



Appeal Decision

Site visit made on 30 January 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2024

Appeal Ref: APP/J1535/W/23/3327274

260 High Road, North Weald Basset, Epping, Essex CM16 6EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Peter and Jillian Botterell against Epping Forest District Council.
 - The application Ref EPF/0121/23 is dated 20 January 2023.
 - The development proposed is described as 'Demolish Existing Chalet Bungalow & Construct 2(no.) x 4 bedroom detached dwellings.'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council failed to give notice within the prescribed period of a decision on an application for planning permission. However, the submitted Statement of Case confirms that the Council would have refused planning permission had it been able, and outlines reasons for that decision.

Main Issues

3. The main issues are the effect of the proposal on:
 - the integrity of protected habitats;
 - flood risk in the area ;
 - the character and appearance of the area; and
 - on the living conditions of the occupants of 262 High Road, with regards outlook.

Reasons

Habitats

4. The appeal property is within the zone of influence (ZoI) of the Epping Forest Special Area of Conservation (SAC). The qualifying features of this SAC include the Beech Forest, heathlands and populations of stag beetles. The SAC's conservation objectives include ensuring the integrity of the site and that the site contributes to achieving favourable conservation status of its qualifying features.

5. The SAC is bisected by a number of roads and evidence shows, that in combination with other plans and projects, new development could have an adverse effect on the integrity of the SAC as a result of, amongst other things, atmospheric pollution. A key contributor to this atmospheric pollution is vehicle emissions. This proposal would intensify residential use at the property and therefore, an appropriate assessment is required in this case.
6. The proposal would result in an additional dwelling at the property, thus there would be a net increase of residential units. Moreover, provision would be made for off-street parking for this new family sized dwelling. Therefore, this would increase the number of vehicles likely to be used in association with this property. In turn, as this appeal property is within the SAC's ZoI, this would increase vehicles travelling on roads through this habitat.
7. The appellants' Habitat Regulations Assessment concludes that given the scale of the development, that in isolation, the increased traffic pollutants arising from the proposal would have a negligible effect on the SAC. However, as already outlined new development must be considered in combination with other projects and plans in the area.
8. The Epping Forest District Local Plan Habitats Regulations Assessment identifies adverse, in combination impacts on the SAC through two pathways, one of which is air quality. Development allocated within the Local Plan or additional to plan led growth which is anticipated to contribute to these adverse impacts must therefore be considered to have a likely significant adverse effect on the SAC. In light of this evidence, I find that this proposal would have a significant adverse effect on the integrity of the SAC, when considered in combination with other projects and plans in the area.
9. The Council, in consultation with Natural England, has developed the Epping Forest Interim Air Pollution Mitigation Strategy, which sets out measures to monitor and manage harmful effects on the SAC. This includes sustainable transport initiatives and site-specific improvement works. The implementation of the Strategy and mitigation measures will be funded by amongst other things, financial contributions from residential development, and this includes from small, windfall sites in the area.
10. A legal agreement has been submitted with this appeal in respect of this matter. However, the legal agreement is unsigned and marked as 'draft'. The appellants have consulted the Council about the agreement and a consent form for the Council's costs have been submitted with this appeal. Be this as it may, the legal agreement is incomplete and as such, I find nothing which provides certainty that the mitigation measures required in this case would be secured.
11. Therefore, I find the proposal would have a significant adverse effect on the integrity of protected habitats. In this regard, the proposal would conflict with Policy DM2 and DM22 of the Epping Forest District Local Plan 2011- 2030 Part 1 (Local Plan). These Policies collectively state, amongst other matters, where development would have likely significant effects, mitigation measures will be required and contributions towards off-site measures to mitigate the likely impacts of air pollution arising from the development will be sought. The proposal would also be contrary to the relevant provisions of the Conservation of Habitats and Species Regulations 2017.

