nor can I be sure that there would be a high proportion of classic/vintage vehicles garaged or that trips associated with the eventual use of the garages would necessarily be infrequent. Indeed, the appellant referred to garages 1-10 and 15-21 being available for daily use if the occupants so wish. As a consequence, I find that I have insufficient information to determine with confidence that the proposal would not generate additional vehicle trips in proximity of the SAC.
19. The London Ultra Low Emission Zone ('ULEZ') has recently been expanded, but it does not extend as far as the site. Moreover, while there may be financial implications for not doing so, the ULEZ does not guarantee use of low-emission vehicles, far less nil-emission vehicles.
20. A precautionary approach must be taken in considering effects on the SAC. From the evidence before me, I cannot be certain that there would not be a net increase in traffic using routes in proximity of the SAC, contributing to changes in air quality that would be detrimental to its qualifying features. Accordingly, I have insufficient information to determine beyond reasonable scientific doubt that the proposal, either alone or in combination with other plans and projects, would not have a likely significant effect on the SAC in respect of air quality.
21. A condition could require provision of electric vehicle charging points on the site. However, that would not guarantee the use of electric vehicles. In the absence of any other measures to mitigate the possible air quality effects of the proposal on the SAC, an adverse effect on its integrity cannot be ruled out.
22. For the reasons above and taking a precautionary approach, I have insufficient information to conclude that the proposal would not have an adverse effect on the integrity of the Epping Forest SAC. I have no firm reason to find that there are no alternative sites that could accommodate the development with lesser effects on the integrity of the designated sites, nor that there are imperative reasons of overriding public interest that would outweigh the adverse effects. In these circumstances, the operation of the Habitats Regulations would preclude the proposal from proceeding. There would also be conflict with Policies DM2 and DM22 of the LP insofar as they require adequate mitigation for air pollution risks and set out that permission will not be granted for development where it is not possible to conclude no adverse effect on the integrity of the SAC.

Other Matters

23. I note additional concerns that have been raised by interested parties including in relation to noise and disturbance, loss of light, effects on trees and effects on

rights of access. However, none of the matters raised either individually or collectively alter my conclusions on the main issues.

Conclusion

24. The proposal would make use of a site which had become dilapidated and which the appellant indicates was a source of antisocial behaviour, and I do not doubt that the development could be made suitably secure. However, the benefits of bringing the site back into productive use would not in my judgement outweigh the harm to the living conditions of 1 Elmores and the adverse effect on the integrity of the Epping Forest SAC.
25. I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR