



Appeal Decision

Site visit made on 1 October 2024

by A Caines BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal Ref: APP/J1535/W/24/3337933

16 Eleven Acre Rise, Loughton IG10 1AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (the Act) for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Declan O'Driscoll against the decision of Epping Forest District Council.
 - The application Ref is EPF/1033/23.
 - The application sought planning permission for "Demolish existing house. Replace with 2 detached houses" without complying with a condition attached to planning permission Ref EPF/1508/18, dated 15 July 2021.
 - The condition in dispute is No 2 which states that:
(2) The development hereby permitted will be completed and retained strictly in accordance with the approved drawings numbers: Site location plan; Block plan; 1; 2; 3 and Design and Access Statement.
 - The reasons given for the condition is:
(2) To ensure the proposal is built in accordance with the approved drawings.
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Decision

1. The appeal is allowed and planning permission is granted to demolish existing house; replace with 2 detached houses at 16 Eleven Acre Rise, Loughton IG10 1AN in accordance with the application Ref EPF1033/23 without compliance with condition No 2 previously imposed on the planning permission Ref EPF/1508/18 dated 15 July 2021, but subject to the conditions in the schedule to this decision.

Applications for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate decision.

Background and Procedural Matters

3. Planning permission was granted in July 2021 to replace the existing house with two detached houses (referred to on the drawings as 'House A' and 'House B'). Subsequently, both houses were constructed, but not entirely in accordance with the approved plans. The current application seeks to amend condition 2 to reference revised plans reflecting the various changes to the houses. The appeal therefore relates to a proposal where the terms of the condition of the planning permission have been breached by works or development already carried out before the application was made, which is more appropriately addressed under S73A of the Act.

4. The changes common to both houses include the use of brick instead of render, addition of stone detailing, and adjustments to fenestration. Additional changes to 'House A' include a porch, step-free access, swapping out vertical railings around the top floor balcony for glass panels, and an increase in its overall height. However, the Council's objection lies just with the increased height and change to the balcony balustrades at 'House A' only. I agree that the uncontested changes are acceptable. My consideration of the appeal is therefore confined to the matters under dispute.
5. I am also dealing with another appeal¹ at the site. Each appeal has been considered on its own merits and forms the subject of a separate decision.

Main Issues

6. The main issues are the effect of varying condition 2 on the character and appearance of the area, with particular regard to the height of 'House A'; and the effect on privacy at 17 Eleven Acre Rise (No 17) as a result of changes to the balcony balustrades.

Reasons

7. Eleven Acre Rise is a residential cul-de-sac lined by individually designed, detached houses which are set back from the road in large plots. There is a general pattern of houses stepping up the hill, but there is a wide variation in their size, design, and spacing.
8. The Council considers that the increase in the height of 'House A' is excessive and no longer respects the topography of the site and neighbouring properties. I note that some questions have been raised over the precise measurements involved. However, even if the difference is more than is being claimed by the appellant, the ridge line of 'House A' remains comfortably below the level of 'House B'. While the step up from No 17 is greater, this relationship is commensurate with many examples in the street and does not result in the development appearing unduly dominant or intrusive. The height and overall size of the house is in keeping with its surroundings, and the established character of houses stepping up the street is suitably respected. Therefore, no material harm has been caused to the street scene.
9. The balcony at the rear of 'House A' is now enclosed by a glass balustrade instead of metal railings. Despite its elevated position, the glass balustrade is not visually prominent due to its modest size, translucent appearance, and location at the rear. As such, it is not visually harmful.
10. In addition, there was no requirement under the previous planning permission for the balustrades to be of solid construction for privacy reasons, or for any additional privacy screens to be erected. Views would still have been possible through and over the low vertical railings, and so, there is no material difference to the glass balustrade in this regard. In any event, views from the balcony are mainly of the bottom part of the rear garden of No 17. I am also mindful that there are a number of windows which have similar or closer views of this part of the garden. As this relationship was previously found acceptable in respect of its effect on living conditions, I reach the same conclusion here. Consequently, there would be no material increase in overlooking of No 17.

