
Appeal Decision

Site visit made on 16 January 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st February 2024

Appeal Ref: APP/J1535/W/22/3313750

Land adjoining 33 Maypole Drive, Chigwell, Essex IG7 6DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Colin Stone against Epping Forest District Council.
 - The application Ref EPF/1229/22 is dated 25 May 2022.
 - The development proposed is the construction of 1 no. 3 bedroom bungalow on a vacant plot of land adjacent to 33 Maypole Drive.
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Decision

1. The appeal is dismissed and planning permission for the construction of 1 no. 3 bedroom bungalow on a vacant plot of land adjacent to 33 Maypole Drive is refused.

Application for Costs

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

Preliminary Matters

3. A revised National Planning Policy Framework was published on 19 December 2023 and updated on 20 December 2023. 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.
4. Since the appeal was submitted, Epping Forest District Council Local Plan 2011-2033 (the LP) was adopted on 6 March 2023. Therefore, the appeal will be considered against the policies from this recently adopted plan.

Main Issues

5. Although a formal decision was not issued, in their statement, the Council have indicated that it would have refused planning permission for the proposed development. They have outlined that their main concerns relate to the previous grounds for refusing planning permission, particularly highlighting the impact of the proposed development on the character of the area in relation to the siting and form of the proposed development in the context of the

streetscene. Therefore, the main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and Appearance

6. The appeal site forms a relatively large lawned garden area to the side of the dwelling at 33 Maypole Drive. It is currently free from built form and surrounded by timber fencing. The surrounding area is a residential cul-de-sac largely comprised of uniform two-storey dwellings and single storey garages with open frontages and enclosed gardens to the rear.
7. The proposal would be located within an existing residential garden area, where an ancillary outbuilding may be expected. However, due to its substantial size and other features which accompany a standalone residential property, such as a separate access, parking and garden, the proposed building would not appear as a subservient outbuilding to the dwelling at 33 Maypole Drive.
8. The proposed development would be located on a large plot which has ample space for a separate dwelling of this size, without appearing cramped, and would use materials intended to match existing development in the area. Nevertheless, it would be significantly different to the style and layout of the existing residential properties in the immediate area, as a single storey dwelling, set behind a high boundary fence with most of its usable garden space located to its side. Therefore, it would appear at odds with other development in the streetscene.
9. Although the front elevation of the proposed dwelling would be set back from the road and in line with the terrace of properties to the south, it would sit quite substantially forward of an adjacent garage outbuilding and the properties at the end of the cul-de-sac. Its siting, along with its incongruous design and layout, would therefore appear overly prominent and out of keeping with the prevailing pattern of development within Maypole Drive.
10. The proposed dwelling would be partially obscured from public view by the existing boundary fence. However, due to its height above this fence, the gap in the fence for the proposed access and the overall mass of the building, it would still be a highly visible addition within the streetscene. The incongruous nature of the proposed development, as set out above, would therefore have a significant impact upon the character and appearance of the area. Whilst the appeal site is already somewhat of an anomaly within the streetscene, the proposed development currently before me would not overcome this.
11. It is noted that the proposed dwelling would be slightly lower in height than an adjacent detached garage outbuilding in front of 26 Maypole Drive. However, the proposal would have a significantly larger footprint than this garage and would be greater in width. Therefore, it would appear more prominent in the streetscene and less akin to an ancillary outbuilding when compared to this neighbouring building.
12. There have been a number of previous applications for the appeal site, some of which have found various aspects of the design acceptable. Nonetheless, the proposed development before me is different in design from these previous iterations. Therefore, it has been considered on its own merits. Similarly, a development approved at 4 Doves Cottages, referenced in a previous appeal

decision¹ for 26 Maypole Drive was found to appear as a subservient residential outbuilding and as such is not comparable to the appeal proposal.

13. Therefore, for the reasons given above, I conclude that the proposed development would harm the character and appearance of the surrounding area and would conflict with Policy DM9 of the LP. This policy seeks to ensure that development proposals relate positively to the locality having regard to the form, scale and massing around the site and the rhythm of any neighbouring or local plot and building widths.

