



Appeal Decision

Site visit made on 14 October 2024

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/J1535/W/24/3338718

Duke of Wellington Public House, 36 High Street, Epping, Essex CM16 4AE

- 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 Shazad Mahmood of APC Capital Ltd against the decision of Epping Forest District Council.
 - The application Ref is EPF/0159/23.
 - The development proposed is five 2-bedroom apartments, car and cycle parking, landscaping and associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for five 2-bedroom apartments, car and cycle parking, landscaping and associated works at Duke of Wellington Public House, 36 High Street, Epping, Essex CM16 4AE in accordance with the terms of the application, Ref EPF/0159/23, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development above is taken from the appeal form, as the proposal has changed from that stated on the application form. This was agreed with the Council and is the description used on the decision notice.
3. The appellant has submitted an amended ground floor plan, 099_100 P3, showing revised car parking and a relocated turntable. As the Council has had the opportunity to comment on the plan, and due to the relatively minor changes which do not significantly affect the nature of the development, no injustice would arise if I were to consider the amended plan. I have therefore taken the plan into account in my decision.

Background and Main Issues

4. There are four reasons for refusal on the decision notice, however the Council has confirmed that they no longer intend to pursue the first three reasons for refusal relating to highway safety. Taking account of the updated visibility splays on Hemnall Street, the required visibility for the speed of the road would be achieved for vehicles, and appropriate pedestrian visibility would be provided. In addition, there is no substantiated evidence which would prompt me to disagree with the Council's conclusions that the amount of car parking provision would be acceptable, given that the site is well located to public transport links and services and facilities.
5. Furthermore, the proposed parking layout would allow for safe manoeuvring and can be secured through an appropriately worded planning condition. There

is no clear reason why future occupiers would not use the off-street parking, reducing demand for on-street parking. The proposal would not therefore adversely affect highway safety and would accord with Policy T1 of the Epping Forest District Local Plan 2011-2033 Part One (2023) (EFDLP).

6. The Council has also indicated that subject to the satisfactory completion of a Unilateral Undertaking (UU), the fourth reason for refusal regarding a protected site would fall away. A signed and dated UU has been submitted which I will consider later in my decision.
7. Notwithstanding that the Council have withdrawn their reasons for refusal, interested parties have some objections to the proposal. On this basis, the main issues are the effect of the proposal on the:
 - character and appearance of the area;
 - living conditions of the existing occupiers of 74 Hemnall Street with regard to privacy and daylight/sunlight, and the patrons of the public house, with regard to privacy; and
 - living conditions of the future occupiers, with regard to outdoor space.

Reasons

Character and appearance

8. The appeal site occupies a corner plot within a generally residential area, which has a mix of properties of varying design and appearance. The neighbouring property at No 74 is a bungalow, and the surrounding area features modern two and three storey apartments, two storey semi-detached dwellings and two storey flats.
9. While the proposal would be taller than No 74 and of a different built form and massing to semi-detached properties along Hemnall Street, it would be of a similar scale to the flats on the opposite side of Half Moon Lane. The proposed development would add to the overall variety in the street scene. It would introduce a different but complementary palate of materials, which would ensure the scheme integrates with its local context. Moreover, I have been presented with no firm evidence that apartments are not required or that there is demand for three bed semi-detached or small terraced dwellings, which are said to be better suited to the appeal site.
10. Owing to the generous plot size and the proposed spacing and layout, the proposed building would be proportionate to the size of the plot and would not represent overdevelopment of the site. While the open character of the currently vacant site would change, the proposed development has been designed in such a way that both aspects facing the street would provide visual interest in this prominent corner location. Overall, the proposal would relate positively to the character and appearance of the area and would accord with EFDLP Policy DM9 as a consequence.

Living conditions – existing occupiers and public house patrons

11. The orientation of the proposed building, separation distances, window positions and proposed obscure glazing would allow good sunlight and daylight to adjacent buildings and land and would avoid overlooking and loss of privacy. No unacceptable harm to the living conditions of the occupiers of No

74 would arise and the proposed development would not result in the beer garden of the adjacent public house being overlooked to the extent that this would be an unattractive space for the patrons. As such, the proposal has taken account of privacy and amenity of neighbours and would accord with EFDLP Policy DM9.

Living conditions – future occupiers

12. As required by EFDLP Policy DM10, each unit would have private amenity space in the form of garden space for the ground floor units and balcony space for those on the upper floors. There would also be a landscaped communal amenity area to the rear for all residents. There is no clear reason to find that this level of provision is unacceptable, and the proposal would therefore accord with EFDLP Policy DM10.

