



Appeal Decision

Site visit made on 3 January 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th January 2024

Appeal Ref: APP/J1535/W/23/3317051

404 Fencepiece Road, Chigwell, Essex, IG7 5DS

- 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 Richard Hart against the decision of Epping Forest District Council.
 - The application Ref EPF/2710/22, dated 29 November 2022, was refused by notice dated 15 February 2023.
 - The development proposed is the demolition of existing dwelling and construction of 8 new apartments.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council adopted the Epping Forest District Local Plan 2011-2033, Part One (LP) in March 2023. The policies in the LP supersede those in the Epping Forest District Local Plans adopted in January 1998 and July 2006 respectively. As such, the policies of those plans cited on the Council's decision notice are no longer in force. However, the Council also referred to the then emerging policies for the LP and both parties have had the opportunity to refer to the LP in their appeal statements.
3. In addition, the National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Hence, I am satisfied that no one will be prejudiced by the changes to the local and national policy context.

Main Issues

4. The main issues are the effect of the proposal on:
 - The character and appearance of the area, including trees;
 - The living conditions of the occupants of 406 Fencepiece Road having particular regard to outlook and noise, and;
 - The Epping Forest Special Area of Conservation (SAC).

Reasons

Character and appearance

5. The section of Fencepiece Road near the appeal site lies within an established residential area. Although there are some exceptions, especially at the corners of junctions, the area predominantly comprises 2-2.5 storey detached and semi-detached houses set within generous rectangular plots. Whilst there are some differences in appearance, most houses take a conventional form. Coherence is derived from the ordered underlying layout whereby dwellings are regularly set back from the road, towards which they present their principal elevation, with a longer rear garden behind. The latter contribute towards a general sense of spaciousness and provide opportunities for greenery and tree cover that enhance and soften the effects of the built form.
6. Consequently, there is a prevailing clear relationship between road alignment, plot shape, the scale and arrangement of built form and rear gardens. This settlement pattern is an important component to the legibility and qualities of the street scene and results in a pleasant, verdant suburban character and appearance.
7. The appeal property is a large detached two storey dwelling that faces Fencepiece Road. Despite sitting forward of the adjacent dwelling at no.406, it reads as the end dwelling within a short series of detached dwellings on the eastern side of the road before reaching a spacious area of allotments and greenery at the corner of Limes Avenue. As such, the appeal site reinforces the prevailing settlement pattern. Moreover, glimpses of the side of the appeal site are possible from Limes Avenue whereby the rear garden and presence of mature trees make a positive contribution to the sense of spaciousness and greenery.
8. The appeal proposal would demolish the present dwelling and replace it with a new structure accommodating eight apartments over three floors. The replacement building would represent a significant increase in built volume in comparison to the existing dwelling. The footprint of which would appear elongated and would encroach much deeper into the rectangular plot. This dissenting configuration would strike a discordant note with the nearest dwellings to the north.
9. The increase in the built coverage within the plot would comprise 2.5 storeys for most of its length and therefore would add considerable bulk to the overall built form. Given its height, massing and position deeper into the plot, the structure would erode the sense of spaciousness. This would be apparent in views from Limes Avenue.
10. In addition, the orientation of the building would be particularly harmful to the underpinning settlement pattern. The front elevation would not face towards the road but rather would have a secondary side elevation onto it. Hence, the main elevation would present towards the side garden boundary with no.406, with the rear elevation towards Limes Avenue. The main entrance door would be approximately halfway into the site, unlike most nearby dwellings, the designs of which tend to announce the main entrance within the most public elevation. Such an arrangement would adversely undermine the legibility and ordered layout that is an intrinsic part of the suburban character of the area.
11. Differing roof lines, elevational projections and varied materials would assist in articulating the massing of the longer elevations of the building such that in some respects it would be redolent of a terrace. However, I did not observe that such linear arrangements, perpendicular to the road and set deep into a

rectangular plot are characteristic of the area. Even having regard to the photographs of various residences in the accompanying Design and Access Statement, I cannot agree that there are multiple examples of development displaying 'extremely similar design features of an extremely similar scale' as is asserted¹.

