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## Appeal Decisions

Site visit made on 5 February 2025

by **K Lancaster BA (hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> February 2025

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### Appeal Ref: APP/J1535/W/24/3355254

#### 14 Tycehurst Hill, Loughton, Essex IG10 1BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr Bala Balendra against the decision of Epping Forest District Council.
- The application Ref EPF/0921/24 was approved on 24 October 2024 and planning permission was granted subject to conditions.
- The development permitted is the retention of dwelling as substantially reconstructed and extended.
- The conditions in dispute are Nos. 5, 6 and 7 which state that:

*(5) Prior to first occupation of the development hereby approved, 1 Electric Vehicle Charging Point shall be installed and retained thereafter for use by the occupants of the site”.*

*(6) Prior to first occupation of the development, 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 scheme shall be implemented in full prior to the occupation of the development hereby approved, and so retained”.*

*(7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking and re-enacting that order) no development permitted by virtue of Classes A, AA, B, E of Part 1 to Schedule 2 shall be undertaken, without the prior written agreement of the Local Planning Authority*

- The reasons given for the conditions are:

*(5) To help support improvements to air quality in accordance with Policies T1, DM2 & DM22 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.*

*(6) To maintain and improve the biodiversity of the site and to mitigate any impact from the development hereby approved, in accordance with Policy DM1 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.*

*(7) To ensure further consideration is given with regards to the effect on the character and appearance of the area and living conditions on adjoining properties, in accordance with Policy DM9 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.*

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### Decision

1. The appeal is allowed and the planning permission Ref EPF/0921/24 for the retention of dwelling as substantially reconstructed and extended at 14 Tycehurst Hill, Loughton, Essex IG10 1BU granted on 24 October 2024 by Epping Forest District Council, is varied by deleting condition No.7.

## Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024 and updated on 7 February 2025. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. The description of development provided on the planning application form read "part demolition of existing building, two storey side and rear extension with internal alterations and second floor within roof space". The Council changed the description to that in the banner heading above, which was subsequently agreed by the appellant. I consider that the amended description accurately describes the appeal scheme and accordingly I have adopted the amended description in the heading above and my formal decision.
4. During my site visit I observed some minor differences between the development 'as built' and the 'proposed plans'. For the avoidance of doubt, I have considered the appeal on the basis of the proposed plans<sup>1</sup> submitted.
5. A separate application<sup>2</sup> made under Section 73 of the Town and Country Planning Act 1990 (the Act) to vary the original permission<sup>3</sup> was also submitted to the Council. This application was refused and is the subject of an appeal<sup>4</sup>, which I have also determined. This is the subject of a separate decision.

## Background and Main Issues

6. Planning permission was granted<sup>5</sup> on appeal<sup>6</sup> for the partial demolition of the existing building, two storey side and rear extensions with internal alterations and creation of a second floor within the roof space. This permission was implemented. However, during construction all but one of the internal walls were demolished and rebuilt.
7. Following an investigation, the Council requested that a planning application be submitted for a replacement dwelling. This application<sup>7</sup> was granted approval in October 2024, subject to a number of planning conditions. The appeal seeks planning permission to carry out the development without complying with conditions attached to this permission.
8. The disputed conditions are Condition No. 5 relating to the provision of an electric vehicle charging point, Condition No. 6 relating to ecological enhancements and Condition No. 7 relating to the removal of certain permitted development rights. These conditions are disputed by the appellant on the basis that they were not imposed on the previous grant of planning permission, are not necessary, reasonable or relevant to the development proposed.
9. The Council considers that they meet all of the relevant tests and are necessary, relevant to planning and the development permitted and reasonable. They also

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<sup>1</sup> Drawing Refs: 201A and 202A

<sup>2</sup> Application Ref: EPF/0224/24

<sup>3</sup> Application Ref: EPF/0255/23

<sup>4</sup> Appeal Ref: APP/J1535/D/24/3342115

<sup>5</sup> Application Ref: EPF/0921/24

<sup>6</sup> Appeal Ref: APP/J1535/D/23/3324103

<sup>7</sup> Application Ref: EPF/0921/24

state that the wording of the conditions is enforceable and precise and not an onerous requirement on the applicant.

10. Therefore, the main issues are:

- Whether Condition No.5 is reasonable, necessary and relevant to the development to achieve improvements in air quality;
- Whether Condition No.6 is reasonable, necessary and relevant to the development to improve the biodiversity of the site and to mitigate any impacts arising from the development; and
- Whether Condition No.7 is reasonable, necessary and relevant to the development to protect the character and appearance of the area and the living conditions of neighbouring occupiers.

## Reasons

11. The appeal site comprises a detached two storey house which sits on a relatively generous plot with good sized front and rear gardens. It is located in an area made up of detached and semi-detached houses on similar sized plots.

