



Appeal Decision

Site visit made on 23 February 2022

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/J1535/W/21/3270344

15 and 15A Stradbroke Drive, CHIGWELL, IG7 5QU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jean-Pierre Popat, Stradbroke Village Limited against the decision of Epping Forest District Council.
 - The application Ref EPF/2503/20, dated 30 October 2020, was refused by notice dated 21 December 2020.
 - The development proposed is demolition of existing dwellings at 15 and 15A Stradbroke drive and construction of 3 replacement dwellings and associated landscaping and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. The references to 'the Framework' made within my decision are to this revised version.
3. The emerging Epping Forest District Local Plan (LP2) is at an advanced stage. Although it is yet to be adopted, I have not been advised of any overriding objections from the examining Inspector to the policies relied on by the Council. Therefore, in light of the advanced stage of production of the LP2, I afford those policies significant weight. The saved policies of the Epping Forest District Local Plan (1998, as altered 2006) (LP) remain in force and I determine the appeal accordingly.
4. In the appeal submissions both parties have referred to a planning permission for three dwellings at the site which was granted under reference EPF/835A/86 in 1987. These three dwellings are in addition to number 15 Stradbroke Drive, such that a total of four dwellings have previously been approved at the site. During the course of the appeal a lawful development certificate (LDC) has been granted confirming that the 1987 permission is extant, such that the two remaining dwellings could be developed. As the main parties are aware of the outcome of the LDC and submissions have already been made in respect of it no prejudice would arise in dealing with this planning appeal on the basis that the LDC has been granted.

Main Issues

5. The main issues are (i) the effect of the proposed development on the character and appearance of the area; (ii) the effect of the proposed development on the mix of housing within the area; and (iii) whether the proposed development would provide satisfactory living conditions for future occupiers with regard to external amenity space.

Reasons

Character and appearance

6. The appeal site is situated in a backland position with its access running between numbers 13 and 17 Stradbroke Drive. Residential development borders the site to all sides. Stradbroke Drive is a tree lined street with properties set back from the road with frontages that mostly accommodate hard surfaced parking areas. Dwellings are mostly substantial, two storey detached buildings that generally extend across the width of their plots, such that there is limited space between them. Many of the properties have high gates and iron railing fencing but the presence of hedgerows, shrubbery, street trees, grass verges and lengthy rear gardens, gives the street an overall spacious and verdant character.
7. The appeal site is well treed and although the existing dwellings are not evidently visible from public view, the woodland nature of the site is apparent from surrounding streets, in particular from near to its access on Stradbroke Drive, and east of the site along Bracken Drive. In this way the site provides spatial relief to the area and makes a significant positive sylvan contribution to the area's character and appearance. Despite its location within a suburban residential area, the site has a semi-rural character and appearance. The importance of the site is recognised by the Tree Preservation Order (TPO) that gives statutory protection to 54 individual trees.
8. The appeal proposal seeks to demolish the existing two dwellings and to erect three executive style, four storey dwellings, in a crescent formation, centrally within the site. The proposed dwellings would be identical above ground level. The basement areas would vary in size and shape due to site constraints. Nevertheless, all of the properties would include gym and games room spaces and changing areas at basement level and a minimum of five double, en-suite bedrooms, four of which would also benefit from dedicated dressing rooms. The existing access routes within the site would be removed and a new permeable resin bound gravel access route would be provided with a turning head at its end. Sandstone paving is proposed to parts of the fronts, rear and sides of each property.
9. The proposal would require the removal of 15 trees from the 123 surveyed. Although the trees proposed for removal are mostly low value category C trees, they nevertheless contribute to the density and depth of tree cover at the site and to biodiversity. Whilst the majority of existing trees are shown to be retained, the extent of tree loss, in combination with the increase in the level of built form and hard surfaces, would adversely impact on the semi-rural sylvan character and appearance of the site. This would likely be evident in views from the rear of surrounding properties and potentially within some street views from Stradbroke Drive and Bracken Drive. I consider it likely that this combined effect would draw attention to the backland nature of the development, as

would the increased vehicle and pedestrian movements along the access route. This would be detrimental to the character and appearance of the site and area.

