



Appeal Decision

Site visit made on 21 January 2025

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2025

Appeal Ref: APP/J1535/W/24/3340995

Playing Fields, Waltham Abbey Leisure Centre and Community Centre, Ninefields, Waltham Abbey EN9 3EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval to details required by a condition of an outline planning permission.
 - The appeal is made by Housing 21 against the decision of Epping Forest District Council.
 - The application Ref EPF/0491/20 sought approval of details pursuant to condition No 2 of outline planning permission Ref EPF/2207/16, granted on 21 March 2017.
 - The application was refused by notice dated 21 November 2023.
 - The development proposed is a Health Centre building; 60 Independent Living Older Persons Apartments Building (Use Class C2 - with a minimum of 6 hours care to be provided per week for each apartment) minimum 40% affordable; Leisure Centre and Swimming Pool Building (to include Fitness Suite and Community Hall) ; Open Space including a mini soccer grass pitch for use by under 7/8 year olds and footpaths; Ancillary development including three vehicular accesses off Hillhouse, car parking, and SUDs Infrastructure and demolition of Ninefields Community Centre Building.
 - The details for which approval is sought are: appearance, landscaping, layout and scale for the erection of a building containing 60 no. extra care apartments and communal facilities with associated car parking and landscaping.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely appearance, landscaping, layout and scale, submitted in pursuance of condition No 2 attached to planning permission Ref EPF/2207/16, dated 21 March 2017, in accordance with the terms of the application, Ref EPF/0491/20, and the plans submitted with it, subject to the additional conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Housing 21 against Epping Forest District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Outline planning permission¹ was granted on 21 March 2017 for a development that comprises a number of different elements, as described in the banner heading above. This appeal relates solely to reserved matters in respect of the independent living older persons apartments building. These reserved matters concern the appearance, landscaping, layout and scale of the building. The access was included and approved at the outline stage.

¹ Ref EPF/2207/16 (the outline planning permission)

4. A revised National Planning Policy Framework was published on 12 December 2024. Whilst I have had regard to the revised national policy as a material consideration in my decision-making, planning decisions must still be made in accordance with the development plan unless material considerations indicate otherwise. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework.

Main Issues

5. The main issues are the effect of the proposed details on:
- the character and appearance of the site and the surrounding area;
 - the living conditions of the occupiers of the neighbouring dwellings in relation to outlook; and
 - public health with regard to noise and pollution.

Reasons

Character and Appearance

6. The appeal site is an unoccupied area of land which currently forms part of a recreational field. It is located within a residential estate with a recently built leisure centre in close proximity, which formed part of the outline planning permission. The residential area is largely comprised of flatted blocks and terraced dwellings interspersed with footpaths and parking areas. The proposal is for a single building of two and three storeys set out in a 'H' shape, with gardens surrounding and a car park to the north. The building would be finished with red brick and slate hanging tiles, with a sloped mansard roof.
7. As identified by an Inspector in a previous appeal decision², the building would be a landmark structure, due to its prominent position and scale. However, the proposed design of the building, including the proposed materials, would be domestic in character and would assimilate well into the residential surroundings.
8. Whilst the residential properties directly adjacent to the appeal site are two storeys in height, there are a number of examples of three storey buildings within the surrounding area and therefore the height of the proposed building would not be an overly incongruous addition. It is noted that, due to ground levels in the area, the appeal site is higher than surrounding development. However, at just under 1 metre in difference, this does not significantly impact the overall height of the building.
9. The mass of the proposed building would also not be out of keeping in the surrounding area due to the presence of other large buildings, including the neighbouring leisure centre. Furthermore, although the building would result in the loss of space and openness on the existing playing fields, I do not see how this could be fully retained with the addition of an apartment building for 60 older persons as approved at outline stage. The design and layout of the building proposed, including surrounding open space, does well to retain the current perception of space and openness as much as possible.

² APP/J1535/W/20/3251628 (the previous appeal decision)

10. Therefore, whilst certainly prominent, the design of the proposed building would not be an overly dominant addition to the area and would not result in harm to the established pattern of development in the area.
11. As such, for the reasons above, the proposed details would not result in harm to the character and appearance of the site and the surrounding area and would comply with Policy DM9 (A) and (D) of the Epping Forest District Local Plan 2011-2033 (the LP) 2023. The relevant sections of this policy seek to ensure that all new development achieves a high quality of design which contributes to the distinctive character and amenity of the local area, relating positively to its locality and having regard to building heights and the form, scale and massing around the site.

