

Appeal Decisions

Site visit made on 17 July 2024

By David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 August 2024

Appeal A Ref: APP/J1535/W/23/3332743

36-44 Osprey Court, Osprey Road, Waltham Abbey EN9 3RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended).
 - The appeal is made by Mr Martin Nash of Nash Residential against the decision of Epping Forest District Council.
 - The application Ref EPF/1254/23, dated 25 May 2023, was refused by notice dated 24 August 2023.
 - The development proposed is new dwellinghouses on detached blocks of flats, the application proposes the creation of one additional storey comprising 3x new dwellinghouses (flats), immediately above the existing top most residential storey, utilising the existing roof space.
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Appeal B Ref: APP/J1535/W/23/3332744

15-35 Osprey Court, Osprey Road, Waltham Abbey EN9 3RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended).
 - The appeal is made by Mr Martin Nash of Nash Residential against the decision of Epping Forest District Council.
 - The application EPF/1253/23, dated 25 May 2023, was refused by notice dated 24 August 2023.
 - The development proposed is new dwellinghouses on detached blocks of flats, the application proposes the creation of one additional storey comprising 7 x new dwellinghouses (flats), immediately above the existing top most residential property.
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Decisions

1. The appeals are dismissed.

Preliminary Matters

2. As set out above, there are two appeals seeking prior approval on separate buildings at the same appeal location. The proposals are promoted by the same appellant and rely on a common car parking solution within the wider site. Although I have considered each proposal on its individual merits where the evidence allows, to avoid duplication I have dealt with the schemes together, except where otherwise indicated.

3. Under Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for development consisting of works for the construction of up to two additional storey of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, subject to limitations and conditions.
4. Where an application is made for a determination as to whether prior approval is required for development, paragraph B(3) states a local planning authority (LPA) may refuse an application where, amongst other things, the development does not comply with any conditions, limitations or restrictions specified in this Part of the GDPO as being applicable to the development in question.
5. The provisions of Schedule 2, Part 20, Class A of the GPDO do not require regard to be had to the development plan. I have had regard to the policies of the development plan, the National Planning Policy Framework (NPPF) and any related guidance only in so far as they are relevant to the assessment of the main issues in these appeals.

Main Issues

6. Paragraph A.2(1) of the GDPO requires the developer to apply to the LPA for prior approval as to, amongst other things, the external appearance of the building and transport and highways impacts.
7. The main issues for both appeals are therefore:
 - (i) Whether the proposed external appearance of the buildings would result in significant harm to the character and appearance of the surrounding area; and
 - (ii) Whether the transport and highways impacts would be acceptable.

Reasons

Character and Appearance

8. The appeal site is part of a wider residential development constructed in the 1990s, predominantly comprising of 2 storey housing. There are some 3 storey buildings distributed throughout the development. There is, however, a notable cluster of 3 storey buildings on the northern edge of the housing estate at Osprey Court, including the appeal buildings, and directly adjacent to the west at Farthingale Court.
9. Both appeal proposals would appreciably increase the bulk and massing of the host buildings by re-profiling the roofscape to create the proposed fourth floors. This would be particularly the case for the larger building at Nos.15-35 Osprey Court (the Appeal B scheme). However, neither scheme would significantly increase the height of the buildings. As such the proposed development would not appear inharmoniously taller in the context of the residual 3 storey buildings at Osprey Court and Farthingale Court. Consequently, neither appeal scheme would appear overly dominant or incompatible in the locality.
10. The existing layout of development means the schemes would only become visible at the entrance to Osprey Court from within Osprey Road. As such any wider visual impact would be very limited. The buildings would be screened

from the north by existing trees. Both appeal proposals would readily assimilate with their host buildings in terms of design, including the proposed palette of materials. They would not appear as incongruous additions.

