



Appeal Decision

Site visit made on 17 March 2025

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2025

Appeal Ref: APP/J1535/W/24/3350424

3 Woodberry Down, Epping, Essex CM16 6RJ

- 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 Ken Fox of Fox Developments against the decision of Epping Forest District Council.
 - The application Ref is EPF/1083/24.
 - The development proposed is the demolition of existing dwelling and detached garage. Erection of 4no. four-bedroom dwellings with associated landscaping, private amenity areas, car parking and 3no. new vehicular accesses across the existing footway.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. A Unilateral Undertaking (UU) dated 13 September 2024 has been submitted by the appellant. The Council has had the opportunity to comment on this additional information. As such, I am satisfied that the evidence does not alter the proposed development to an extent that anyone involved in the appeal would be prejudiced or impacted should I accept the UU. I shall return to the UU later in my decision.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the integrity of the Epping Forest Special Area of Conservation (EFSAC); and
 - the character and appearance of the area.

Reasons

Epping Forest Special Area of Conservation

4. The EFSAC is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The Habitat Regulations requires me as the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposal, either alone or in combination with other plans or projects, on the integrity of the sites. Permission may only be granted after having ascertained that the proposed development would not affect the European site's integrity.
5. The pathways of impact are disturbance from recreational activities from new residents, and atmospheric pollution including ammonia and oxides of nitrogen

resulting from increased nearby traffic and the age and mix of those vehicle types. The site is within the 0-6.2 km Zone of Influence as identified in the Epping Forest Strategic Access Management and Monitoring Strategy 2021 (SAMM). Consequently, the development would result in a likely significant effect on the integrity of the EFSAC as a result of disturbance from recreational activities. In addition, the development has the potential to result in a net increase in traffic using roads through the EFSAC. Accordingly, the proposal would result in a likely significant effect on the integrity of the EFSAC in relation to recreational pressures and atmospheric pollution.

6. The SAMM strategy and the Epping Forest District Green Infrastructure Strategy provides a strategic, district wide approach to mitigating recreational pressures on the EFSAC through the securing of financial contributions for access management schemes and monitoring proposals. In addition, the Interim Air Pollution Mitigation Strategy 2020 (IAMPS) provides a strategic, district wide approach to mitigating air quality impacts on the EFSAC through the imposition of planning conditions and securing of financial contributions for the implementation of strategic mitigation measures and monitoring activities.
7. The Planning Practice Guidance indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice. The appellant has submitted a signed UU, under Section 106 of the Town and Country Planning Act 1990, that seeks to ensure payments are made towards the mitigation strategy.
8. The SAMM requires that a financial contribution is sought from net increases in new dwellings in the District. The financial contribution is calculated based on the proximity of the site to the EFSAC. The site falls within the 0-3km radius of the EFSAC as identified in the SAMM, and therefore a contribution of £1852.63 per net dwelling is required. In addition, the IAMPS requires a financial contribution of £335 per net dwelling.
9. The UU commits to a recreation contribution of £1372.08, which is significantly below the contribution required by the SAMM. Moreover, the air pollution contribution within the UU is in excess of what is required by the IAMPS. Furthermore, the Council states that there is no Green Infrastructure Contribution applicable to the appeal proposal.
10. It is possible in certain circumstances to 'strike out' provisions in planning obligations, or to conclude they shall not have legal effect at the request of the parties. Such mechanisms within obligations are sometimes known as 'blue pencil' clauses, which is included at clause 17.1 of the UU. This may occur, for example, where provisions are unnecessary to make the development acceptable in planning terms, or do not directly relate to the development, or are not fairly and reasonably related in scale and kind to the development. However, it is not for me to 'alter' or 'amend' the detailed terms or clauses of obligations through my decision letter, because they are standalone documents. Moreover, the clause does not allow me to add a contribution for the monitoring and reporting on the implementation of the agreement.
11. The appellant states that they would be willing to provide a fee undertaking in relation to the preparation of the legal agreement and there have been difficulties liaising with the Council regarding the planning obligations, including that the

Council has not provide a figure in respect of the fee for the monitoring and reporting on the implementation of the agreement. However, the Planning Practice Guidance (PPG) is clear that discussions about planning obligations, including their form and content, should take place as early as possible in the planning process, and pre-application discussions can prevent delays in finalising planning applications which are granted subject to the completion of planning obligation agreements. The PPG also encourages the use of standard templates to assist with the process of agreeing planning obligations.

12. Given my duties under the Regulations, I conclude that the proposal would have an adverse effect on the integrity of the EFSAC. The development therefore conflicts with Policy DM2 of the Epping Forest District Local Plan 2011-2033 Part One 2023 (LP), which requires proposals to ensure that there is no adverse effect on the site integrity of the EFSAC.