Other Matters

14. The appellant has stated that the Council cannot demonstrate a five-year supply of deliverable housing. No information has been provided to support this or outline the extent of the shortfall but, if this is the case, on this basis the test in paragraph 11(d) of the National Planning Policy Framework (the Framework) should be applied.
15. The proposed development would add to the overall housing land supply and would make a small contribution to the Government's objective of significantly boosting the supply of homes, providing an additional dwelling in a sustainable location which could be suitable for those with accessibility requirements or the elderly. However, the benefits derived from an individual dwelling would be limited and therefore this carries limited weight. Therefore, even if there is a significant shortfall in the housing land supply, given the harm I have identified, the adverse impact of granting planning permission would significantly and demonstrably outweigh the limited benefits of one dwelling when considered against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposed development.
16. It is noted that it may be possible to construct the proposed building under permitted development rights for use ancillary to the main dwelling. Although there appears to be no intention to construct such a building at this point in time. However, a standalone dwelling would have a different impact on the character and appearance of the area to a garden outbuilding including a separate access, parking area and an increased level of use. Therefore, it is not directly comparable and does not set a precedent for the appeal proposal before me.
17. The appellant has raised concerns that the Council failed to consult local residents and the Parish Council regarding the proposed development. However, I find no evidence to suggest that this is the case and the Council have confirmed that the necessary consultations took place and the comments received from local residents were relevant to the current appeal proposal. Furthermore, local residents were able to provide their comments as part of this appeal.
18. The appeal site is located in close proximity to the Epping Forest Special Area of Conservation (SAC) and the Council have indicated that additional vehicle movements from the proposed development would require adequate mitigation measures to be put in place to counteract the adverse effect on the SAC, outlining the measures and financial contributions in accordance with the

¹ APP/J1535/W/21/3286646

Interim Epping Forest Air Pollution Mitigation Strategy (2020). A letter was submitted by the appellant, as part of this appeal, stating that they would make the necessary financial contributions, however no formal unilateral undertaking or section 106 agreement has been provided to secure this.

19. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

20. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR

Delegated Report

EPF/0183/22

Description of Site:

Application site forms part of the garden area of 33 Maypole Drive, a two storey end of terrace house on the east side of the road, a cul-de-sac. The existing house is extended to the front and side at ground floor and has a side and rear garden area, the rear extending to Gravel Lane. Common to the road, parking is to the frontage.

The surrounding area is wholly in residential use, Maypole Drive comprising primarily a mix of semi-detached and terraced houses. Immediately abutting the rear boundary is a garage on its own plot, subject of a number of applications for residential development

Description of Proposal:

Application proposes a single storey three bedroom dwelling on the existing garden area. The building is shown with a shallow pitch roof to achieve eaves height of 2.1m and ridge height of 4m with openings on all elevations, main entrance is shown from the west side (abutting adjoining garage) with 2m gap on this side, building is also set a minimum of 2.1m from the rear boundary.

Two parking spaces are shown in south east corner of site adjacent to existing house parking. Minor alterations to the existing by way of removal of a shed and creation of a side access are required to facilitate development

Relevant History:

EPF/2797/18 Four bed detached dwelling on site refused (Committee overturn) – overbearing impact on neighbours at the rear, overlooking, design out of character, loss of garden area to existing. An appeal was dismissed; overbearing impact on neighbours from building and design were upheld, others were not. SAC issue was raised at appeal only and was noted.

EPF/2164/20 Construction of two dwellings refused – Cramped character in particular to unit 1 (particularly garden area), overbearing impact on neighbours at the rear, impact on EFSAC.

EPF/0114/21 Construction of two dwellings refused on same grounds. Appeal dismissed – Inspector agreed impact on neighbours and SAC, but did not consider there was harm to the character and appearance of the area.

Policies Applied:

Adopted Local Plan:

Section 38(6) Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan currently comprises the Epping Forest District Council Adopted Local Plan (1998) and Alterations (2006).

The following policies within the current Development Plan are considered to be of relevance to this application:

CP2	Protecting the quality of the rural and built environment
NC1	SPA's, SAC's and SSSI's
DBE1	Design of new buildings
DBE2	Effect on neighbouring properties
DBE3	Design in urban areas
DBE5	Design and layout of new development
DBE8	Private amenity space
DBE9	Loss of Amenity
ST6	Vehicle parking

NPPF (February 2109):

The revised NPPF is a material consideration in determining planning applications. As with its predecessor, the presumption in favour of sustainable development remains at the heart of the NPPF. Paragraph 11 of the NPPF provides that for determining planning applications this means either;

- (a) approving development proposals that accord with an up-to-date development plan without delay; or
- (b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making, but policies within the development plan need to be considered and applied in terms of their degree of consistency with the Framework.