11. There is significant local concern that the proposed roofscape would not be characteristic of the immediate locality. However, I find the proposed additional storey and amended roofscape would efficiently provide the proposed volume, constraining the degree of upward extension required to accommodate the proposed flats. The various dormer openings would create interest and variety and would help to break up the overall mass and bulk of the roofscape further limiting its visual impact. There would be no significant harm in this regard.
12. In conclusion, the appeal schemes would not harm the character or appearance of the surrounding area. They would satisfy condition A.2(1)(e) of the GPDO in terms of an acceptable external appearance. There would be no conflict with Policy DM9 of the Epping Forest District Local Plan adopted in 2023 (the EFDLP) which require, amongst other things, high quality design that relates positively to their context.

Parking

13. In terms of the GDPO, the provision of parking is not specifically one of the conditions identified at paragraph A.2 but the “transport and highways impacts of the development” are identified at paragraph A.2(1)(a). The likely parking demand generated by the proposals and the extent to which highways impacts may arise due to the quantity of parking provision proposed can reasonably fall within the scope of paragraph A.2(1)(a). As part of the appeal the appellant has submitted a ‘Parking Analysis’ document¹.
14. Whilst there are two appeal schemes at Osprey Court, the assessment of parking demand has principally been undertaken on a cumulative basis for the total 10 flats proposed, all of which would be equivalent to 1 bedroom properties. There is little dispute that when the planning applications were assessed and determined by the LPA the overall parking demand had been underestimated at 7 spaces. Notably, latest data from the 2021 Census data for the relevant Middle Layer Super Output Area (MLSOA) for the appeal location can now be used.
15. The 2021 Census data for MLSOA reveals that for 1 bedroom properties 24.2% of households do not have a car or van, 53.5% of households have 1 car or van and 22.1 % of households have 2 or more cars and/or vans. On this split, the appellant calculates an additional parking demand for 9 vehicles, in large part assigning 3 of the flats as having no car or van. There is local concern about this approach and that a more precautionary parking demand for 11 vehicles should be planned for when applying the Census data.
16. I have observed the walking distances and quality of routes to bus stops on Shernbroke Road and to local facilities in this part of Waltham Abbey. These are not particularly long journeys on foot despite sometimes involving slightly more circuitous routes than would be desirable. That said, the quality of bus stop provision on Shernbroke Road is limited which may deter some prospective residents from using this form of transport. There is also very little before me on the frequency of bus services from these stops. The nearest

¹ Osprey Court Parking Analysis, Mode Transport Planning, 24 October 2023 document J326557 TN Osprey Rev F

railway station is some distance. Whilst the appellant submits it is within reasonable cycling distance, there are scant details before me of any existing communal cycle parking provision at Osprey Court. No cycle parking is proposed in the plans before me, including to what would be fourth floor flats only accessible by stairwells.

17. Overall, I consider the practicality and desirability of living in the proposed flats without a vehicle would be dented by the quality of local bus infrastructure and the absence of cycle parking at a location distant from the nearest train station. I have therefore determined that car dependency at the appeal location is likely to be strong and as such a more precautionary parking demand of 10 vehicles² would be a reasonable basis. Whilst now of some age, this would align with the Essex County Council Parking Standards Design and Good Practice (2009) of providing an average of 1 parking space per 1 bedroom flat. In addition to this resident parking demand, there will also be recurring demand for visitor parking associated with the 10 flats proposed. The LPA calculate the visitor demand at 2 vehicle spaces. This adds to my view that a minimum of 10 parking spaces should be considered.
18. Whilst few details were provided as part of the proposed plans, the appellant submits that an existing area of Grasscrete adjacent to the parking court behind Nos. 36-44 Osprey Court could accommodate 6 car parking spaces. This Grasscrete area is now largely subsumed within the amenity grassland between Osprey Court and the small brook to the north but it is discernible and lower kerbs would allow access from the adjacent parking area. The Grasscrete area is laid out in an awkward fanned shape. It is not an area that is coherently laid out to provide for efficient vehicle parking.
19. There are limited details of how this area could provide for 6 parking spaces. A high level block plan at 1:500 scale was only provided as part of the appellant's final comments. It contains no measurements of the parking spaces including circulation space to show that the proposed layout would be feasible. This Plan was only received after local representations to the appeal notification and LPA statement of case, as such I have given it only very limited weight. Nonetheless, on the limited evidence before me I cannot conclude that 6 vehicles could be adequately accommodated on this existing Grasscrete area, including any space needed for electric vehicle charging infrastructure. Whilst the appellant considers displaced parking provision from the site would be only 3 vehicles, based on the above conclusion at paragraph 17, I consider it would be at least 4 vehicles. Given the awkward layout of the Grasscrete area, I am of a view that the displaced demand parking could well be higher than this. This does not include the additional parking demand from visitors to the appeal proposals.
20. Whilst there is some evidence of limited capacity within the existing parking provision at Osprey Court³, the appellant does not seek to rely on this and submits that "...Osprey Court is at parking capacity"⁴. Consequently, displaced parking provision would be required to find on-street spaces. The appellant has undertaken an analysis of on-street car parking capacity based on surveys