Protected Site

13. The appeal site lies within the zone of influence of the Epping Forest Special Area of Conservation (SAC) (the protected site) which is protected pursuant to the Conservation of Habitats and Species Regulations 2017 (the Regulations) in recognition of the significance of its ecological features. Qualifying features include its value with regard to beech trees and wet and dry heaths, and its population of stag beetle.
14. The protected site has been identified as being vulnerable to harm from recreational pressure and atmospheric pollution arising from new development. Additional residents from the proposal would therefore be likely to have a significant effect on the protected site.
15. As the competent authority I am required to carry out an appropriate assessment in relation to the effect of granting permission on the integrity of the protected site. Mitigation has been developed to avoid such adverse effects, funded through proportionate developer contributions. The Epping Forest Strategic Access Management and Monitoring Strategy (SAMM) and the Epping Forest Air Pollution Mitigation Strategy (APMS) set out a package of measures to avoid or mitigate the effects of development on the integrity of the SAC. Measures include the introduction of a clean air zone, raising awareness of air pollution and access management strategies.
16. Pursuant to the SAMM and APMS, arrangements are in place for financial contributions to be sought in connection with new development, to fund mitigation measures. The UU includes obligations to secure the required mitigation payments and a monitoring contribution to ensure that the UU is complied with, which would help to ensure the delivery of the mitigation. I am satisfied that this would be effective in securing the required contributions and meets the Framework's tests for planning obligations.
17. On this basis, the adverse effects of the proposal on the integrity of the protected site would be avoided. Consequently, with the above mitigation measures in place, the proposal would not adversely affect the integrity of the protected site, either alone or in combination with other development.
18. Taking account of the planning obligations that are set out in the UU, the proposal would assist in the conservation and enhancement of the biodiversity of the SAC and would therefore accord with EFDLP Policy DM2.

Other Matter

19. The appeal site is in proximity to the Grade II listed building known as the Water Tower. Mindful of the statutory duty set out in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
20. The special interest and significance of the Water Tower is derived primarily from its architectural interest as appreciated principally from High Street, comprising red brick with dressings and decorative key stone. The immediate setting of the Water Tower includes the streetscape within which it is located and owing to the height of the asset it is prominent from numerous vantage points in the wider area, and so has a wider setting which makes a valuable contribution to its significance. Nonetheless, the appeal site is physically and largely visually separate from the asset and does not comprise its setting. Accordingly, the proposal would have no effect on its significance. I note the Council raised no concerns in this respect either.

Conditions

21. It is necessary to impose a condition identifying the approved plans for certainty. A condition is imposed in relation to contamination to protect living conditions, which is required before the commencement of development to ensure that the proposal can be carried out safely. The submission and approval of a construction method statement is required in the interest of highway safety and protecting the living conditions of neighbouring occupiers, and before the commencement of development as the details relate to the construction phase. I have removed reference to tree protection as there are no trees on the site, or any root protection area incursions into the site, as shown on the Tree Constraints Plan, dated 17/08/2022, by All Arboriculture.
22. Conditions are imposed to ensure the development is carried out in accordance with the flood risk assessment, ecology appraisal, and noise assessment in the interest of preventing flooding, protecting biodiversity, and protecting the living conditions of existing and future occupiers respectively. Conditions are imposed to secure hard and soft landscaping details and details of external materials in the interest of the character and appearance of the area. To promote improved digital connectivity a condition in relation to the provision of broadband infrastructure is imposed.
23. To ensure adequate provision is made for waste and recycling a condition to secure details of the proposed bin store is imposed. In the interest of highway safety, a condition is imposed to secure the implementation of highway works. In the interest of reducing carbon, conditions are imposed to ensure that a residential travel information pack is provided to all future residents and that the development is carried out in accordance with the energy statement. Similarly, in the interest of sustainability, conditions are imposed to secure cycle parking facilities and to ensure that water consumption is minimised. It is not necessary to impose a condition relating to electric car charging as this is covered by building regulations.
24. The appeal site boundary does not include the public house, nor does the proposal involve its demolition. Furthermore, there is no substantive evidence to indicate that the appeal site is likely to have archaeological interest.

Accordingly, neither a condition to secure archaeological building recording nor archaeological mitigation have been imposed.

