



Appeal Decision

Site visit made on 20 February 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/J1535/W/23/3319655

48 Russell Road, Buckhurst Hill IG9 5QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr David Saunders against the decision of Epping Forest District Council.
 - The application Ref is EPF/0108/20.
 - The development proposed is demolition of existing bungalow and erection of 5 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Epping Forest District Local Plan 2011-2033 Part One (the LP) was adopted following the Council's decision on the planning application subject to the appeal. It replaced the policies of the Epping Forest District Local Plan – Adopted January 1998, and the Local Plan Alterations – Adopted July 2006, that are referenced in the Council's decision notice. These policies are no longer part of the development plan and hold no weight in determining this appeal. The main parties acknowledge in their submitted evidence the changes to the statutory development plan. As such, I am satisfied that no party would be unfairly prejudiced by this approach.
3. A revision to the National Planning Policy Framework (the Framework) was published on 19 December 2023. Other than changes to paragraph numbering, the revised Framework includes no material changes relevant to the substance of the appeal.

Main Issue

4. The main issue is whether the proposed development would deliver suitable living conditions for the future occupiers of the development by way of internal space provision for Flat Nos 1, 2 and 4, and external amenity space provision.

Reasons

5. Policy DM10 of the LP requires all new housing development to meet or exceed the minimum internal space standards set out in the latest Nationally Described Space Standard (NDSS). The figures set out in the NDSS are based on the number of bedrooms, bedspaces and storeys in each unit.
6. The proposed Flat Nos 1 and 2 are spread across the ground and lower ground floors of the building. The bedrooms and bathrooms are at ground floor level,

- whilst the kitchen/dining/living areas are at lower ground floor level accessed by a staircase. Most of the lower ground floor area is double height.
7. Flat Nos 1 and 2 are both 2-bedroom 3-person (2B/3P) units. The figures set out in the appellant's statement of case meet the minimum NDSS requirement for 2B/3P 1-storey dwellings. The appellant considers that the Council has mis-measured the plans and has not taken account of areas of the lower ground floor kitchen that lie beneath an overhang from the first floor. However, the appellant does not consider Flat Nos 1 and 2 to be 2-storey dwellings because there is no floor above the double height living area.
 8. The NDSS states that the standard Gross Internal Areas (GIA) are organised by storey height to take account of the extra circulation space needed for stairs to upper floors. In this sense, the units are split over two levels and include staircases of a comparable scale to what might be found in a more conventional 2-storey dwelling. Moreover, part of the floorspace on which the appellant's GIA calculation is based lies beneath that of the upper floor. As such, to my mind, Flat Nos 1 and 2 cannot be considered single-storey units.
 9. Both units fall significantly short of the NDSS requirement for 2B/3P 2-storey dwellings. Accordingly, the proposal would conflict with Policy DM10 of the LP in this regard.
 10. The appellant sets out that the internal layouts have been architect designed to focus on well-proportioned room shapes and sizes and to limit circulation spaces to make efficient and well-considered layouts. The appellant argues that the NDSS should be used as a guide, but not a hard and fast rule in determining proposals. However, Policy DM10 and its supporting text set a strict expectation for proposals to at least meet the minimum NDSS requirement. In light of this, and the significant shortfall against the requirement for 2-storey units identified above, I am not persuaded that the proposal would provide sufficient internal space for Flat Nos 1 and 2.
 11. Flat No 4 is a 2B/3P 1-storey unit located at first floor. The appellant accepts, based on the plans on which the Council made its decision, that Flat No 4 would not meet the minimum NDSS requirement. An amended first floor plan, which was not before the Council when determining the planning application, has been provided with the appeal which seeks to address this issue.
 12. The amended plan proposes only a very minor change to the internal layout of the building and would not require any external changes to the proposed scheme. Having regard to the principles established in *Holborn Studios Ltd*¹, the plans have not changed so substantially to amount to a fundamental change. In procedural terms, I am satisfied that my acceptance of the amended plan would not prejudice interested parties by depriving those who should have been consulted of the opportunity of such consultation. Accordingly, I have determined the appeal against the amended first floor plan.
 13. The amended plan illustrates a slight revision to the position of the partition wall between Flat Nos 3 and 4 to increase the floorspace of Flat No 4, and thereby meet the minimum NDSS requirement. Although this would slightly reduce the floorspace of Flat No 3, it would nevertheless remain NDSS

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

compliant. I am therefore satisfied that Flat No 4 would be provided with sufficient internal space.