² In essence rounding down the number of households with no car or van to 2 households and increasing the number of households with 1 car or van to 6 households.

³ Appendix A, Mode Transport Planning Parking Analysis October 2023 – 6 spaces at Osprey Court (areas A and B) on both survey nights.

⁴ Email of 7 May 2024 Additional Final Comments

applying the Lambeth methodology. A reasonably wide survey area has been assessed (200 metre walking distance from the appeal sites), extending along Osprey Road, into parts of Farthingale Lane and Harrier Way. The results of the survey work assert moderate parking stress in Osprey Road and Harrier Way and less stressed parking conditions in Farthingale Lane. Overall, the appellant's evidence indicates some 39 on-street parking spaces were unoccupied on the survey dates, such that across a wider area there is only moderate parking stress at an average of circa 41% over the two survey days rising to around 47% on the appellant's on-street demand of 3 spaces.

21. From the appellant's survey work, most of the unoccupied spaces are on Farthingale Lane followed by Osprey Road. The identification of a 200 metres walking distance is understandable in theory but, as many representations have pointed out, there would be a strong desire to park as close as possible to the appeal site. This may be for the person's own security and on occasion for convenience (for example carrying shopping or bulky items). It would also involve considerations of the security of the vehicle itself (including the potential for unobserved damage). On street parking at Farthingale Lane and on Harrier Way is some distance from Osprey Court, well beyond immediate visibility from within Osprey Court and Osprey Road. In my assessment, neither of these locations would be desirable for residents of the proposed flats for on-street parking. There would be a strong aspiration to park on Osprey Road and a preference to park as close as possible towards the Osprey Court end of this highway.
22. Looking at the mapping of constraints, unrestricted on-street parking on Osprey Road is predominantly towards the Farthingale Lane end rather than closer to Osprey Court. The appellant's analysis appears to include 11.2 metres of unrestricted on-street parking at the end of Osprey Road which is identified within private parking court Area A and so I have not included any capacity within this area. From my observations, given the length of dropped kerb to access off-street driveways it is difficult to calculate where the appellant's 27 on-street parking spaces are in Osprey Road. The general highway layout in Osprey Road is narrow, gently curving in places and providing frequent access to off-street driveways. It is not a layout conducive to modern on-street parking without some form of compromise. This includes parking on or close to a bend, driveway access or junction, restricting the visibility of other highway users, or unacceptably parking on the pavement to ensure sufficient width for other vehicles to pass.
23. As local representations have pointed out, and numerous photographs from various residents at different times of day/night illustrate, on-street parking in Osprey Road appears to congregate towards the Osprey Court end. This includes extensive parking on the pavements on both sides of the narrow carriageway. Whilst my site visit at 08.45 on a weekday morning can only be a snapshot, vans and cars were parked on both sides of the highway in Osprey Road on the approach to the entrance to Osprey Court. The presence of vans appears to corroborate those submissions that such vehicles are not allowed to use the parking courts at Osprey Court. Accordingly, pedestrians are forced into the highway, including children, disabled persons and anyone with a pram/buggy. This occurs at a point close to where vehicles are manoeuvring out of Osprey Court and where visibility would be compromised by the on-street parking on both sides of the road. The situation is wholly unsatisfactory

and likely to be significantly exacerbated by displaced parking from the appeal proposals.