¹ APP/J1535/W/24/3337934

11. I therefore find that the development does not detract from the character and appearance of the area, or cause material harm to the living conditions of the occupiers at 17 Eleven Acre Rise in relation to privacy. Accordingly, I find no conflict with Policy DM9 of the Epping Forest District Local Plan (2023) which requires new development to have regard to building heights, scale and massing; and avoid overlooking and loss of privacy to neighbouring occupiers. It also accords with the National Planning Policy Framework in respect of achieving well-designed places and a high standard of amenity.

Other Matters

12. The Epping Forest Special Area for Conservation (SAC) is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017. The Council's third reason for refusal points to the lack of a Section 106 agreement to secure an appropriate financial contribution to mitigate the air pollution and recreational impacts of the development on the SAC, in line with its Strategic Mitigation Strategy. A new S106 agreement was submitted with the appeal, but it is not signed. However, it has subsequently been confirmed by the Council that the requisite sum was paid under the previous planning permission. As the appeal scheme does not propose any uplift in the overall house numbers across the site, it would not lead to a material increase in air pollution or recreational pressure on the SAC. As such, there would be no probability or risk that the proposal would have significant effects on the interest features of the designated site, alone or in combination with other development. Thus, there is no requirement for me to carry out an appropriate assessment.
13. Concerns have been expressed over additional overlooking of No 17 from the front windows and outdoor patio at 'House A', and I have had regard to the photographs provided. However, this did not form part of the Council's refusal. Given the previous planning permission, the distance from the boundary, and oblique angles of view, I am satisfied that the relationship is acceptable. Furthermore, I do not consider that the increase in height of 'House A' results in the development being oppressive or overbearing on No 17.
14. Comments have also been made in relation to the retrospective nature of the development and alleged conduct of planning officers and Committee members, but these are not matters for me to address and do not influence my assessment of the planning merits of the scheme.

Conditions

15. In light of my findings above, I consider that it is not necessary to comply with condition 2 of the 2021 planning permission. I have therefore replaced it with a new condition to specify the amended drawings as this provides certainty.
16. The Planning Practice Guidance advises that all relevant conditions from the earlier permission which continue to have effect should be restated on the new decision notice. I shall therefore reimpose all those that I consider remain relevant with some minor changes to the wording where necessary. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. However, as the development has been implemented a time limit condition and any relating to the construction period or approval of materials are not necessary. Electric vehicle charging points are now covered by other legislation so this does not need repeating.

Conclusion

17. For the reasons given, and having had regard to all other matters raised, the development does not materially harm the character and appearance of the area or the living conditions of the occupiers of 17 Eleven Acre Rise. The proposal therefore complies with the development plan in those respects and the appeal is therefore allowed.

A Caines

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawings: Site Location Plan; Site Plan Rev A; House A Plans & Elevations Rev B; House B Plans & Elevations Rev C.
- 2) The surfacing of the driveway and parking areas shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the site.
- 3) The refuse storage facility shown on the approved plans shall be completed prior to the first occupation of the development and shall thereafter be retained free of obstruction and used for the storage of refuse and recycling only and for no other purpose unless otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to first occupation, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 5) Prior to first occupation, measures to improve the ecological value of the site shall be implemented and thereafter retained in accordance with details that have been submitted to and agreed in writing by the Local Planning Authority.
- 6) There shall be no discharge of surface water onto the highway.
- 7) Gates shall not be erected on the vehicular access to the site without the prior written approval of the Local Planning Authority.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (or any other Order revoking, further amending or re-enacting that Order) no extensions or enlargements to the roofs of the houses generally permitted by virtue of Classes A and B of Part 1 of Schedule 2 to the Order shall be undertaken without the prior written permission of the Local Planning Authority.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (or any other Order revoking, further amending or re-enacting that Order) no window or other opening other than shown on the approved plans shall be created on any flank wall without the prior written permission of the Local Planning Authority.

- 10) Prior to first occupation, a strategy to facilitate super-fast broadband for future occupants of the site shall have been submitted to and approved in writing by the Local Planning Authority. The strategy shall ensure that either a landline or ducting to facilitate the provision of a broadband service to that dwelling from a site-wide network is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway, unless alternative provision has otherwise been agreed in writing by the Local Planning Authority. The development of the site shall be carried out in accordance with the approved strategy.

****End of conditions****