Living Conditions

12. The appeal site is located adjacent to a number of existing residential properties on Cullings Court. Although the proposed scale of the building would be significant in height and massing, the position of the building on the site ensures that it is well set back from the northern boundary with neighbouring properties, in line with the parameters of the outline planning permission. Furthermore, the section of the building closest to these neighbouring properties has been reduced in height when compared to the main bulk of the building. For these reasons, the proposed development would not result in a sense of enclosure to the occupiers of the neighbouring dwellings on Cullings Court and would not result in a loss of outlook.
13. Therefore, the proposed details would not result in harm to the living conditions of the occupiers of the neighbouring dwellings and would comply with Policy DM9 (I) of the LP. The relevant section of this policy seeks to ensure that development proposals take account of the amenity of the development's neighbours, not resulting in an overbearing or overly enclosed form of development which materially impacts on the outlook of the occupiers of neighbouring properties.

Public Health

14. The proposed layout of the development includes a car park on the northern part of the appeal site, located adjacent to a public footpath alongside the dwellings on Cullings Court. Due to the existing ground levels in the area, this car park would be approximately 1 metre higher than the adjacent footpath.
15. Whilst the landscaping plan proposes native species shrub planting on the site perimeter between the proposed car park and footpath, parked cars would still be in relatively close proximity to users of the walkway. Nevertheless, for a majority of time, cars in the car park would largely be stationary and switched off, with minimal time spent manoeuvring into and out of spaces. Therefore, any noise and fumes generated would be limited. Furthermore, those using the footpath would be walking past the appeal site and therefore are unlikely to be exposed to any such noise or fumes for a long period of time.
16. To address the Council's concerns, the appellant has undertaken noise and air quality assessments in relation to the use of the proposed car park. These confirm that the noise from moving vehicles in the proposed car park would not be of a magnitude or duration that would result in an adverse impact on footpath users and that the development will not have a significant impact on local roadside air quality.

17. As such, I conclude that the proposed details would not result in harm to public health relating to noise and pollution and would not conflict with Policies DM9 (a) and (i) and DM21 (a) and (b) of the LP in this regard. The relevant sections of these policies seek to ensure that local environmental impacts of all development proposals after mitigation do not lead to an unacceptable impact on the health of existing or new users of the surrounding land, stating that the Council will resist development that leads to unacceptable local environment impacts including air pollution/quality and noise.

Other Matters

18. A number of representations were received from interested parties in response to both the original application and the appeal. These largely relate to need for the development and the loss of the existing playing field. However, the appeal before me relates to the reserved matters (appearance, landscaping, layout and scale) only and outline planning permission for the development has already been granted. Therefore, I am unable to consider these matters as part of the appeal.
19. Several concerns were also raised, relating to highway safety, impact during construction and various other matters. However, there is no substantive evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council or statutory consultees in this regard. Therefore, none of the concerns raised provide a compelling reason why planning permission should not be granted.
20. The appeal site is within the Zone of Influence of the Epping Forest Special Area of Conservation (SAC) as identified in the Site Access Management and Monitoring Strategy. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of this SAC. The effects arising from the proposal need to be considered in combination with other development in the area, adopting a precautionary approach.
21. The development would result in additional dwellings with a consequent increase in the number of local residents living within the Zone of Influence for this European Site. This would be likely to result in additional recreational activity in these areas arising from new residents and atmospheric pollution as a result of increased traffic using roads through the SAC. Therefore, the proposed development is likely to have a significant effect on this European Site. As the competent authority, it is necessary for me to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SAC identified.
22. The 2017 evidence base which informed the baseline traffic and air quality modelling for the Strategic Habitats Regulations Assessment considered all the 'in combination' effects of all planned proposals including sites which had planning permission, and which were considered in the site selection process. The Council have provided evidence to demonstrate this. This base data therefore included the outline planning permission connected to this application. The number of units proposed in this application is the same as that previously approved therefore it is considered that the proposed units have already been accounted for and as such,

it is considered that the proposal would not have an adverse impact on the integrity of the SAC, over and above what has already been approved.

23. In their consultation response, Natural England agree that the air pollution impacts are accounted for in baseline modelling data for the Local Plan and therefore in the adopted Local Plan and that the application can rely on the Interim Air Pollution Mitigation Strategy, which is a supporting document of the adopted Local Plan and, as such, no bespoke mitigation is required.
24. I therefore find within my AA that the proposal would not have an adverse effect on the integrity of the European Site outlined above. The development would therefore comply with the Habitats Regulations.

