

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: 11 April 2024

Appeal Ref: APP/J1535/W/23/3322092

7 Brooklyn Avenue, Loughton IG10 1BL

- 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 and Mrs Nooitgedacht against the decision of Epping Forest District Council.
 - The application Ref EPF/0144/23, dated 24 January 2023, was refused by notice dated 3 April 2023.
 - The development proposed is described as 'Proposed detached 3 bedroom dwelling in an existing side garden.'
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Decision

1. The appeal is allowed, and planning permission is granted for a proposed detached 3 bedroom dwelling in an existing side garden, at 7 Brooklyn Avenue, Loughton IG10 1BL, in accordance with application Ref EPF/0144/23, dated 24 January 2023 and the submitted information, and subject to the schedule of conditions appended to this decision.

Applications for costs

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

Main Issues

3. The main issues are the effect of the proposal on the:
 - Character and appearance of the area; and
 - Integrity of the Epping Forest Special Area of Conservation.

Reasons

Character and Appearance

4. The appeal property is a triangular shaped corner plot in a residential area which generally has a relatively closeknit, linear pattern of development. This residential area edges the centre of Loughton, but the dwellings are of a traditional style such that the area has a distinct suburban quality. This quality, along with the linear pattern of development, positively contributes to a sense of coherency in the street scene.

5. It is asserted that No 7 had an original access at the corner of the plot and submitted photographs show a path at this part of the property. Be this as it may, the appeal property is currently accessed from Brooklyn Avenue, but No 7's paired dwelling fronts Priory Road. With this arrangement the property appears somewhat an anomaly at this prominent corner location. The appeal property has other uncommon features, with its private garden at the side and with evidence suggesting that this garden originally formed the front of the dwelling.
6. This private garden is currently bounded by a high wooden fence. As such, although there is a sense of space in the immediate area this is largely derived from the relatively wide road junction that shapes this corner plot. Moreover, while the trees in this existing garden provide a pleasant contrast with the surrounding built form, the positive visual contribution that these green features bring to the street scene is largely limited to their canopies that can be seen above the fence.
7. The proposal would subdivide the plot and the existing side garden would accommodate a new detached dwelling. The new dwelling would be gable fronted and its traditional style and mass would be in keeping with the surrounding built form. Moreover, under this scheme the frontage of No 7 would match the neighbouring dwelling at 2a Priory Road, such that this existing irregular arrangement at this corner would be resolved.
8. Also, the front elevation of the new dwelling and its plot width would be similar to that which exists at neighbouring properties. Furthermore, the gap between existing No 7 and the new dwelling would not be dissimilar to the space between other dwellings in this area. As such the new addition would not appear harmfully cramped and nor would it disrupt the general grain of development in the area.
9. The development would reduce the existing garden at the property. However, some private garden would be retained. While the private garden for the new dwelling would be smaller than is common in the area, this variation would not appear incongruent in this corner plot which already has locally uncharacteristic features.
10. The proposal would remove some trees in the existing garden. However, it is understood these trees do not benefit from statutory protection. Also, the arboriculture assessments indicate that some trees at the property are diseased. In any event, some trees would be retained in this proposal, and these specimens would be visible above the boundary fence such that these natural features would continue to make a positive contribution to the appearance of the street scene. Also, further planting is proposed in addition to these retained trees, and this could be secured by condition.
11. In light of the above, the proposal would not have a harmful effect on the character and appearance of the area. In this regard, the proposal would not be contrary to Policies DM5 and DM9 of the Epping Forest District Local Plan 2011-2033 (Local Plan). These Policies collectively state that proposals must achieve a high quality of design and demonstrate they have been designed to, amongst other matters, retain existing green assets including trees.

12. The proposal would also accord with provisions of the National Planning Policy Framework – December 2023 (the Framework) which seeks well-designed places.