Character and appearance

13. The appeal site comprises a detached two-storey dwelling with a single-storey outbuilding to the rear. Development in the area comprises a mix of detached and semi-detached dwellings set back within a loosely defined linear pattern. Dwellings within Woodberry Down typically spread across the plots with limited spaces between neighbouring buildings, reflecting the urban character of the area. The site is unusually spacious with the existing buildings being positioned towards the side of the site. The existing dwelling is in a prominent position and highly visible from the junction into Woodberry Down from Lindsey Street. The dwelling at the site is unusual within the street scene and whilst attractive, the Council advise that it is not a non-designated heritage asset, and I see no reason disagree.
14. The proposal is for two pairs of semi-detached dwellings following the demolition of the existing dwelling. The dwellings would be set back from the site frontage broadly in line with the row of dwellings to the side of the site, including No 5 Woodberry Down (No 5). The proposed dwellings would be set in from the side boundaries of the site and would provide adequate spacing between both the pair of proposed dwellings and the existing development on either side of the site. While Plot 1 has an irregular shape, the dwelling would be located away from the side boundary in a similar position to the existing dwelling.
15. The pair of semi-detached dwellings would increase the density of development at the site. Nevertheless, the spacing between the existing and proposed dwellings and the overall plot sizes would be comparable to the existing development in Woodberry Down. Moreover, the scale and layout of the proposal would reflect the linear pattern of development and would respect the prevailing character and appearance of the area.
16. The architecture of the proposed dwellings would include elements drawn from the surrounding development, including the forward-facing gables with diamond brickwork detailing. The position of the buildings on rising land limits the visual effect of the overall height of the development, where the ridge height would be broadly similar to that of No 5. The dormer windows to the rear roofslopes of the dwellings would also reflect those present on the rear roofslopes of neighbouring properties, including to the side and rear of the site.
17. I conclude that the proposal would not harm the character and appearance of the area. The development therefore accords with Policy DM9 of the Epping Forest

District Local Plan 2011-2033 Part One 2023 (LP), which requires that development proposals must relate positively to their locality having regard to the form, scale and massing around the site and the rhythm of any neighbouring or local plot and building widths and, where appropriate, existing building lines.

Other Matters

18. The site is adjoined by dwellings to either side and to the rear. The proposed dwellings would be close to the side boundaries and would include upper floor windows within the side and rear elevations. Given the position and orientation of the dwellings, the proposal would not result in significant overlooking beyond oblique views of the neighbouring properties or a loss of outlook. Furthermore, due to the separation between the proposed dwellings and the properties to the rear of the site, the development would not result in a loss of privacy for occupants of the neighbouring dwellings.
19. Concerns have been raised that there has been a loss of wildlife following works at the site. Nonetheless, I have not been presented with substantive evidence that demonstrates that the former trees were protected, or that protected species were present at the site.
20. The site is not located within a Conservation Area, but there is a Grade II listed building at No 20-22 Lindsey Street. I have a statutory duty under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the setting of this listed building. Given the distance between the site and the listed building and the intervening buildings and the road at Woodberry Down, the site is not within the setting of the listed building. Even if the site is within the setting of the listed building, the appropriate design, form and scale of the proposed development would preserve its setting.
21. The proposal would increase the number of vehicle movements at the site and within Woodberry Down. Nevertheless, the development would provide adequate parking for each dwelling, with the three new accesses being afforded suitable visibility in either direction. The Council and Highway Authority consider that the proposal would provide safe and suitable access to the site can be achieved for all users and I see no reason to reach a different conclusion.

Planning Balance

22. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with the aforementioned policies of the LP, with the associated conflict reflecting the adverse effect on the integrity of the EFSAC. The proposal conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise.
23. The appellant asserts that the Council is failing to deliver its housing requirement for the purposes of the Housing Delivery Test. In such circumstances, Paragraph 11 d) of the Framework indicates that permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. Footnote 7 of the Framework details that this includes policies relating to habitats sites.

24. The proposed development would make a positive contribution to the supply and delivery of housing through the efficient use of land. The Framework explains that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. In addition, the proposal would deliver social and economic benefits both during construction through the creation of jobs, and following occupation through the use of facilities and services in the surrounding settlements. However, the contribution of three additional dwellings and the associated benefits are limited by the scale of development proposed.
25. In any case, even if I were to accept that the Council is failing to deliver its housing requirement for the purposes of the Housing Delivery Test, given that the proposal would have a harmful effect on the EFSAC, the application of the policies in the Framework provide a strong reason for refusing planning permission for the development proposed. When considered as a whole, the proposal does not conform with the presumption in favour of sustainable development outlined in Paragraph 11 of the Framework

Conclusion

26. The proposal conflicts with the development plan. The material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

J Pearce

INSPECTOR