Flood Risk

12. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at the highest risk. To this aim the National Planning Policy Framework – December 2023 (the Framework) sets out a sequential, risk-based approach and where appropriate, applications should be supported by a site-specific flood risk assessment (FRA). When determining planning applications, it should be ensured that flood risk is not increased elsewhere. As such, this is not a matter which could be addressed by condition.
13. The appellants' evidence states that the property is within flood zone 1. The Framework states that FRA is needed for sites in an area within flood zone 1 that, amongst other matters, has critical drainage problems as notified by the Environment Agency (EA). Also, Planning Practice Guidance advises that the assessment of flood risk should identify sources of uncertainty.
14. In this case, the EA has highlighted that the development would involve works within 8 metres of a watercourse. It is understood that the culverted North Weald Basset Drain, described as a main river, extends across the rear garden of the appeal property.
15. While there is already an existing '*more vulnerable*' use at the property, this proposal would significantly intensify this use with the subdivision of the plot. Also, although the new dwellings would be located in the same position as the existing dwelling, this development would result in a significantly larger area of the appeal property being covered by built forms than is currently the case.
16. The appellants' Risk Assessment Report asserts that the flood risk from river and ground water sources is low. However, the appellant's Report also clarifies that it is not intended to replace a specialist study to ascertain the risks posed from flooding.
17. Therefore, a site-specific FRA has not been submitted in this case. Moreover, despite the guidance provided by the EA on this matter, limited details have been presented in respect of the proposal's potential impact on the culverted Drain at the property. Given the factors outlined above there is uncertainty as to whether the appeal property has a medium or high risk of flooding from any sources or that the development would not increase flood risk elsewhere. The main steps in assessing flood risk, as outlined in national and local policy, have therefore not been satisfied in this case.
18. Consequently, I find that there is insufficient evidence to conclude on the effect of the proposal on flood risk in the area. In this regard the proposal would fail to accord with Policy DM17 of the Local Plan. This Policy, amongst other matters, states, that new development must be set back at a distance of at least eight metres from a main river and an ordinary watercourse, or at an appropriate width as agreed by the Council and/or the Environment Agency.
19. The proposal would also fail to accord with provisions of the Framework related to planning and flood risk.

Character and Appearance

20. The appeal property is a detached dwelling fronting High Road. The dwelling is in a row of generally detached properties that vary in design and plot width. Although dwellings in this area benefit from large gardens to the rear, verdant features in this part of the street scene are largely confined to hedges and trees at the front of properties. This provides an important contrast with the built form that lines the street, and as such these features make a significant contribution to the appearance of this part of High Road.
21. The existing dwelling is built close to the western side boundary and there is a garage and parking space on the other side of the dwelling. As such, there are limited natural features at the side of the property, with only glimpsed views of bushes in the rear garden present in the street scene. The area at the front of the dwelling is mainly laid to gravel, such that it is largely devoid of green features. However, this area is partially screened by a hedge and tree which softens the appearance of the dwelling and positively contributes to the natural features along the roadside.
22. The Council has raised concern that there is limited information regarding the impact of the proposal on trees. I find nothing currently preventing the removal of this tree. This aside, while I find no explicit requirement for an arboriculture report in this case, Policy DM5 of the Local Plan states that proposals must demonstrate that they have been designed to retain green assets, including trees.
23. The submitted plans show there would be six parking spaces at the front of the dwellings. However, the plans also show that the tree at the front of the property would be retained. Moreover, while the hedge would be removed, this would be replaced by some soft landscaping at the front of the dwellings and at the side boundaries. The retention of the tree and the soft landscaping could be secured by condition.
24. Also, although built form would be intensified at the site, much of the existing rear garden space would be retained and this could accommodate improved landscaping features, including replacement trees. Again, I am satisfied that this could be secured by condition.
25. The detached dwellings would have a hipped roof and gable front detail. This traditional architectural style would be sensitive to this suburban street scene and the existing dwellings that characterise this part of High Road.
26. The proposed dwellings would be two storeys. However, the plans show that they would not be considerably taller than existing neighbouring dwellings. Indeed, the roof ridge of the proposed dwellings would appear to match the apex of the gables on neighbouring properties. Moreover, two storey dwellings are not uncommon in the wider area. As such, the proposed dwellings would not appear unusually taller than the existing surrounding built forms.
27. The plot widths of the proposed dwellings would be narrower than the immediate properties. Be this as it may, plot sizes vary in this area such that this would not harmfully disrupt any existing sense of consistency along the road. Furthermore, there would be space to the sides and between the dwellings such that they would not appear uncharacteristically cramped when viewed in the wider street scene.