### *Condition No.5*

12. This condition requires that prior to first occupation of the development hereby approved, one Electric Vehicle Charging Point (the EVCP) shall be installed and retained thereafter for use by the occupants of the site. The Council states that this condition is necessary to help support improvements to air quality.
13. The approved plans<sup>8</sup> show the location of an EVCP on the front elevation of the property, which the appellant confirms has already been installed. However, it is not clear from the evidence when the installation took place, and whether its installation pre-dates the imposition of the disputed condition. Nonetheless, the second part of the disputed condition which requires the EVCP to be retained thereafter for the use of the occupants is necessary. The approved plans cannot be relied upon to ensure the electric vehicle charging point is retained and available for use by the occupier of the appeal property.
14. Whilst I accept that the appellant may have already complied with the first part of this disputed condition, there is no compelling evidence before me to demonstrate that a requirement to secure the EVCP in perpetuity is not reasonable, necessary, or relevant to the development proposed.
15. Therefore, I find that Condition No.5 should not be deleted or varied. The removal of this condition would be contrary to Policies T1, DM2 and DM22 of the Epping Forest District Local Plan 2011-2033, adopted 2023 (the EFLP). Together these policies seek, amongst other things, to ensure the development contributes toward a low carbon future and reduce air pollution and require development to conserve and enhance the biodiversity of the Epping Forest Special Area of Conservation including having regard to impacts upon air quality, which should be adequately mitigated.

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<sup>8</sup> Drawing Ref: 202 Rev A

### *Condition No.6*

16. This condition requires that prior to first occupation of the development, 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. It further states that the scheme shall be implemented in full prior to the occupation of the development hereby approved, and so retained. The Council states that this condition is necessary to maintain and improve the biodiversity of the site and to mitigate any impact from the development.
17. Policy DM1 of the EFLP states that all development should seek to deliver net biodiversity gain in addition to protecting existing habitats and species. Development proposals should seek to integrate biodiversity through their design and layout, including, where appropriate, through the provision of connections between physical and functional networks.
18. Both Policy DM1 and the Framework seek to ensure that planning decisions contribute to and enhance the natural environment, by providing net gains for biodiversity. The proposed scheme would involve the reduction in size of the rear garden, and I also observed on site that there is currently no soft landscaping or planting to the front of the property.
19. Therefore, I find that the ecological enhancement measures are reasonable and necessary in order to achieve a net gain in biodiversity on the site, in accordance with Policy DM9 and the Framework. Furthermore, whilst the condition was not imposed on the previous scheme, the Council has clearly set out its policy basis for imposing the condition.
20. Consequently, I therefore find that the disputed condition is reasonable, necessary and relevant to the development proposed in the interests of achieving biodiversity net gain. Without the disputed condition it would not accord with the aims of Policy DM1 of the EFLP or the Framework, for the reasons set out above.

### *Condition No.7*

21. Condition No.7 relates to a condition which states that no development permitted by virtue of Classes A, AA, B, E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking and re-enacting that order) (the GPDO) shall be undertaken, without the prior written agreement of the Local Planning Authority. The Council state that the condition is reasonable and necessary to ensure further consideration is given with regards to the effect on the character and appearance of the area and living conditions on adjoining properties.
22. However, the Framework sets out the tests<sup>9</sup> for planning conditions and states<sup>10</sup> that planning conditions should not be used to restrict national permitted development rights unless there is 'clear justification' to do so. The Planning Practice Guidance<sup>11</sup> (the PPG) also states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity, and that blanket removal of freedoms to carry out

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<sup>9</sup> Paragraph 57

<sup>10</sup> Paragraph 55

<sup>11</sup> Paragraph Ref: 017 Reference ID: 21a-017-20190723

small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

23. Schedule 2, Part 1, Classes A, AA, B and E of the GPDO, allows for work to be carried out to a dwellinghouse, including the enlargement, improvement or other alteration of a dwellinghouse, porches and buildings etc incidental to the enjoyment of a dwellinghouse. Any development which may be carried out under the aforementioned classes is subject to certain conditions and limitations, which control amongst other things, the size and appearance of development. They also have regard to the impact of any development on the living conditions of neighbouring occupiers.
24. In its reason for imposing the condition, the Council has cited Policy DM9 of the EFLP. However, this is a policy concerning the design of new development and no other justification has been put forward. I therefore find that the Council has not provided any clear justification for imposing this condition.
25. Consequently, for the above reasons, I therefore conclude that it has not been demonstrated that there is clear justification for the removal of permitted development rights in this particular case and that Condition No.7 is not reasonable or necessary, in the interests of protecting the character and appearance of the area or the living conditions of neighbouring occupiers. As such, removal of this condition would not be contrary to Policy DM9 of the EFLP which seeks amongst other things, to ensure that all new development achieves a high quality of design which relates positively to its context. It should therefore be deleted.

### **Conclusion**

26. I have considered each of the conditions imposed by the Council and concluded that Condition Nos.5 and 6 should be retained, and that Condition No.7 should be deleted.
27. For the reasons given above I conclude that the appeal should be allowed in part, and the planning permission varied, as set out in the formal decision.

*K Lancaster*

INSPECTOR