Conclusion

25. For the reasons given above, I conclude that the proposal accords with the development plan read as a whole. There are no material considerations that indicate that I should take a decision otherwise than in accordance with it. Therefore, the appeal should be allowed.

F Harrison

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this notice.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 099_001 P1; Site Plan 099_050 P2; Ground Floor Plan 099_100 P3; First Floor Plan 099_101 P2; Second Floor Plan 099_102 P2; Roof Plan 099_103 P2; South West and South Elevation 099_200 P2; North East and North Elevation 099_201 P2; East and North West Elevation 099_202 P2; Sections 099_300 P2 and 099/SK/230427/01/Comparison Elevation.

Pre commencement

- 3) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:

- i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
- ii. the site has been remediated in accordance with the approved measures and timescales; and
- iii. a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
- ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.

- 4) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include details of:

- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- measures to control the emission of dust and dirt during construction, including wheel washing, reference shall be made to the Institute of Air Quality Management best practice guidance on air quality monitoring in the

vicinity of demolition and construction sites and guidance on the assessment of dust from demolition and construction; and

- a scheme for recycling/disposing of waste resulting from demolition and construction works.

The approved CMS shall be adhered to throughout the construction period.

After the commencement of development

- 5) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment and SuDS Strategy for Planning, dated March 2023, by Ark Environmental Consultancy Ltd.
- 6) The development hereby permitted shall be undertaken in accordance with the recommendations identified in Table 6 of the Preliminary Ecological Appraisal and Preliminary Roost Assessment, dated 01/8/22, by Arbtech Consulting Ltd.
- 7) The development hereby permitted shall be undertaken in accordance with the Energy Statement for Planning, dated 04/11/22, by Base Energy.
- 8) The development hereby permitted shall be undertaken in accordance with the recommendations identified in Table 9.1 of the Noise Assessment, dated 20 July 2022, by Hawkins Environmental.

Prior to above ground construction

- 9) No above ground construction shall commence until details of the materials to be used in the construction of all external surfaces have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter maintained as such.
- 10) No above ground construction shall commence until details of both hard and soft landscape works have been submitted to and agreed in writing by the local planning authority. The details shall include:
 - proposed finished levels or contours;
 - means of enclosure; and
 - planting plans including specifications of species, sizes and number.

The hard landscaping works shall be carried out in accordance with the approved scheme and shall be completed prior to the first occupation of the development or completion of the development, whichever is the sooner, and retained as such thereafter. The soft landscaping works shall be carried out in accordance with the approved scheme and in the first available planting season following the first occupation of the development and retained as such thereafter. Any trees, shrubs or plants planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or become seriously diseased within 5 years of planting shall be replaced within the next planting season by trees, shrubs or plants of similar size and species to those originally required to be planted.

- 11) No above ground construction shall commence until details of the communal bin store shown on Ground Floor Plan 099_100 P3 have been submitted to and approved by the local planning authority, to demonstrate the adequate storage

of waste and recycling arising from the development hereby permitted. The approved communal bin store shall be installed and made available for use prior to the occupation of the development hereby permitted and retained as such thereafter.

Prior to occupation

- 12) Prior to the occupation of the development hereby permitted, measures shall be implemented to ensure a water efficiency standard of 110 litres (or less) per person per day, in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority. The measures shall be retained as such thereafter.
- 13) Prior to the occupation of the development hereby permitted, each dwelling shall be provided with the necessary infrastructure to enable a connection to a superfast broadband network or alternative equivalent service.
- 14) Prior to the occupation of the development hereby permitted, all areas shown on approved plan Ground Floor Plan 099_100 P3 to be used by vehicles shall be fully laid out, including parking and turning areas, and the visibility splays shown in the Transport Technical Note, dated December 2023, by KRONEN, and drawing Vehicle Visibility with 1m offset Scale 1:200@A4, shall be implemented. The arrangements shall be retained as such thereafter.
- 15) Prior to the occupation of the development hereby permitted, the bike store shown on approved plan Ground Floor Plan 099_100 P3 shall be implemented, in accordance with the Essex Planning Officers Association Parking Standards (2009), and shall be secure, convenient, and covered. The arrangements shall be retained as such thereafter.
- 16) Prior to the occupation of the development hereby permitted, a Residential Travel Information Pack that includes six, one day travel vouchers for use with the location public transport operators, shall be submitted to and approved in writing by the local planning authority. Thereafter, Residential Travel Information Packs shall be provided to all future residents of the development upon occupation.

*****End of Conditions*****