28. In light of the above, I find that the proposal would not have a harmful effect on the character and appearance of the area. In this regard the proposal would accord with Policies DM5 and DM9. These Policies collectively seek a high quality of design.
29. The proposal would also be consistent with the Framework, which seeks well-designed places and recognises that trees make an important contribution to the character and quality of urban environments, stating, amongst other matters, that existing trees are retained wherever possible.

Living Conditions

30. The appeal property and neighbouring properties have sizeable plots. However, while they have generous rear gardens, dwellings are built relatively close to shared side boundaries.
31. This proposal would extend the footprint of a dwelling closer to the shared boundary with No 262 than is currently the case. However, this would be by a small amount. A gap that would be similar to the space between dwellings in the wider area would also be retained, and in this regard a reasonable degree of separation would be maintained. Also, as already stated the new dwellings would not be considerably taller than No 262. With these factors, the new additions would not appear harmfully oppressive forms to the occupants of neighbouring dwellings.
32. The windows serving habitable rooms at the rear of No 262 have an outlook over the rear gardens. While the footprint of the new dwellings would extend beyond the rear elevation of No 262, this would only be by a moderate amount. With these factors in mind and given the degree of separation that would be retained between the existing and proposed dwelling, the new dwelling would not significantly encroach into the outlook of windows at the rear of No 262.
33. Also, the increase in height and depth of built form at the appeal property would be noticeable, but this change would be relatively modest such that the rear gardens at the appeal property would remain sizeable. In turn, the outlook from the rear of neighbouring dwellings would still be dominated by the spacious and relatively undeveloped rear gardens in this immediate area, and largely unchanged in this regard.
34. Therefore, I find that the proposal would not have a harmful effect on the living conditions of the occupants of 262 High Road, with regards outlook. In this respect, the proposal would not conflict with Policy DM9 of the Local Plan. This Policy requires that, amongst other matters, proposals not result in an over-bearing or overly enclosed form of development which materially impacts on outlook.

Planning Balance

35. I have not found harm in respect of living conditions and the appellants' ecology survey suggests that on-site ecology would not be harmed by the development. However, even if I accepted that this would be so in respect of ecology, development should not result in harm and therefore these are neutral factors.

36. This redevelopment of the property would extend the built form into the existing garden. However, the definition of previously developed land, as set out in the glossary of the Framework, excludes land in built-up areas such as residential gardens.
37. Policy H1 of the Local Plan, amongst other matters, states the loss of bungalows will be resisted and this proposal would replace an existing dormer style bungalow with two storey dwellings. However, the evidence states that accessibility and adaptability measures would be incorporated into the new development. Moreover, the proposal would result in a net gain of one family home at the appeal property and this adds to the supply of homes in the area. The new dwellings would incorporate energy efficient and low carbon measures, and as a windfall site, they could be built quickly. The site is also in a built-up area near services.
38. These social, economic and environmental benefits are limited given the scale of the development. These limited benefits would not be sufficient to outweigh the identified harm to protected habitats and flood risk, and the conflict with the Local Plan in respect of these matters.

Other Matters

39. While the footprint of the existing dwelling does not appear to be in the Green Belt, much of the rear garden of the appeal property is within the Green Belt boundary. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The construction of new buildings in the Green Belt should be regarded as inappropriate, although the Framework sets out exceptions to this. Inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
40. This proposal would significantly extend the built form at the property. The submitted plans suggest the new dwellings would be outside the Green Belt. However, the Council's map shows that the new buildings would likely encroach into the Green Belt at the rear of the property, and this issue needs to be addressed. However, as I am dismissing on other grounds it is not necessary to consider this further in this appeal.
41. I note the correspondence seeking to address contamination during the application period. Be this as it may, as already outlined there is insufficient information such that the proposal fails to accord with national and local flood risk policy and harm in respect of impact on habitats has also been identified. This matter has not altered my findings for this reason.

Conclusion

42. Having regard to the development plan and other material considerations, the appeal should be dismissed.

A J Sutton

INSPECTOR