Special Area of Conservation

13. The appeal property is within the zone of influence of the Epping Forest Special Area of Conservation (SAC). The SAC is designated for three Annex I habitats (Northern Atlantic wet heaths, European dry heaths, and Atlantic acidophilous beech forests), as well as one Annex II species (Stag Beetle). 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.
14. 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. Also, Epping Forest is an extensive area of open semi-natural habitat close to London, and popular for walking and exercising dogs, and this recreational pressure has been found to be harmful to the sensitive habitats. This proposal would intensify residential use at the property and therefore, an appropriate assessment is required in this case.
15. The proposal would result in a net increase of residential units, which in turn, would likely increase vehicle use in the area and add to existing recreational pressures in the Forest. The Epping Forest District Local Plan Habitats Regulations Assessment identifies adverse, in combination impacts on the SAC through two pathways which include poor air quality as a result of more people driving through the SAC, and recreational pressures with increased number of people walking through the sensitive habitats.
16. 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, this proposed new residential unit would have a significant adverse effect on the integrity of the SAC, when considered in combination with other projects and plans in the area.
17. The Council, following consultation with Natural England (NE), and in partnership with other effected Councils, has adopted a programme of Strategic Access Management and Monitoring measures to mitigate the impact of new development. The Epping Forest Strategic Access Management and Monitoring (SAMM) Strategy 2021 provides a comprehensive approach to mitigating the effects of future development, which include a site-wide approach to physically manage additional 'wear and tear' on tracks, on-going monitoring of ecological conditions and visitor usage and visitor engagement activities to help raise awareness of the issues facing the Forest. Mitigation also includes the provision of Suitable Alternative Natural Greenspaces (SANG) in the area.
18. The Epping Forest Interim Air Pollution Mitigation Strategy (IAPMS), which sets out measures to monitor and manage harmful effects on the SAC has also been adopted by the Council. This includes sustainable transport

initiatives and site-specific improvement works. The implementation of the strategies outlined above, and mitigation measures identified will be funded by amongst other things, financial contributions from residential development, and this includes from small, windfall sites in the SAC's zone of influence. Therefore, a planning obligation is necessary in this case to make the development acceptable in planning terms.

19. The appellant, through this appeal process, has clarified with the Council the financial contributions necessary to mitigate the harmful effects of this proposal. The contributions are stated as £335.00 per dwelling under the IAPMS; £1852.63 per dwelling under the SAMM Strategy; and £716.00 per dwelling under the District Green Infrastructure Strategy.
20. NE highlights that these mitigation strategies support the Local Plan which was found sound by an Inspector in 2023. NE is content that this proposal is able to rely on the two mitigation strategies because windfall development has been accounted for in the modelling. It is also advised that the above fees are consistent with the SAMM Strategy which mitigates recreational pressure and the IAPMS which seeks to reduce air pollution.
21. A legal agreement in the form of a unilateral undertaking (UU) has been submitted with this appeal. Following consultation with the Council it came to light that the SAMM strategy contribution needed to be revised by £1.00. The UU was duly amended and now specifies the financial contributions outlined above, and which the evidence indicates is deemed to be up to date by the Council and NE. Moreover, the evidence indicates that this planning obligation fairly and reasonably relates in scale and kind to the development proposed.
22. Also, the signed and dated planning obligation references this proposal and is supported by details of each persons' title to the land and evidence of title. I am therefore satisfied that the obligation is directly related to the development proposed, is complete and provides certainty that the mitigation required in this case can be secured. On this basis, the likely adverse effects of this proposal on the protected habitat would be addressed by a UU which satisfies the test for planning obligations, as set out in Regulation 122 of the CIL Regulations 2010 (as amended) and Paragraph 57 of the Framework.
23. I therefore find on this matter, that in light of the mitigation secured in this case, the proposal would not harm the integrity of the Epping Forest Special Area of Conservation. In this regard, the proposal would not conflict with Policy DM2 of the Local Plan. This Policy, states, 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.
24. The proposal would also accord with relevant provisions of the Conservation of Habitats and Species Regulations 2017.