12. Furthermore, in this context, the proposed assortment of gables, dormers, differing ridge heights and gambrel style roof profile would result in a confused appearance. The effect would be exacerbated by using noticeably differently proportioned windows, sometimes within the same elevation. The juxtaposition of large, glazed folding windows, smaller conventional casements and a central largely blank gable feature along the proposed rear elevation would appear particularly disjointed, and would be glimpsed from Limes Avenue. Overall, it is not successfully shown that the architectural concept for the proposed building would be well grounded in the locality, and instead would harmfully undermine its identity.
13. Taking these factors together the proposal would be unsympathetic to local character and would fail to be visually attractive as a result of good architecture and layout. As such, it would fall short of requirements set out in paragraph 135 of the Framework in those respects.
14. A protected mature oak tree² lies close to the rear boundary of the site, and an Austrian pine grows to the south. Policy DM5(B) of the LP states that proposals must be accompanied by sufficient evidence to demonstrate that trees will be retained and protected. The Council consider that this has not been shown but have not detailed any specific areas of likely harm to the trees.
15. I have had regard to the Arboricultural Report³ dated 8 July 2022 provided which suggests that both trees would be retained. However, that report⁴ confirms that it only remains valid for a year following inspection of the trees. Notwithstanding the appellant's reference to an updated report, all versions of the report before me have the same date and by its own terms, the contents of the report are no longer valid. I have further concerns that the report predates the Tree Protection Order placed on the oak tree and that the Tree Protection Plan and measures discussed relate to a different development than the one before me. Hence, the document carries little weight.
16. Nevertheless, both the trees lie outside of the appeal site and the proposed block plan shows that the area close to both trees would be retained as a garden with the proposed building some distance away. However, it is proposed to remove an existing outbuilding at the end of the garden which lies close to the oak tree, which could have implications for the protected tree. On balance, notwithstanding the imperfect tree evidence provided, I am satisfied that it would be relatively straightforward to avoid causing harm to these trees. Moreover, detailed tree protection measures and fencing are matters that could be addressed by a planning condition. On that basis, the proposal would sufficiently deal with the requirements of policy DM5.

¹ Page 4, Appellant's Statement of Case

² Tree Preservation Order reference TPO/EPF/04/22 confirmed 17.1.23

³ Prepared by Andrew Day Arboricultural Consultancy, sent with appeal documents and appellant's 'Response to the LPA's comments'.

⁴ Page 27

17. It is put to me that the appeal scheme has been reduced and improved in comparison to previous planning applications at the appeal site. Be that as it may, it is not shown that any comparable previous schemes have been approved or could be constructed as a 'fall back' to the scheme before me. Hence, their relative merits to the current proposal hold little relevance.
18. Notwithstanding that I considered trees could be suitably safeguarded, overall, I find that the proposal would cause unacceptable harm to the character and appearance of the area. Accordingly, the proposal would conflict with policy DM9 of the LP which amongst other matters requires development to achieve a high quality design that relates positively to its context and makes a positive contribution to a place.

Living conditions

19. Policy DM9(I) of the LP states that development proposals must take account of the privacy and amenity of neighbours. Sub-section (iv) states proposals should not result in an overbearing form of development which materially impacts on the outlook of neighbours, whereas subsection (v) requires proposals to address issues of noise likely to arise from the development.
20. The Council considers that the proposal would have an overbearing impact on the outlook enjoyed by the occupants of 406 Fencepiece Road from the rear of their property and garden. In addition, concerns are raised in relation to the effect of noise on those neighbours.
21. The proposed block plan shows that the building would extend deeper into the appeal site and considerably beyond the rear façade of no.406. Given the height of the building, the structure would be clearly visible above the boundary fence. As such, the presence of significant built form would be obvious for about half the length of the rear garden of no.406. This would markedly erode the sense of spaciousness in the outlook from windows in the rear elevation and garden of no.406.
22. It is highlighted that the structure would be inset from the side boundary with no.406. Nevertheless, the separation distance or 'buffer' would be insufficient to prevent the scale of the building proposed from having a looming presence in the outlook from the rear of no.406.
23. Moreover, the building would align with the patio/decking and area of garden closest to the house which is likely to be more intensively used for prolonged periods of sitting out. The appeal proposal would result in an unpleasant sense of enclosure and constraint which would diminish the experience of the neighbouring occupants when seeking to enjoy their rear garden area in this way.
24. Consequently, the proposal would not achieve the high standard of amenity for existing and future users advocated in paragraph 135f) of the Framework.
25. Reference is made to the removal of an outbuilding which lies on the boundary with no.406. However, this is a small, single storey structure, the presence of which is not shown to be problematic. Its removal would not overcome nor address the extent of my concerns arising from the height, length and position of the proposed apartment building.