Conditions

25. As the appeal before me is for the approval of reserved matters, I can only impose additional conditions which directly relate to the matters I am approving. The suggested condition relating to time limits for commencement of the development has not been included as this is covered by the outline planning permission.
26. Conditions relating to details of surface water disposal, provision of a construction method statement and restriction of hours of construction work, recommendations regarding biodiversity net gain, a habitat management and monitoring plan, accordance with an ecological assessment, provision of a superfast broadband network, provision of sustainability measures, provision of electric vehicle charging points, incorporation of water efficiency standards and the provision of a residential travel information pack have not been included, as these do not directly relate to the matters I am approving. I also note that some of these matters are controlled by separate conditions attached to the outline planning permission and therefore repetition is not necessary. A condition relating to cycle parking has also not been included as this is sufficiently detailed within the submitted plans.
27. I have attached a condition requiring the development to accord with the approved plans, as this provides certainty and precision. Conditions relating to the submission of details relating to tree protection, external materials and solar panels and the retention of front boundary treatments have been included to ensure that the development does not harm the character and appearance of the area. Conditions relating to the submission of details relating to external lighting, obscure glazing of certain windows, privacy screens for balconies and restriction of access to the flat roof section of the building have been included, to ensure the development does not harm the living conditions of the occupiers of neighbouring dwellings.
28. Conditions requiring parking spaces to be implemented and retained and open spaces to be retained for general use by all residents, have also been included, as these could not have been reasonably imposed before the plans in relation to layout were submitted.
29. Lastly, a condition in relation to the submission of details in relation to hard and soft landscaping has been amended, as these details have already been sufficiently provided as part of the reserved matters. However, the part of the condition in relation to the provision and retention of such landscaping has been included to ensure an appropriate appearance for the development.

Conclusion

30. For the reasons given above the appeal is allowed.

E Grierson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawing nos: APL 1001 Rev B, APL 1002 Rev C, APL 1003 Rev A, APL 1004 Rev D, APL 1005 Rev D, APL 1006 Rev D, APL 1007 Rev C, APL 1008 Rev D, APL 1009 Rev C, APL 1010 Rev C, APL 1020, APL 1021, APL 1022 and APL 050 Rev B.
- 2) No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction - Recommendations) has been submitted to the local planning authority and approved in writing. The development shall be carried out only in accordance with the approved documents.
- 3) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the building or completion of the development, whichever is the sooner. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place.
- 4) If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.
- 5) (1) No development above ground level shall take place until sample panels of all new facing brickwork demonstrating the colour, texture, bond and pointing have been provided on site and approved in writing by the local planning authority. The approved sample panels shall be retained on site until the work is complete and the development shall be carried out in accordance with the approved sample panels. (2) No development above ground level shall take place until documentary and photographic details of the type and colours of all other external finishes of the development 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.
- 6) The development hereby approved shall not be occupied until details of a scheme of external lighting have been submitted to and approved in writing by the local planning authority. The development shall be implemented in

accordance with the approved details and no external lighting other than in accordance with the approved details shall be installed on the site.

- 7) Prior to any above ground works commencing onsite, details of the roof top plant or roof located paraphernalia (including communications antennae) and solar panels to be installed on the roof shall be submitted to and approved in writing by the local planning authority. The development shall be carried out and operated strictly in accordance with the details approved. The solar panels shall be provided/installed prior to the first occupation of the development and shall be maintained as such thereafter.
- 8) Prior to first occupation of the building hereby permitted the windows in the northern flank elevation at first floor level and above, shall have been fitted with obscure glass with a minimum privacy level 3 obscurity, and no part of that/those windows that is less than 1.7 metres above the internal floor level of the room in which it is installed shall be capable of being opened. Once installed the obscure glass shall be retained thereafter.
- 9) Prior to the first use of the balconies within units numbered 34, 38, 56 and 59, details of privacy screens positioned close to the northern boundary of the balconies which are no lower than 1.7 metres high shall have been submitted to and approved in writing by the local planning authority. The development shall be implemented before occupation in accordance with the approved details and retained thereafter.
- 10) The parking spaces shall be as dimensioned on the approved plan drawing no. APL1002 rev C, shall be provided prior to the first use of the development and shall be retained free of obstruction for the parking of residents, staff and visitors' vehicles.
- 11) Other than shrub or tree planting, the front boundary railings and gates hereby permitted shall not be infilled or enclosed by, or supplemented by any fence, screen or other means of enclosure without prior consent from the local planning authority through the submission of a planning application.
- 12) All areas of open space outside of the domestic curtilages shall be retained in perpetuity for general use by all residents within the development and shall not be enclosed nor have access restricted without prior consent from the local planning authority through the submission of a planning application.
- 13) Access to the flat roof area of the western section of the linear block positioned nearest to 48 and 49 Cullings Court, hereby approved, shall be for maintenance or emergency purposes only and the flat roof shall not be used as a seating area, roof garden, terrace, patio, or similar amenity area.

END OF SCHEDULE