Other Matters

25. It is highlighted that the site is not allocated in the Local Plan. However, windfall sites are identified as a component of housing land supply over the Local Plan period. Also, a five-year housing land supply is not considered a cap, and the Government's objective is to significantly boost the supply of homes.
26. Interested parties have raised concerns about parking pressure and highways safety in the area. The Framework states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.
27. The proposal would create two new vehicular access points onto Priory Road. However, the existing access, near the bend near Brooklyn Avenue, would be closed such that access points onto the highway, in the immediate area, would not significantly increase.
28. The proposed new dwelling would likely generate additional vehicles in the area. However, this increase would be limited given the small scale of the development. Moreover, off-street parking provision would also be available for occupants of the new dwelling, and this would reduce the need for vehicles associated with the dwelling to park on the street. For these reasons the proposal would not harmfully impact on the availability of parking in the street.
29. The carriageway, on Priory Road, near the appeal property, is straight with good visibility. Also, the new access would be sufficiently spaced from the road junction such that vehicles using it would not present a hazard to road users and pedestrians in the area. Accordingly, the proposal would not be harmful to highway safety in this area.
30. The built form would be brought closer to the property boundary than is currently the case. However, the new dwelling would be separated from 1 Priory Road by a garden and the road to the front. These features would provide a good degree of separation between No 1 and the new dwelling, thereby ensuring the existing privacy levels for the occupants of that dwelling are protected, and that the development would not result in an unacceptable loss of light at that existing property.
31. Evidence has been presented that the area is at risk of surface flooding. The proposal would result in a substantial part of the existing garden being developed. However, significant garden space would also be retained which could accommodate suitable drainage arrangements. Indeed, the Council's Flood Risk Officer is content that this matter could be addressed by condition and no compelling evidence has been advanced which would lead me to dispute this conclusion.
32. Attention is drawn to the capacity of local schools. However, this small-scale development would lead to a limited increase of residents in the area, and this matter attracts limited weight for this reason.
33. Concern has been raised about the impact on bee colonies. While noting some loss of garden space, this would be small such that the impact on biodiversity in the area would be limited. Moreover, I find no compelling

evidence that this proposal would be particularly harmful to bee colonies in this area. In any event, the Council is seeking enhancement of biodiversity on the site, and this is a matter which could be secured by condition.

34. There is also concern that allowing this appeal would create a precedent. However, each proposal must be determined on its own individual merits. In any event, development deemed to be acceptable should not justify harmful development proposed elsewhere.
35. Neighbouring residents have highlighted the inconvenience of address changes which may result from this development. Concerns regarding the successful implementation of a clean air zone have also been highlighted. However, these matters are outside the scope of this appeal and have not altered my findings for this reason.

Conditions

36. In addition to the statutory time period, accordance with approved plans is necessary for certainty and to protect the character of the area. Also, the use of materials specified on the approved plans and submitted information and the implementation of the submitted landscaping scheme is necessary in the interest of certainty and to protect the appearance of the area.
37. The appellant has agreed to a pre-commencement condition which ensures suitable drainage arrangements are agreed and provided at the property. This is necessary prior to development to ensure that the system can be accommodated in the site and that the development does not increase surface flooding in the area.
38. It is necessary to implement the submitted tree protection method statement prior to the commencement of development to ensure trees in the site are protected during the construction phase.
39. The Council proposes a condition addressing contamination. However, this is an existing garden, and no clear justification has been advanced for this matter to be addressed prior to the commencement of development.
40. Conditions requiring the movement of excavated waste materials from the site during construction is reasonable to ensure a suitable garden space for future occupants is provided. Controlling construction hours and the provision of wheel washing during construction is also reasonable and necessary to protect the living conditions of existing occupants in this residential area.
41. The installation of electrical vehicle charging points in new dwellings is a matter dealt with by a regime separate to the planning system and therefore this is not necessary. Provision of superfast broadband at properties has support in Local Plan Policies, with the aim to reduce car-led pollution and to improve the wellbeing of residents, and therefore this requirement is reasonable for the new dwelling.
42. The requirement to install obscured glazing in the southern elevation of the new dwelling is necessary to protect the privacy of neighbouring residents.