In addition to paragraph 11, the following paragraphs of the NPPF are considered to be of relevance to this application:

- 2 Achieving sustainable development
- 5 Delivering sufficient supply of homes
- 11 Making effective use of land
- 12 Achieving well designed places
- 14 Meeting the challenge of climate change, flooding and coastal change

Epping Forest District Local Plan (Submission Version) 2017:

On 14 December 2017, the Council resolved to approve the Epping Forest District Local Plan (2011-2033) – Submission Version ("LPSV") for submission to the Secretary of State and the Council also resolved that the LPSV be endorsed as a material consideration to be used in the determination of planning applications.

The Council submitted the LPSV for independent examination on 21 September 2018. The Inspector appointed to examine the LPSV ("the Local Plan Inspector") held examination hearings between 12 February and 11 June 2019. As part of the examination process, the Council has asked the Local Plan inspector to recommend modifications of the LPSV to enable its adoption.

During the examination hearings, a number of proposed Main Modifications of the LPSV were 'agreed' with the Inspector on the basis that they would be subject to public consultation in due course. Following completion of the hearings, in a letter dated 2 August 2019, the Inspector provided the Council with advice on the soundness and legal compliance of the LPSV ("the Inspector's Advice"). In that letter, the Inspector concluded that, at this stage, further Main Modifications (MMs) of the emerging Local Plan are required to enable its adoption and that, in some cases, additional work will need to be done by the Council to establish the precise form of the MMs.

Although the LPSV does not yet form part of the statutory development plan, when determining planning applications, the Council must have regard to the LPSV as material to the application under consideration. In accordance with paragraph 48 of the Framework, the LPAs "may give weight to relevant policies in emerging plans according to:

- a) The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given)."

Footnote 22 to paragraph 48 of the NPPF explains that where an emerging Local Plan is being examined under the transitional arrangements (set out in paragraph 214), as is the case for the LPSV, consistency should be tested against the previous version of the Framework published in March 2012.

As the preparation of the emerging Local Plan has reached a very advanced stage, subject to the Inspector's Advice regarding the need for additional MMs, significant weight should be accorded to LPSV policies in accordance with paragraph 48 of Framework.

The following policies in the LPSV are considered to be of relevance to the determination of this application, with the weight afforded by your officers in this particular case indicated:

POLICY	WEIGHT AFFORDED
SP1 Presumption in favour of sustainable development	Significant
SP7 The Natural Environment, landscape character and green infrastructure	Significant
T1 Sustainable transport choices	Significant
DM1 Habitat protection and improving biodiversity	Significant
DM2 Epping Forest SAC and Lee Valley SPA	Significant
DM3 Landscape Character, Ancient Landscapes and Geodiversity	Significant

DM9	High Quality Design	Significant
DM10	Housing design and quality	Significant
DM15	Managing and reducing flood risk	Significant
DM16	Sustainable Drainage Systems	Significant
DM19	Sustainable water use	Significant
DM21	Local environmental impacts, pollution and land contamination	Significant
DM22	Air quality	Significant

Consultation Carried Out and Summary of Representations Received

Date of site visit: Previous application

Number of neighbours consulted: 30

Site notice posted: No, not required

Responses received: Two responses received from neighbours at 24 & 26 Gravel Lane. Residents comment on impact in terms of their short rear gardens and levels differences, in terms of disturbance, loss privacy and physical impact. It is noted that one resident appears to have misread the application as being for houses.

Parish Council: Chigwell PC have objected on grounds of over development

Main Issues and Considerations:

The application is substantially different from previous schemes in proposing only one dwelling and that being a single storey property.

The overall height of the building is no greater than would be permitted as a domestic outbuilding, albeit on a much larger footprint. With the separation from the boundary to properties in Gravel Lane, the building will not now have a significant physical impact on the neighbours. It should be noted we have not run a residential amenity argument on refusals for single storey buildings on the adjoining plot.

The building would however be incongruous in the setting. The area comprises street fronting properties in a regular pattern of two storey dwellings, as was recognised by the Inspector at the previous appeal for this site. A single storey dwelling, and on located in a garden would be at odds with this overall strong pattern. Two Inspectors at appeals on the adjoining land have also placed emphasis on the street front pattern. The street elevation present this as a building in the garden, retaining existing 2m fences along the boundary – the building is too big to be read as an outbuilding and therefore presents an out of character element in the setting. No information on levels is presented, the street falls east to west by a noticeable degree, and site photos demonstrate the garden sits at a higher level above the road. In the absence of accurate details, this suggests either a significant step up into the building, a building that sits in a more elevated position than indicated, or substantial level changes, any of which adds further to the incongruous nature of the development.

The site lies outside of the SAC 3km core area and has been assessed in terms of air quality only. An HRA accompanies the application, recognising that the development is likely to generate some journeys through the EFSAC area, but argues that would not have a significant impact. This assessment appears to fall short of the standards required, in that it fails to provide beyond scientific doubt that there will not be harm. Thus the development can be seen as having an impact, no

matter how small.

The Parish Council have objected on grounds of overdevelopment but have not sought to clarify this. The development provides adequate amenity space for existing and proposed and the objection cannot therefore be sustained.

Matters raised in consultation around contaminated land and drainage could be addressed by condition if minded to approve.

Conclusion:

While the application has moved on somewhat from previous refusals, in its context, the building is a substantial structure incongruous in the setting. The application fails to persuade on the siting and character in the wider context, or leaves issues unresolved around levels which add to the odd nature of the scheme. The character issues which the previous appeal inspector was satisfied with are fundamentally changed by this development and little weight is therefore given to the Inspectors acceptance of the character of that materially different development.

The HRA results indicate an impact on the EFSAC, but deem this to be limited – this would not meet the current standard requiring a beyond scientific doubt justification. In the light of the impact, and in the absence of an agreed mitigation, the development has an unacceptable impact

Therefore the application should be refused.



Appeal Decision

Site visit made on 30 November 2021

by Andre Pinto BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd December 2021

Appeal Ref: APP/J1535/W/21/3271721

Land Adjoining 33, Maypole Drive, Chigwell IG7 6DE

- 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 Colin Stone against the decision of Epping Forest District Council.
 - The application Ref EPF/0114/21, dated 14 January 2021, was refused by notice dated 9 March 2021.
 - The development proposed is construction of 2 Number 2 Bedroom Units.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed development on:
 - the living conditions of existing and future occupiers of nearby properties, particularly with regard to any overbearing impact at 22-26 Gravel Lane, and those of future occupiers of the proposed development, particularly those of Unit 1 with regard to layout and overshadowing;
 - the character and appearance of the area; and,
 - the effect of the proposed development on the integrity of the Epping Forest SAC.

Reasons

Living Conditions

3. The development proposal is for the construction of two two-storey residential units in a vacant plot of land immediately adjacent to 33 Maypole Drive. 22-26 Gravel Lane also backs directly on to the appeal site.
4. At its narrowest point, as set in drawing LA33MD/1/21/9/RevB, the proposed development would be set back approximately 3.6 metres from the rear boundary of properties in Gravel Lane.
5. Policy DBE2 of the Epping Forest District Local Plan (1998) states that planning permission will not be granted for new buildings which have a detrimental effect upon existing neighbouring amenity. Policy DBE9 requires that a new development does not result in an excessive loss of amenity, including visual impact. Consequently, it is necessary to look at, not only to what degree the proposal may or may not cause excessive visual impact, but also take into

consideration the level of visual outlook currently enjoyed by neighbouring properties. Furthermore, Paragraph 15.45 of the Epping Forest District Local Plan (1998) states that visual impact involves an assessment of the effects of scale, proportion, siting, massing, height, orientation and roofline, as well as proximity of a new development to existing residential areas.

6. In order to minimise the impact of the proposal on 22-26 Gravel Lane, the Appellant proposes to lower the ground level by nearly half a metre within the appeal site as to create a roof line approximately at the same level as that of the properties in Gravel Lane. Also, the proposed "cat slide design" roof, to the rear elevation of the proposed development, aims to address the overbearing effect of the proposal by creating a 15.5 metre gap between the rear 2 storey elevations of numbers 22 and 24 Gravel Lane and the roof ridge of the new dwellings.
7. Although I accept that these changes would minimise the impact of the proposal on the rear elevation of 22-26 Gravel Lane, the resulting building would still stand in close proximity to the rear boundary of those properties which, in my view, would still lead to a visual overbearing impact, particularly when viewed from the rear windows or garden areas of the neighbouring properties.
8. The Council has also raised concerns regarding the living conditions of future residents of Unit 1, particularly in relation to layout and overshadowing of the garden area. Although, as a result of the proposal, the rear garden area to Unit 1 would have an unusual layout, the resulting space would still allow for activities, such as clothes drying and enjoying fresh air, to be carried out therefore not compromising its usability.
9. In relation to overshadowing, the back garden of Unit 1 would, due to its size layout and orientation, be shadowed for significant periods of the day, but there would still be opportunities for residents to enjoy direct sunlight due to the position and length of the garden.
10. Overall, the development would unacceptably harm the living conditions of the neighbouring occupants, particularly those at 22-26 Gravel Lane, in relation to an overbearing impact only. This would be, in that regard only, in conflict with Policy CP2 of the Epping Forest District Local Plan Alterations (2006), Policies DBE2 and DBE9 of the Epping Forest District Local Plan (1998); draft Policies DM9 and DM10 of the Epping Forest District Local Plan (Submission Version 2017) and the Framework; all of which seek to protect neighbours' living conditions and promote high quality design.

Character and Appearance

11. The character and appearance of Maypole Drive is defined by regularly spaced semi-detached and terraced dwellings, slightly set back from the main road and wrapped around the cul-de-sac, which provide coherence and symmetry. The majority of dwellings share similar-sized shallow plots and some architectural features when viewed from Maypole Drive.
12. In such a context, the appeal site is an oddity, as it consists of an unusual gap in the street frontage, albeit bounded by a tall fence.
13. The proposed development would seek to fill this gap with two semi-detached houses which would echo and reflect the character and appearance of the

surrounding area, with many of the architectural features, as well as the scale and proportion of the surrounding dwellings, being reflected in the design.

14. In addition to this, the proposed development would also adhere to the established building line by replicating the relative position of the existing dwellings in relation to their plots. This would result in a coherent continuation of the existing streetscape and strengthen the existing visual corridors.
15. In conclusion, the proposed development would not harm the character and appearance of the area and, in that regard only, would therefore not be in conflict with Policies DBE1, DBE5, DBE8 and DBE9 on the Epping Forest District Local Plan (1998) draft Policies DM9 and DM10 of the Epping Forest District Local Plan (Submission Version 2017) and the Framework all of which seek to protect high quality design.

Epping Forest SAC

16. The appeal site is located in close proximity to the Epping Forest Special Area of Conservation (SAC). Accordingly, due to the location of the appeal site, the requirements of the Conservation of Habitats and Species Regulations 2017 apply (the Regulations). The Regulations require that I, as the competent authority, must ensure that there are no significant effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC.
17. It is anticipated that, without mitigation, new residential developments in this area and of this scale could have a significant effect on the sensitive interest features of these European designated sites, through increasing the local population in the area, which would likely increase recreational use of the SAC and have a negative effect on air pollution, particularly when considered 'in combination' with other plans and projects.
18. Therefore, by virtue of its protected status, an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) (CHSR) would be required were I minded to allow the appeal. Nevertheless, considering that the appeal is to be dismissed on other issues mentioned in this decision, no further consideration is required on this matter as planning permission is not being granted.

Other Matters

19. I have had regard to the benefits that would arise from the development identified by the appellant, including the efficient use of land, as well as written representations made on the proposal. However, the benefits do not outweigh the significant harm that I have identified in relation to the main issues.

Conclusion

20. Although I have found that the development would not have a negative impact on the character and appearance of the area, it would significantly negative effect the living conditions of occupants of nearby properties in relation to overbearing impacts and potentially impact the integrity of the SAC, and, for those matters, I conclude that the appeal should be dismissed.

Andre Pinto INSPECTOR



Appeal Decision

Site visit made on 20 October 2020

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2020

Appeal Ref: APP/J1535/W/20/3248507

Land Adjacent to 26 Maypole Drive, Chigwell IG7 6DE

- 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 J Oddi against the decision of Epping Forest District Council.
 - The application Ref EPF/1879/19, dated 30 July 2019, was refused by notice dated 9 December 2019.
 - The development proposed is described as "demolish the existing garages and erect a single storey shallow pitched roofed detached two person dwelling".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site has been the subject of previous appeal decisions¹ which I have had regard to insofar as they are relevant to the development before me.
3. The Epping Forest District Council Local Plan Submission Version 2017 (the LPSV) is currently under examination. However, as the LPSV has reached an advanced stage and information has been provided as part of the appeal on the examining Inspector's advice regarding the main modifications to the plan, I have attached moderate weight to its emerging policies.

Main Issues

4. The main issues in this appeal are the effect of the development on the:
 - character and appearance of the area;
 - living conditions of adjoining occupiers with particular regard to outlook and light to 26 and 28 Gravel Lane;
 - living conditions of future occupiers of the dwelling with particular regard to private amenity space; and,
 - Epping Forest Special Area of Conservation (SAC)

Reasons

Character and Appearance

5. The appeal site comprises a double garage that is located at the northern end of Maypole Drive, which is a cul-de-sac and contains a mixture of two storey

¹ APP/J1535/W/15/3137118, APP/J1535/C/15/3137218 and APP/J1535/W/18/3194953

- dwellings which are arranged in terraces at its entrance. Towards the end of the cul-de-sac the dwellings tend to be arranged as semi-detached properties with garaging between. The rear gardens of some of the properties along Gravel Lane also back onto the northern part of Maypole Drive.
6. Maypole Drive has a pleasant suburban and spacious quality which is reinforced by the layout of the dwellings, especially those that are sited towards the end of the cul-de-sac and adjacent to the turning head and appeal site. The properties here are set back from the road with private parking areas to the front and enclosed garden areas to the rear.
 7. The appeal site contains a single storey double garage which is constructed of brick under a crown style roof. The proposal seeks to demolish the garage and replace it with a one bedroom, single storey dwelling that would be constructed with two distinct wings and a recess towards the centre to allow parking for one vehicle. The proposed dwelling would be wider than the existing garage, covering the majority of the space within the site, leaving an area to its side which would be used as a private amenity area.
 8. The proposal would be sited along the shared rear boundary to 26-30 Gravel Lane, leaving only a small gap between its rear elevation and the fence that separate the sites. The remaining elevations would also be sited extremely close to its boundaries, leaving very little space about the building. Although a garden area would be provided to the north of the building, given the spatial limitations of the appeal site, the proposal would appear as a cramped and somewhat contrived form of development in comparison to the more spacious development that exists within Maypole Drive.
 9. Furthermore, the proposal would be significantly wider than the existing garage and would appear as a somewhat squat and incongruous form of development in comparison to the built environment in the vicinity, which is largely typified by two storey dwellings that are set back from the road with decent sized rear gardens. Moreover, although the development would comply with the requirements of the NDSS², it would nonetheless fail to reflect or respect the suburban grain of the area and would be quite out of keeping with its established character. This harm would be clearly visible from Maypole Drive and from properties that surround the site.
 10. I acknowledge that there is a variety in the layout of dwellings in the area, such as the Victorian houses to the east. However, I am not persuaded that the proposal would reflect the development along Gravel Lane, which again is typified by two storey dwellings with rear gardens. In addition, the proposed dwelling would not be visible from Gravel Lane and relates squarely to the street scene on Maypole Drive. Furthermore, I do not accept that the garden to the east of No. 33 Maypole Drive breaks up the pattern of development to the extent that the proposal would not be out of keeping with other dwellings within the vicinity of the appeal site.
 11. Thus, the development would result in harm to the character and appearance of the area. It would be in conflict with Policies CP2, DBE1 and DBE9 of the Epping Forest District Council Local Plan 1998 and Alterations 2006 (the Local Plan) and Policies DM9 and DM10 of the LPSV and paragraph 127 of the National Planning Policy Framework (the Framework) which seek, amongst

² Technical housing standards – nationally described space standard March 2015

other things, to ensure that developments respect their setting, maintain and improve the character of the urban environment and the visual amenity of neighbours.

Living Conditions – Adjoining Occupiers

12. The proposal would be sited to the rear of Nos. 26 and 28 Gravel Lane which are positioned at a lower level than the appeal site. Whilst the appellant argues that the proposed dwelling would be no more harmful than the existing garage building, the proposal would be a much larger building, sited very close to its rear boundary and along a greater length. With an overall height of some 3.5m, coupled with the difference in levels between the properties on Gravel Lane, leads me to conclude that the proposal would be an unneighbourly form of development that would create an unacceptable level of enclosure, thereby harming the outlook that the occupiers of Nos. 26 and 28 currently enjoy.
13. Although the appellant accepts that loss of light would occur to No. 28, it is considered to be minor. However, the width of the proposal across the site is likely to result in a loss of light to the rear garden of No. 26, which would be unacceptable given its modest size. Whilst I acknowledge that any loss of light to No. 28 would be more limited, I am nonetheless not persuaded that the development would not result in unacceptable loss of light to the garden areas of Nos. 26 or 28 Gravel Lane, which would make their private amenity areas a less enjoyable place to use.
14. Thus, the development would result in harm to the living conditions of adjoining occupiers. It would be in conflict with Policies DBE2 and DBE9 of the Local Plan, Policies DM9 and DM10 of the LPSV and paragraph 127 of the Framework which seek, amongst other things, to ensure that developments do not result in excessive loss of amenity for neighbouring properties.

Living Conditions – Future Occupiers

15. Policy DBE8 of the Local Plan requires all new residential development to provide amenity space. Although it is evident that Policy DBE8 does not prescribe the amount of amenity space that should be provided, it nonetheless has to be of a size and shape which enables reasonable use.
16. The development proposes a garden area to the side of the dwelling which is marked as a patio area on the submitted plans. Although the amenity area would be level and is likely to receive a reasonable amount of sunlight, it would be triangular shape and limited in size. The quality of the amenity space would be further reduced through the proposed fencing, landscaping and its use for the storage of bicycles. This leads me to conclude that the space would be rather enclosed and its quality and quantity somewhat lacking. Moreover, although the dwelling would be a two person unit, it does not reduce the need to provide quality private amenity space for its occupiers.
17. Thus, the development would result in harm to the living conditions of future occupiers by failing to provide adequate amenity space. It would be in conflict with Policies CP2 and DBE8 of the Local Plan, Policy DM10 of the LPSV and paragraph 127 of the Framework which seek, amongst other things, that developments provide private amenity space that is of a high standard and which enables reasonable use.

Epping Forest SAC

18. The Council confirms that there is currently no way forward on securing appropriate mitigation from small scale proposals such as the proposed development where, in combination with other developments, they are likely to have a significant effect upon the Epping Forest SAC European protected site, due to reduced air quality.
19. However, given my findings on the substantive matters before me, I do not intend to consider this particular issue further because, should there have been an agreed way forward in enabling this scheme to mitigate for air quality impacts so as to satisfy the EU Habitats Directive, this would not have altered the harm I have already identified above.

Other Matters

20. I acknowledge that the proposal would be a low cost dwelling, suitable for disabled persons and close to public transport links. I also accept that the development would deliver housing on a small windfall site which could be built-out quickly, boosting the Council's housing land supply position in accordance with the policies of the LPSV. In addition, I also acknowledge that the Framework states that previously developed, or brownfield land, should be used as much as possible. However, I do not find the site to be suitable for the development and thus, while noting the benefits that would result in this respect, I do not consider that either individually or cumulatively they outweigh the harm identified above.
21. Although the appellant states that a development for three garages was recommended for approval by officers, it remains that the site does not have permission for such a development. Moreover, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.
22. I note that representations were made by a local resident raising additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.

Planning Balance and Conclusion

23. The appellant suggests that the policies which are the most important for determining the application are considered to be out-of-date. In such circumstances, the tilted balance at paragraph 11 d) of the Framework requires that, in the circumstances of this case, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. In this case, the development would contribute towards boosting the supply of housing in the District, there would be social benefits through the provision of a new dwelling and some economic benefits through its construction and in the future when occupants could be expected to be economically active and to contribute to the support of local businesses and services. However, given the quantum of development, I afford these benefits limited weight in favour of the appeal.

25. However, I have found that the proposal would be contrary to the development plan in that it would result in material harm to the character and appearance of the area, the living conditions of adjoining occupiers and the living conditions of future occupiers of the dwelling, to which I afford significant weight. Moreover, even if the Council is unable to demonstrate a five year housing land supply and whether or not the policies from the development plan which are the most important for determining the appeal should be considered out-of-date, the harm I have found is serious and, in my view, that significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework taken as a whole. As such the presumption in favour of sustainable development as envisaged by the Framework does not apply in this case. There are no other material considerations that indicate a decision other than in accordance with the Development Plan.
26. Thus, for the reasons given above, and having regard to the development plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR



Appeal Decision

Site visit made on 2 December 2019

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2019

Appeal Ref: APP/J1535/W/19/3234558

Land adjoining 33 Maypole Drive, Chigwell, IG7 6DE

- 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 Colin Stone against the decision of Epping Forest District Council.
 - The application Ref EPF/2797/18, dated 16 October 2018, was refused by notice dated 17 April 2019.
 - The development proposed is a four bedroomed detached dwelling house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) The effect on the living conditions of neighbouring occupants, with particular regard to any overbearing impact at 22-26 Gravel Lane or perceived overlooking of 24-26 Gravel Lane;
 - (b) The effect on the character and appearance of the area;
 - (c) Whether acceptable living conditions would be maintained by the occupants of 33 Maypole Drive, with particular regard to garden area.