24. Furthermore, Osprey Road is a cul-de-sac with access into Osprey Court close to its terminus. Osprey Court is only accessible by vehicles via Osprey Road. As such, any vehicle required to go to Osprey Court would have to negotiate the constraints generated by on-street parking identified above. I am concerned that even the relatively modest amount of displaced parking identified has the potential to significantly constrain the sole vehicular access to Osprey Court and parts of Osprey Road, including delivery vehicles, other service vehicles and in a worse case scenario emergency vehicles.
25. Overall, I consider that the availability of appropriate on-street parking has been over-estimated and the on-street parking demand arising from the appeal proposals underestimated. As such, I am not persuaded, having regard to the highway circumstances that I have observed, combined with the strong proclivity to park as close as possible to where you live, that displaced parking from the appeal proposals, including visitor parking, could be safely accommodated in those parts of the highway network closest to the appeal sites. The additional on-street parking demand would have an unacceptable impact on highway safety and the performance of the highway network in Osprey Road. The existing baseline situation is already poor, which the appeal proposals would exacerbate, to a point which could be arguably severe.
26. I note the LPA did not consult the Local Highway Authority (LHA) in terms envisaged at Paragraph B(5)(b) of the GPDO. As such there are no LHA comments regarding the appeal proposals before me. Nonetheless, that does not preclude consideration of transport and highways impacts as per paragraph A.2(1)(a) based on the evidence available, some of which has evolved since the LPA made its decision, together with site observations.
27. I have dealt with the appeals together on the issue of parking because that is largely how the evidence has been presented, including the car parking capacity analysis. The parking demands of each scheme have been disaggregated in places such that it may be arguable that the highways impact of one scheme rather than both could be acceptable but there is nothing before me to say one scheme is to be preferred over another and to issue separate decisions on that basis. It is clear on the issue of highways impacts that the appellant wanted both schemes to be considered primarily together and to be considered cumulatively acceptable on that basis. For the reasons given above I cannot share that conclusion.
28. I therefore conclude that the appeal proposals would result in unacceptable highways impacts such that the proposals would not meet the condition at paragraph A.2(1)(a) of the GPDO. The proposals would fail to accord with Policy T1 of the EFDLP which requires, amongst other things, that development provides appropriate parking, has regard to adopted parking standards and mitigates any impact on on-street parking provision within the locality. The proposal would also invoke paragraph 115 of the NPPF which states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

29. The appeal sites are within 3 kilometres of the Epping Forest Special Area of Conservation (SAC). Accordingly, the appeal proposals are likely to result in harm to the qualifying features of this protected habitat with regards to recreational pressure and air quality. These harms could be mitigated by securing financial contributions towards established mechanisms which are accepted to be effective.
30. Article 3(1) of the GPDO grants planning permission for Schedule 2 Part 20 Class A development subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by the GPDO in these cases, that development which is (a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the site, must not begin until the developer has received written notification of the approval of the LPA under Regulation 77.
31. Under Regulation 78(3)(a), a Regulation 75 approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provisions of the GPDO. As such, Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat and the proposed development could not be lawfully begun until the process set out in Regulation 77 has been completed. The LPA has confirmed that such an approach would be acceptable and no longer sought to pursue its related reason for refusal as part of the appeal process. Accordingly, I conclude that harm to the qualifying features of the SAC would be avoided on this basis. The proposals would therefore accord with part B of Policy DM2 and Policy DM22 of the EFDLP.

Conclusion

32. The proposals would be acceptable in terms of the local character and appearance. Furthermore, potential harms arising from the appeal proposals on the Epping Forest SAC, could be avoided through the provisions of the Habitats Regulations as they relate to the GPDO. However, I have found that the appeal proposals would generate a level of on-street parking demand that would result in significant harm. The receiving highway network on Osprey Road closest to the appeal location would be the persistent focus of those residents and visitors whose parking would not be accommodated at Osprey Court. This local highway cannot adequately or safely accommodate the parking pressure likely to arise from both schemes. As such, and notwithstanding the lack of harm in relation to the other issues in these appeals, the prior approvals should be refused. I have had regard to all other matters raised but nothing leads me to conclude other than that both appeals should be dismissed for the reasons given above.

David Spencer

Inspector.