43. The Local Plan supports water efficiency measures, and incorporating these measures into the new dwelling is reasonable and necessary to ensure the Policy objectives are achieved. There is also Policy support for biodiversity enhancement, and this is a reasonable requirement for this reason.
44. A negatively worded condition for the reinstatement of the kerb on Brooklyn Avenue relates to land outside of the appellants' control. However, this is proposed by the Highways Authority and as such there is a reasonable prospect that this action will be carried out. This is necessary in the interest of parking provision in the area.
45. The Highways Authority also request that Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers, and/or Oyster Cards, for use with the relevant local public transport operator are provided. However, I find no policy requirement for this, and this appears unreasonable for a development of this scale that is located close to local services and public transport options.
46. Planning Practice Guidance advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Permitted development rights for extensions and incidental buildings are subject to conditions and restriction, and in any event, there would be limited scope for such additions given the size of the site. As such I find no clear justification for the removal of these rights in this case. However, alterations to the roof of the new dwelling, particularly on the southern elevation, could adversely impact the privacy currently enjoyed by occupants of No 7 and therefore the removal of these rights are justified and necessary.

Conclusion

47. For the reasons stated above and having regard to the development plan, the Framework and other material considerations, the appeal should be allowed.

A J Sutton

INSPECTOR

Appendix

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Existing Site Location and Block Plan Drawing No 100, Proposed Block Plan Drawing No 101 Revision A, Proposed Landscaping Plan Drawing No 103, Priory Road Elevations Drawing No 200, Brooklyn Avenue Elevations Drawing No 201, Side Elevations Drawing No 202, Proposed Street Scene Drawing No 203 and Proposed Ground + First Floor Plans Drawing No 202.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those specified in the submitted application form, approved plans and the design and access statement, and shall be retained as such thereafter.
- 4) The development, hereby permitted, shall not commence until details of a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved drainage scheme and the approved drainage system shall be provided on the site prior to the first occupation of the dwelling, hereby permitted. The approved drainage system shall then be retained for the lifetime of the development.
- 5) Tree protection shall be implemented prior to the commencement of development activities (including demolition), and the methodology for development (including supervision) shall be undertaken in accordance with the submitted Tree Survey/ Arboricultural Method Statement reports and tree protection shall be installed as shown on Arborterra Ltd drawing number 720 - 03 dated April 2021 and shall be retained as such during the construction of the development hereby permitted.

If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.
- 6) During the construction phase of the development hereby permitted, a wheel washing or other cleaning facilities for vehicles leaving the site during this phase shall be installed and utilised to clean vehicles immediately before leaving the site. Any mud or other material deposited on nearby roads as a result of the development shall be removed. During this construction phase, no deliveries, external running of plant and equipment or demolition and construction works, other than internal works that are not audible outside

the site boundary, shall take place on the site other than between the hours of 08:00 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays.

- 7) Prior to any above groundworks, all material excavated from the below ground works hereby approved shall have been removed from the site.
- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 9) Prior to the first occupation of the new dwelling hereby permitted, the developer shall ensure that the dwelling has been provided with the necessary infrastructure to enable its connection to a superfast broadband network or alternative equivalent service.
- 10) Prior to the first occupation of the new dwelling hereby permitted, the windows in the southern elevation of the new dwelling shall have been fitted with obscure glass with a minimum privacy level 3 obscurity. No part of the first-floor windows on this southern elevation, that are less than 1.7 metres above the internal floor level of the room in which it is installed, shall be capable of being opened. Once installed the obscure glass shall be retained thereafter.
- 11) Prior to the first occupation of the new dwelling hereby permitted, measures shall be incorporated within the new dwelling to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 12) Prior to the first occupation of the new dwelling hereby permitted, a scheme to enhance the ecological value of the site shall be submitted to and agreed in writing by the Local Planning Authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator (BIAC) where appropriate. The approved scheme shall be implemented in full prior to the first occupation of the new dwelling hereby permitted.
- 13) Prior to the first occupation of the new dwelling hereby permitted, the existing vehicular access on Brooklyn Avenue shall be fully reinstated, including footway construction and full height kerbing.
- 14) Hard and soft landscaping shall be implemented as shown on Tententen Proposed Landscaping Plan Drawing No 103; and the accompanying planting schedule. The works shall be carried out prior to the occupation of the new dwelling hereby permitted. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place.

- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no roof additions to the new dwelling hereby permitted shall be constructed.

End.