26. Currently the appeal site accommodates one large dwelling. Eight apartments would be likely to house more people and generate additional comings and goings. I acknowledge that some noise would be associated with that activity. Furthermore, as the main entrance is deeper within the appeal site, that is likely to be more apparent to the neighbours at no.406. Nevertheless, the use of the land would remain residential in character and so would not be inherently noisy and there is no technical evidence before me to substantiate the Council's concern that such noise would be excessive.
27. Furthermore, motor vehicular activity would be confined to the parking area at the front of the building meaning that associated vehicle noise would be prevented from occurring adjacent to the rear garden of no.406. Rather the main entrance would attract pedestrian activity. In this respect the 'buffer' inset from the side boundary would be more effective in mitigating noise or disturbance from such relatively low-key activity, as it would allow for the provision of a more centrally positioned path.
28. Accordingly, although I do not find the proposal would result in excessive noise and disturbance, I do find that it would unacceptably compromise the living conditions of neighbouring occupants at no.406 owing to the harmful effect on their outlook. Therefore, it would further conflict with policy DM9 of the LP in this respect.

SAC

29. The SAC designation reflects its international importance for nature conservation and is recognised under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations). The SAC comprises a mosaic of habitats including former beech wood-pasture, and both wet and dry heathland. These host important habitats and species including wood-pasture with many old pollards and associated beech and oak as well as various rare moss, lichens and stag beetle.
30. Evidence shows that the SAC is under significant pressure from human activity. As the population of people living nearby grows, damaging impacts from recreational visits and associated dog walking have the potential to cause ongoing adverse effects on the protected habitats and species. Similarly, the deterioration of air quality from traffic emissions within the SAC owing to an increase of certain chemical compounds is compromising the health of the protected habitats and species.
31. Caselaw⁵ requires the decision maker, when considering the effect that a proposal may have on European Sites, to consider mitigation within an Appropriate Assessment. The appeal proposal would increase the net number of dwellings at the site. It is foreseeable that it may generate additional recreational visits and traffic that could affect the SAC as it lies within the identified zone of influence which makes such occurrences more likely.
32. In the absence of mitigation measures and using a precautionary approach, intensification of such activities would be likely to cause disturbance to the habitats and associated species at the SAC and contribute to a deterioration in air quality. I am required to consider the effect of the proposal both individually

⁵ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the SAC.

33. Reference is made in the submitted evidence⁶ to strategic approaches employed by the Council to mitigate the harmful effects of development upon air quality (Interim Air Pollution Mitigation Strategy) and the recreational impacts of housing development (Managing Recreational Pressure on the Epping Forest SAC (the Interim Approach)). In both respects, the Council seek financial contributions to be secured by planning obligations towards the respective mitigation strategies, stated to be £335 and £1852.63 per net dwelling respectively⁷. In addition, planning conditions to provide broadband connection and electric vehicle charging points would also contribute towards the air pollution mitigation strategy.
34. The appellant does not dispute the need for, nor the amount of the financial contributions sought⁸ and states that he would be willing to enter into a section 106 agreement. However, at the time of my determination of this appeal no completed legal agreement nor other mechanism was before me that would secure them. It follows that in the absence of any secured mitigation measures, the proposed development would be likely to have an adverse effect on the SAC's special features.
35. As such, the proposal would fail an Appropriate Assessment under the Habitat Regulations. It is not part of the appellant's case that no alternative solutions or imperative reasons of overriding public interest as referred to in the Habitat Regulations exist.
36. Therefore, I find that the proposed development would be likely to adversely affect the integrity of the SAC. Consequently, it would be contrary to the provisions of the Habitat Regulations. Furthermore, it would conflict with policy DM2 of the LP which seeks to protect the SAC and states, amongst other things, that in these circumstances new development will not be permitted. It would also run counter to the requirements of policy DM22 of the LP which requires development to provide adequate mitigation against the adverse impacts of air pollution.

Other Matters

37. The development would provide additional dwellings that would contribute towards the overall housing supply and mix. It would also make more efficient use of an existing residential plot in a location with reasonable access to a range of local services and public transport. These are factors that are encouraged by the Framework and weigh in favour of the proposal.
38. Even so, paragraph 128 of the Framework specifies that the desirability of maintaining an area's prevailing character and setting should be taken into account when making effective use of land. Moreover, the Council have confirmed⁹ that it is able to show a sufficient supply of housing land and I have not seen evidence to suggest otherwise. Hence, these are factors that temper

⁶ Overarching Standard Advice for Development Applications within Epping Forest District from Natural England dated 10.8.21; Appropriate Assessment contained within Council's delegated report.

⁷ Paragraph 10, Council's Statement of Case

⁸ Appellant's response to LPA's comments, Refusal reason 4

⁹ Paragraph 11, Council's Statement of Case

the amount of favourable weight given to the beneficial elements. Accordingly, taken cumulatively I attribute them moderate weight in the overall balance.

Planning balance and conclusion

39. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁰. In relation to the main issues, I have found the proposal would conflict with policies of the development plan which are consistent with policies in the Framework. Although there are some positive aspects to the proposal, they are insufficient to outweigh this finding. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

INSPECTOR

¹⁰ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.