10. I accept that the density of development would be low, comparative with the size of the site, and the design of the buildings would be high quality. There would be space between the dwellings not dissimilar to those of the frontage properties on Stradbroke Drive. Each of the proposed dwellings would have garden space to the rear and the tree belt would largely be maintained north of the proposed internal access route. The development would not, therefore, be cramped. Nevertheless, I consider that the appeal scheme, by virtue of the significant scale and massing of the buildings proposed, would appear overly dominant within its immediate setting. I acknowledge that the size of the buildings is not unlike others in the wider area, but the position of the proposed development, within this unique site, bears little resemblance to the surrounding street scenes. Therefore, the similarities in scale to nearby properties does not lend favour to the appeal proposal which I consider would represent overdevelopment of the site.
11. I further acknowledge that the site is already developed and that there is extant permission for an additional two dwellings at the site. Thus, the site has been found capable of supporting a greater volume of built form than the existing two dwellings. The principle of the proposal is not in dispute. However, the less suburban layout, and smaller scale of the previously approved development, even when taking into account that it would result in one more dwelling than is proposed by the appeal scheme, would be more in keeping with the wooded nature of the site. Whereas the proposed buildings and more ordered layout would result in a consolidated spatial footprint centrally within the site, whereby the extent of development proposed, and the massing associated with it, would appear significantly more dominant and would harm the character of the site.
12. I note that historically the site has not been subdivided by way of internal boundary treatments but that the ownership of the site has altered such that this situation would be unlikely to persist. I therefore accept that any additional suburbanisation of the site, by way of the erection of internal boundary features, should be considered against the effect of subdivision of the site that could take place in relation to either the existing dwellings or if the further two permitted dwelling were to be developed. Whilst any formal subdivision would diminish the existing woodland appearance, this matter does not alter my opinion that the suburban layout and the overall scale and massing of the appeal proposal would not positively reflect its context.
13. I also note that the remaining two dwellings would be served by their own separate accesses from Stradbroke Park which appear to be relatively low key in design and would not require removal or alteration of the existing access routes. The appeal proposal would result in significant changes to the existing internal access route with dissection of the site by a large suburban style access which would not be reflective of its wooded setting.
14. Replacement trees are proposed and could be secured as part of the proposed landscaping scheme were permission to be granted. A condition could be imposed to secure the long-term management of the landscaping, including the trees. However, it could take some years before the replacement trees make

the same contribution as the existing trees and, in any case, this would not significantly mitigate the bulk and scale of the proposed buildings which would still be out of keeping with the character of the site.

15. Although the extant permission represents a 'fallback' position for the appellant, the evidence indicates that that development would be less substantial and therefore less harmful than the scheme before me. Accordingly, it attracts limited weight in favour of the current proposal.
16. Therefore, I conclude that the proposed development would cause significant harm to the character and appearance of the area. For these reasons the proposal would be contrary to LP Policies CP2, CP3, CP6, CP7, DBE1, LL10 and LL11 and emerging LP2 Policies SP2, SP3, SP7, DM1, DM3, DM5 and DM9 which together and amongst other matters seek high quality design that relates positively to its context.
17. The proposal would also conflict with paragraphs 119, 126, 130 and 180 of the Framework in these regards.

Housing mix

18. Emerging LP2 Policy H1 seeks, amongst other matters, to resist the loss of bungalows and specialist accommodation in order to provide a range of accommodation for people with accessibility needs, including the current and future needs of older people.
19. More generally, LP2 Policy H1 seeks to meet the housing needs of different sectors within the community, to ensure the creation of mixed and balanced communities. Bungalows are considered to play an important role because of their potential ease of adaptation. This approach accords with the Framework, which says that the size, type and tenure of housing for different groups in the community should be assessed and reflected in planning policies.
20. One of the existing dwellings to be demolished under the appeal proposal falls within the Council's definition of a bungalow. The three proposed dwellings would all be four storey properties. Therefore, the appeal proposal conflicts with LP2 Policy H1 (F) as it would lead to the loss of a bungalow. This is a material consideration that I afford significant weight.
21. The West Essex and East Hertfordshire Strategic Housing Market Assessment (2015) indicates an aging profile of the District's population over the plan period. The Council advises that the cumulative loss of bungalows over time would harm the Council's objectives for maintaining and increasing the supply of units that are suitable for older residents.
22. I accept that the appeal properties would be built to high accessibility standards. However, this would be required for all new homes under LP2 Policy H1 (A) (v). From the evidence provided it appears that the main accommodation in the roof space of the existing bungalow is the master bedroom. This suggests that other bedroom accommodation is available on the ground floor, along with the bathroom facilities. I acknowledge that the design of the stairs would require potentially expensive works to adapt for accessibility. However, the appellant indicates that a stair lift would be possible to retrofit. I also have no evidence that the ground floor layout and design, where the majority of the habitable rooms are, would be difficult to adapt to the requisite accessibility standards.

23. Although the bungalow and its large garden is of a size suitable for a family, I do not consider that this precludes it from being adapted to accessible standards or from positively contributing to the mix of housing types. I note that, in any case, it is not a specific requirement of criterion F that bungalows must be capable of being adapted to be retained. The available evidence supports the retention of the bungalow, but there is no substantive evidence before me that there is a need during the plan period for the dwellings proposed. The appellant states that the proposed dwellings would be “classic Chigwell housing stock”. This emphasises to me that the scheme would provide more of the same rather than positively contribute to the mix.
24. My attention has been drawn to several appeal decisions that involve the replacement of a bungalow. However, I note that the circumstances of each of the cases referenced are not directly comparable to those of the case before me. In the Lambourne Road case¹ the chalet style bungalow provided a bathroom and three bedrooms at first floor level. Thereby requiring alteration to access any or all of the bedroom accommodation and the bathroom facilities. In the Sparelease Hill case² the bungalow had its main entrance through a narrow lobby that included two sets of steps, there were further ground floor level changes served by other steps and the bathroom was said to be quite restricted in its size and access. The Inspector considered that the property could not easily be adapted to meet accessibility needs. Further, in the Tomswood Road case³ the Inspector considered that the bungalow experienced a sense of overbearing from its neighbouring properties which attracted weight in favour of that proposal. As such, while I have had full regard to these decisions, they do not provide support for the appeal proposal.
25. I note the opinion of a local estate agent regarding the condition of the bungalow and the reasons they consider it is not a suitable property for older people. Whether or not the bungalow is in such a state of disrepair that the only viable option is to replace it, does not to my mind offer support to the appeal proposal, as there is no ‘in principle’ objection to the replacement of the building, rather the underlying objection is to the loss of a bungalow from the housing mix. Other matters raised regarding the likelihood of being able to find an older purchaser do not persuade me that the appeal proposal justifies a departure from the requirements of LP2 Policy H1.
26. While an additional storey can be provided to a dwelling under permitted development rights, this is subject to a prior approval process, as both parties indicate. The appellant considers there to be no obvious reason why an upward extension scheme would not succeed via this process and, therefore, the contribution of the bungalow to the housing mix would be lost without recourse to LP2 Policy H1. However, it is not certain that prior approval would be granted and, given that the proposal is for redevelopment of the site, there is no clear evidence to suggest that such an alternative would be pursued. I therefore afford this matter limited weight in my considerations.
27. Consequently, I conclude that the proposal would have a harmful effect on the mix of housing within the area in conflict with emerging LP2 Policy H1. It would also conflict with the Framework’s aim of providing a range of housing to meet the needs of different groups in the community.

¹ APP/J1535/W/20/3254429

² APP/J1535/W/20/3253711

³ APP/J1535/W/19/3228905

Living conditions

28. The quality of the proposed external amenity spaces is of concern to the Council in respect of overshadowing and overbearing impacts of the retained trees and from inconvenience of seasonal nuisance.
29. An Internal Daylight and External Sunlight Assessment was undertaken by the appellant. This report considered the BRE Guidelines test which sets out that an amenity space is well sunlit if it receives two or more hours direct sunlight on ground to 50% of the area on 21 March (spring equinox, which represents the average for the year). It identified that the proposal would provide enjoyable usable external garden spaces throughout the year and suggested that people generally prefer the dappled light through a tree on a summer's day and also that during winter months, the shading cover from them would be far less.
30. The report concluded that the amount of daylight and sunlight that the external amenity spaces would receive exceeds the relevant recommended BRE Guidelines. No evidence was provided to indicate that the assessment or conclusions of the report may be incorrect. I am satisfied that the retained and proposed trees would not lead to unacceptable levels of light for future occupants, and in this respect I am not persuaded that this would form a likely reason for occupants to seek significant pruning or complete removal of trees.
31. With regard to the suggested problems arising from falling tree debris, I acknowledge that this is a practical consideration that future occupiers would have. However, I accept that the treed nature of the site would likely be part of the attraction of the proposed development for future occupiers, and that they would purchase the dwellings in the knowledge that the trees exist, that some of them are subject to protection through the TPO and that ongoing maintenance, including in relation to leaf litter, would be required.
32. It is likely that the majority of future occupiers would act responsibly in relation to maintaining the character of the site. The Council would retain control over any works to the protected trees, including refusing applications where the works are not considered acceptable. In addition, a condition could be imposed were the appeal to be allowed, requiring the replacement of trees, shrubs or hedges shown to be retained, that were removed, uprooted, destroyed, damaged or diseased within a specified timeframe. Prospective purchasers would be aware of their responsibilities in these matters.
33. I conclude that the proposal would provide satisfactory living conditions for future occupiers with regard to external amenity space. Thus, the proposal would not conflict in this regard with LP Policies CP7 and DBE8 and emerging LP2 Policy DM9 which, together and amongst other matters, and along with paragraph 130 of the Framework, seek developments that provide satisfactory living conditions for future occupiers including in relation to external amenity spaces.

Other Matters

34. I have been referred to pre-application advice provided by the Council. However, I have considered the appeal on its planning merits, and such discussions as may have taken place between the Council and the appellant before and during the course of the application process do not alter my conclusions.

35. My attention has been drawn to examples of other sites where the Council has granted planning permission for backland development. I have given consideration to those permissions. However, the principle of development at the appeal site is not in dispute and it is clear that the site-specific circumstances and the scale of the permitted examples are not directly comparable to the appeal scheme. I therefore find the referenced permissions to be of limited relevance in this instance.
36. I note other concerns raised by interested parties, including overlooking. However, as I am dismissing the appeal on other grounds it has not been necessary to consider these matters further.

Habitats sites

37. The Habitats Regulations⁴ require that planning permission may only be granted after having ascertained that the proposed development will not affect the integrity of a European site⁵ or sites. The appeal site falls within the zone of influence of the Epping Forest Special Area of Conservation (SAC). The SAC is designated for the diverse species range of flora, fauna and habitats found within the Epping Forest. The qualifying features of the SAC are at risk from increases in recreational pressure and atmospheric pollution. I note that the appellant has indicated willingness to provide a financial contribution towards mitigating the recreational impacts of an additional dwelling at the site and has agreed to the imposition of planning conditions to deal with the provision of high-speed broadband and electric vehicle charging capacity to address issues of atmospheric pollution.
38. However, as I am dismissing the appeal on other grounds, upon which an assessment under the Habitats Regulations would have no bearing, it is not necessary to explore this issue any further in this case.

Planning Balance

39. It is common ground between the main parties that the Council cannot demonstrate a five year deliverable supply of housing, although no exact figure clarifying the shortfall has been provided to the appeal. Nevertheless, I have been directed to the Housing Delivery Test results which indicate a worsening delivery situation since 2019. The latest results indicate that the delivery of housing was substantially below the housing requirement over the last three years with only 35% being achieved. Consequently, because of the provisions of footnote 8, paragraph 11 d) ii. of the Framework should be applied.
40. This presumption in favour of sustainable development would not be engaged if I had found that there would be unmitigated harm to the SAC. However, as I have not undertaken an appropriate assessment in this instance, I have applied the so-called tilted balance.
41. The proposal would provide a net gain of one market home compared to what exists on the site, in an accessible location. Thus, it would contribute as a small or medium sized site towards the supply and mix of housing, boosting supply as required by the Framework. This would be one net dwelling less than what

⁴ Conservation of Habitats and Species Regulations 2017.

⁵ Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

the extant permission could provide. Furthermore, the proposed dwellings would all be executive large market homes, a type already prevalent in the area. These factors limit the weight I afford these benefits to modest, even taking into consideration the housing land supply and delivery position.

42. It is also intended that the proposal would meet accessibility standards and be energy efficient. This would be required of any development and along with other matters where no harm has been identified, these are neutral considerations weighing neither for nor against the proposal.
43. Although the Framework seeks to make effective and efficient use of land and, in places where there is an existing shortage of land for meeting identified housing needs, to avoid homes being built at low densities, it also requires developments to do so while safeguarding and improving the environment. I do not consider the proposal is designed to an extent where it can be considered an effective use of land and weight cannot be afforded in this regard.
44. I have found the proposal would give rise to unacceptable harm to the character and appearance of the area. This is contrary to the requirements of the Framework for high quality design and development that is sympathetic to local character. This matter attracts significant weight. I have also found that further harm would be caused by the loss of a bungalow. This would be contrary to the aims of the Framework which seek to ensure the identified housing need of the community is met. This conflict attracts considerable weight.
45. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. Therefore, the proposal would not represent sustainable development. The proposal would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations, including the provisions of the Framework.

Conclusion

46. For the above reasons the appeal is dismissed.

S Tudhope

INSPECTOR