14. The Council's decision notice and officer report refer to policies that are now revoked in respect of the provision of external amenity space. Within the current policy context, Policy DM10 of the LP requires ground floor family housing to provide access to private garden/amenity space, and family housing on upper floors to provide access to a balcony and/or terrace of a usable size, or to shared communal amenity space and children's play space.
15. All units would be provided with private amenity space in the form of rear gardens for Flat Nos 1 and 2, and balconies for the upper floor units. An area of communal external amenity space would be provided to the rear/side of the building, adjacent to the refuse, recycling and cycle storage areas.
16. All balconies would be of a size and shape appropriate to the units they would serve. Although the site lies on sloping ground, the submitted details indicate that the use of steps and retaining walls would provide reasonably level external garden areas. Whilst the communal amenity space would not be substantial and would only be accessible from the front of the building, it would nevertheless provide a usable supplement to the private amenity space of each unit. Accordingly, I find the provision of private and communal amenity space to be acceptable.
17. The scheme approved through planning permission Ref EPF/0826/18 appears externally similar to the scheme before me. Whilst the permission appears to remain extant, the approved scheme is for fewer units than the scheme before me and its internal layout is significantly different. Given the main issues in the current appeal, the approved scheme is of limited weight in my decision.
18. The scheme considered through planning application Ref EPF/2483/18 and subsequently dismissed on appeal appears similar both internally and externally to the scheme before me. However, the Council's reasons for refusal and the subsequent issues considered by my colleague in determining the appeal are different to those in the current case. In any event, I am required to determine the current appeal on its own merits and within the current policy context, which has changed since the previous decisions were taken. For these reasons, any conclusions reached by the Council or the Inspector in relation to the previous case do not alter my findings above.
19. For the reasons given above, although I find no harm in respect of the provision of external amenity space or the provision of internal space for Flat No 4, the proposal would provide insufficient internal space for Flat Nos 1 and 2, and accordingly would fail to deliver suitable living conditions for future occupiers. It would therefore conflict with Policies DM9 and DM10 of the LP which, in respect of this issue, seek for all new development to achieve a high quality of design, to integrate occupier comfort and wellbeing within the design and layout, and to meet or exceed the minimum NDSS requirements.

Planning balance

20. The appellant's evidence indicates that the Council's record of housing delivery falls significantly below 75% of the housing requirement over the previous three years. In such cases, paragraph 11 d) ii. of the Framework is engaged, which directs that planning permission should be granted unless 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.

21. The proposal is in a suitable and sustainable location for housing and would make efficient use of previously developed land. It would provide a net increase of 4 dwellings that would appeal to a range of prospective occupiers and could be delivered reasonably quickly to contribute to the Council's stock of housing. It would also deliver economic benefits by supporting jobs and local businesses during the construction phase, and generating additional local spending once occupied. These considerations weigh in favour of the proposal, although the benefits are tempered by the limited number of dwellings proposed.
22. Nevertheless, my findings on the main issue above demonstrate the proposal would provide unsuitable living conditions for future occupiers. These considerations carry significant weight against the proposal. As such, the adverse impacts of granting the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Other Matters

23. A Habitat Regulations Assessment (HRA) has been submitted with the appeal to assess the effects of the proposal on the integrity of the Epping Forest Special Area of Conservation (the SAC). A completed unilateral undertaking has been provided securing contributions that seek to mitigate the effects on the integrity of the SAC in terms of air pollution and recreational pressure. Had I been minded to allow the appeal, it would have been necessary to consider this matter within an appropriate assessment. However, because I am dismissing the appeal for other reasons, I have not done so.

Conclusion

24. The proposed development would fail to accord with the development plan as a whole. There are no other considerations, including the provisions of the Framework, to lead me to a decision other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR