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## Appeal Decision

Site visit made on 22 August 2025

**by F P Tinsley MA (Hons) MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7<sup>th</sup> October 2025

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**Appeal Ref: APP/J1535/W/25/3366843**

**Air space above 15-35 Osprey Court, Waltham Abbey EN9 3RZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Martin Nash of Nash Residential Ltd against the decision of Epping Forrest District Council.
  - The application reference is Ref: EPF/2113/24
  - The development proposed is described as 'Prior approval: New dwellinghouses on top of detached block of flats'
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### Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for Prior approval: New dwellinghouses on top of detached block of flats at air space above 15-35 Osprey Court, Waltham Abbey, EN9 3RZ in accordance with the application Ref: EPF/2113/24 and the details submitted with it and subject to the conditions detailed in the attached schedule.

### Applications for costs

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

### Preliminary Matters

3. I have used the description of development detailed on the Council Decision Notice to describe the development as this more succinctly describes the proposed development for which prior approval is sought. The description of development provided by the applicant on the planning application form provides details of the proposed development including reference to providing an existing grasscrete area to provide six car parking spaces and a cycle store to serve the seven new dwellings for which prior approval is sought.

### Background and Main Issues

4. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) applies to the construction of new dwellinghouses immediately above the existing topmost residential storey on a building which is purpose-built, detached block of flats,

subject to limitations and conditions. The main point at issue between the parties relates to whether the transport and highways impacts associated with the proposed development would be acceptable regarding parking provision.

5. In a previous planning appeal on the site<sup>1</sup> (the previous appeal) relating to a similar scheme it was found that those proposals would result in unacceptable highways impacts such that the proposals would not meet the condition at paragraph A.2(1)(a) of the GPDO. Therefore, the proposals were deemed to fail to accord with Policy T1 of the Epping Forest District Local Plan 2011–2023 (Local Plan) which requires, amongst other things, that development provides appropriate parking, has regard to adopted parking standards and mitigates any impact on on-street parking provision within the locality. That proposal was also found to have an unacceptable impact on highway safety in conflict with the aims of the National Planning Policy Framework (the Framework). The appellant has sought to address the previous reasons for dismissing the previous appeal in the application before me.
6. Against this background, the main issue is whether the transport and highways impact of the proposal with reference to proposed parking provision would be acceptable.

## Reasons

7. In terms of the GPDO, the provision of parking is not specifically one of the conditions identified at paragraph A.2 but the “transport and highways impacts of the development” are identified at paragraph A.2(1)(a). The likely parking demand generated by the proposals and the extent to which highways impacts may arise due to the quantity of parking provision proposed can reasonably fall within the scope of paragraph A.2(1)(a).
8. The proposed development would introduce seven additional one-bedroom flats situated above the existing dwellings within the block. According to the *Essex County Council Parking Standards: Design and Good Practice* (updated 2024), each one-bedroom flat should be provided with an average of one parking space, plus 0.25 unallocated visitor spaces. Based on this guidance, the Council calculates the visitor parking demand to be 1.75 spaces. The Inspector in the previous appeal concluded that a minimum of one parking space per flat was necessary. I agree and consider that providing one space per additional flat, totalling seven spaces, would be an appropriate and reasonable provision for this development. A significantly lower level of provision would likely result in unacceptable transport and highway impacts.
9. The current proposal includes six additional car parking spaces, located on an existing grasscrete area adjacent to the residential block. This results in a shortfall of one space when compared to provision of one space per flat.
10. While I agree with the previous Inspector’s assessment that the proposal is likely to generate a high degree of car dependency, there are several factors that help mitigate this. The appeal site is situated a short distance from bus stops on Shernbroke Road.

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<sup>1</sup> APP/J1535/W/23/3332744

11. Although the nearest railway station is located some distance from the site, I consider it to be within cycling distance. Importantly, the current proposal includes communal cycle parking provision at Osprey Court, integrated within the grasscrete area adjacent to the proposed six car parking spaces. This provision was not included in the previous appeal proposals for the site.
12. Notwithstanding that multiple local representations have raised concerns about pressure on existing car parking provision within the Osprey Court development and the difficulty of accessing on-street parking on adjacent roads due to factors such as the prevalence of private driveways and dropped kerbs, I have not been presented with compelling evidence indicating a shortfall in on-site parking provision for the existing development. In this context I have restricted my assessment to the proposal before me and assessed proposed parking provision in the context of the additional flats proposed.
13. While there would be a shortfall of one parking space if a space were to be provided for each flat, there is scope for on-street parking in the surrounding area. This includes Farthingale Lane, which is located a short distance from the appeal site. Taking this into account, along with the other mitigating factors identified above, I do not consider that a shortfall of a single parking space would result in an unacceptable impact on highway safety, nor would the cumulative impacts on the road network be severe enough to justify refusal of the proposal on transport and highways grounds in this regard.
14. A detailed site plan has been submitted, demonstrating how the grasscrete area adjacent to the parking court behind Nos. 36–44 Osprey Court could accommodate six car parking spaces. Although this grasscrete area is now semi integrated into the amenity grassland between Osprey Court and the small stream to the north, it remains discernible, and the presence of lower kerbs would allow access from the adjacent parking area. I consider this area to be developed and not part of the garden area. Provision of car parking in this area would not require invasive works below ground level which could damage tree roots. The parking area is laid out in an unconventional fan shape; however, I have not been provided with evidence to indicate that it would be unsuitable for use as a car parking area, contrary to the appellant's submissions. This area also includes the communal cycle parking provision referenced earlier. I note that the appellant has provided significantly more detailed information about the layout of the proposed parking area in this case than was available to the Inspector during the previous appeal.
15. I have also taken into account the comments of Essex Highways, the statutory highway authority, who stated in their response to the application (dated 11 November 2024) that the proposal is not contrary to the Highway Authority's Development Management Policies, Policy T1 of the Epping Forest District Local Plan 2011–2023, or the Framework, and would not be detrimental to highway safety, capacity, or efficiency. From a transport and highways perspective, the Highway Authority considers the impact of the proposal to be acceptable, subject to conditions. I attach significant weight to these comments as they come from the statutory highway authority for the area. Furthermore, I note that the Council did not consult the statutory highway authority under the terms set out in Paragraph B(5)(b) of the GPDO during consideration of the previous appeal proposals on the site. As a result, there were no statutory highways authority comments available

to the previous Inspector at that time when they reached their conclusion regarding the proposal.

16. I therefore conclude that the appeal proposals would not result in unacceptable highways impacts and would comply with the condition set out in Paragraph A.2(1)(a) of the GPDO. The proposals would also accord with Policy T1 of the Epping Forest District Local Plan (2023). Additionally, the proposal aligns with Paragraph 116 of the Framework, which states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network, following mitigation, would be severe. I have not identified any unacceptable impact on highway safety or severe residual cumulative impacts on the road network which would justify refusal.

### **Other Matters**

17. The appeal sites are within 3 kilometres of the Epping Forest Special Area of Conservation (SAC). Accordingly, the appeal proposals are likely to result in harm to the qualifying features of this protected habitat with regards to recreational pressure and air quality. These harms could be mitigated by securing financial contributions towards established mechanisms which are accepted to be effective.
18. Article 3(1) of the GPDO grants planning permission for Schedule 2 Part 20 Class A development subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by the GPDO in these cases, that development which is (a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the site, must not begin until the developer has received written notification of the approval of the Council under Regulation 77.
19. Under Regulation 78(3)(a), a Regulation 75 approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provisions of the GPDO. As such, Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat and the proposed development could not be lawfully begun until the process set out in Regulation 77 has been completed. A Regulation 77 application may be submitted and determined separately to an application for prior approval and I have determined the appeal accordingly. A draft S.106 agreement has been submitted by the appellant and this would be considered as part of the Regulation 77 application. I have not attached any weight to the Draft S106 agreement in my considerations of this appeal. I conclude that harm to the qualifying features of the SAC would be avoided on this basis. The proposals would therefore accord with part B of Policy DM2 and Policy DM22 of the Local Plan.
20. A significant number of interested parties have made submissions relating to the appeal, raising a wide range of objections. These include concerns about noise, the impact on the character and appearance of the area, damage and disruption during the construction phase, loss of garden area, impact on wildlife, lack of electric vehicle (EV) charging, loss of daylight, impact on access for emergency service vehicles, effects on mental health and wellbeing, the number of

applications lodged on this site (which some consider to amount to harassment of residents), the suitability of the grasscrete area for parking, potential for subsidence, bin storage capacity, the impact on trees and the capacity of local infrastructure including schools and healthcare to accommodate the proposals.

21. Under the provisions of the GPDO, my considerations are restricted to the conditions identified at paragraph A.2(1). In respect of the relevant conditions, I have already considered the impact on traffic and highways above.
22. While the proposal would result in the reconfiguration of the existing roof, the alterations to create the additional upper storeys would largely reflect the character and appearance of the existing building. Although the proposal would be visible from adjacent roads and dwellings, I do not consider that the change in appearance would cause harm to the character of its surroundings.
23. I have seen no clear evidence that the proposal would have an adverse impact on air traffic or defence assets or result in contamination risks. There are no ground works proposed that could raise contamination issues. The Council's Drainage Team has confirmed that, as the proposal involves rooftop vertical development, it will not materially impact flood risk. I have not been presented with any evidence to challenge this conclusion, and the Environment Agency does not object to the proposals.
24. I have no evidence to indicate that all the apartments would not receive good levels of natural light. The proposed dwellings would be sufficiently distant from neighbouring premises so as not to have an adverse impact on the amenity of the existing building or neighbouring properties. I have no reason to believe, based on the evidence before me, that the proposal would have an adverse impact on business premises in the area. I have not been referred to any Directions relating to protected vistas, and the Council has not challenged that the proposal complies with the requirements of paragraphs A.2(1)(i) and (j) regarding fire safety. I have found no reason to conclude otherwise than the Council. In this regard I note that objectors have identified emergency service vehicle access as an issue. While this is an understandable concern and may have occurred in the past as a result of parking behaviour in the area, which is nevertheless the subject of separate legislation, I have no evidence before me which leads me to conclude that the proposed development will lead to obstruction to access in this regard.
25. I accept that there is the potential for noise to be transmitted between the proposed new dwellings and those below. This matter is addressed in Building Regulations and it is therefore not necessary to provide measures to address this matter in the context of this appeal.
26. Several interested parties have identified that the proposed development will act as a precedent for similar development in the area. Planning decisions are made on their respective merits as assessed against policies in the development plan rather than following a system of precedent.
27. The site is located outside of the Upshire Conservation Area (CA) where there is a statutory duty to pay special regard to the desirability of preserving or enhancing the character or appearance of the CA. The proposed development is a significant distance from the CA and is substantially screened by trees. Therefore, the proposal would not impact on the character, appearance and setting or significance of the CA.

28. In considering this appeal, I have had due regard to the Public Sector Equality Duty (PSED) set out under Section 149 of the Equality Act 2010, in particular the need to eliminate discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. Following consideration of the circumstances as they have been presented to me, I am satisfied that the impact of allowing the appeal is proportionate and necessary.

### **Conditions**

29. The Council has provided draft conditions they seek to attach to the grant of planning permission for the proposed development. I have reviewed these and amended them where I consider it necessary and appropriate. Development under Class A is permitted subject to the conditions set out in paragraph A.2. Conditions (2) and (3) of paragraph A.2 require that the development must be completed within three years from the date of prior approval, and that, before development begins, the developer must submit a construction management report to the local planning authority. This report must detail the proposed hours of operation and outline how adverse impacts from noise, dust, vibration, and traffic will be mitigated. Four of the Council's suggested conditions duplicate these statutory requirements and are therefore unnecessary.
30. For clarity, I have included a condition referring to the approved plans associated with the development.
31. I have omitted the condition requiring Regulation 77 approval, as this is redundant given the existing statutory requirements referred to above. I have not been provided with evidence of a planning policy requirement for the provision of EV charging infrastructure and have therefore not included such a condition. I have also not imposed the suggested condition relating to surface water disposal, as it is not necessary in the context of this proposal.
32. Although the submitted plans specify the materials to be used, it is reasonable to include a condition requiring that those materials be used in the construction of the development. I have also included a condition relating to water usage in the proposed flats, which is appropriate given that the District is classified as an area of severe water stress. Finally, in the interest of reducing reliance on car travel and promoting sustainable development and transport, I have included a condition requiring that, prior to occupation, the developer must provide a Residential Travel Information Pack for each dwelling. This pack, approved by Essex County Council, will promote sustainable transport options. I have removed the requirement to provide vouchers for use with local public transport operators, as this is considered unnecessary.

### **Conclusion**

33. For the reasons given above the appeal should be allowed and prior approval should be granted.

*F P Tinsley*

INSPECTOR

### **Schedule of Conditions**

1. The development hereby permitted shall be carried out and retained strictly in accordance with the following approved plans:

OV/OSPNEY/parking/01/A

OV/OSPNEY/pD/01/d

OV/OSPNEY/pD/03

OV/OSPNEY/pD/04

OV/OSPNEY/pD/02

OV/OSPNEY/parking/02

OV/OSPNEY/pD/10/A

OV/OSPNEY/pD/08/A

OV/OSPNEY/parking/01

OV/OSPNEY/pD/09/A

2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those specified in the submitted application.
3. Prior to first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
4. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council.

**\*\*END of Schedule\*\***