Reasons

Neighbours' living conditions

3. The proposed dwelling would have a wide two-storey frontage with a single storey rear extension. It would be set back within the site so that the two-storey element would be around 5.32m from the rear boundary according to the submitted drawings. Residential properties in Gravel Lane back onto the appeal site with small rear gardens at a slightly lower ground level.
4. Although it is proposed to lower the ground level within the site such that the proposed building would have a lower roof height than the properties in Gravel Lane, the two-storey part of the building would stand in close proximity and the single storey element closer still. The close proximity, combined with the width and scale of the proposed building, would make it a visually intrusive and overbearing feature when viewed from the rear windows or garden areas of the neighbouring properties.

5. Three first floor windows are proposed within the eastern elevation of the building, facing towards the neighbours at 24-26 Gravel Lane. Whilst there may be some potential for a perception of being overlooked by these neighbours, the windows are high level and would serve a landing and two bathrooms such that there would be no actual overlooking. I do not consider that the presence of these windows would themselves harm living conditions.
6. Overall, the development would unacceptably harm the living conditions of the neighbouring occupants, particularly at 22-24 Gravel Lane, through a detrimental overbearing impact. This would be in conflict with policy DBE9 of the Epping Forest District Local Plan and Alterations (1998 and 2006) (LP); draft policy DM9 of the Epping Forest District Local Plan (Submission Version 2017) (emerging LP); and the objectives of the National Planning Policy Framework (the Framework); all of which seek to protect neighbours' living conditions.

Character and appearance

7. Maypole Drive predominantly comprises regularly spaced semi-detached and terraced dwellings which wrap around the cul-de-sac. The appeal site is an unusual gap in the street frontage, albeit that it is bounded by a tall fence. Removal of the large stretch of fence to create a more open front garden arrangement would be consistent with the street and some attempts have been made to reflect the surrounding buildings in proposals to incorporate vertical brick pillars within the design.
8. However, the appearance of the proposed building would otherwise be somewhat different. The introduction of a detached dwelling would itself be unusual in the cul-de-sac, notwithstanding that a relatively modern detached dwelling is located at the southern end. This difference in form would be emphasised by the width and scale of the building which would appear much larger than other dwellings in the street, despite the fact that some have been extended. The choice of a hipped roof would be in contrast to the predominantly gable ended dwellings in the street and the absence of design features such as hanging tiles, which add a degree of visual interest to the existing properties, would be conspicuous in the bland exterior proposed.
9. The Framework requires good design that is appropriate to context and takes opportunities to improve the appearance of an area. The proposed development would fall short in these regards and would detract from the character and appearance of the area. This would be in conflict with Policy CP2 of the LP; and draft policies DM9 and DM10 of the emerging LP; which require high quality design. The Council has also referred to policy DBE10 of the LP but this relates to residential extensions and is not relevant to the appeal proposal.

Living conditions for occupants at 33 Maypole Drive

10. The appeal site has been registered with the Land Registry as a separate piece of land from No.33 according to the appellant but clearly formed part of the garden to No.33 previously. It still appears to be a garden and is not separated from No.33 in any way. Land ownership has little relevance to land use planning considerations and the practical implications of the appeal would be to permit a new dwelling on land which currently exists as garden. There is no evidence before me to suggest otherwise.

11. That said, No.33 would retain a small area of garden for use by its occupants and I am satisfied that this would be sufficient for practical use, allowing residents to sit outside or dry washing. As such, I find no conflict in these respects with policies CP2, DBE8 or DBE9 of the LP; draft policies DM9 and DM10 of the emerging LP; or the Framework.

Other Matters

12. The site is located close to the Epping Forest Special Area of Conservation and has the potential to harm its integrity. If I were minded to allow the appeal, it would have been necessary to undertake an 'appropriate assessment' under the Habitat Regulations.
13. I have had regard to the benefits that would arise from the development identified by the appellant, including the efficient use of land. However, the benefits do not outweigh the significant harm that I have identified in relation to the main issues.

Conclusion

14. The development would unacceptably harm the living conditions of neighbouring occupants and would be detrimental to the character and appearance of the area. This would be in conflict with important policies of the development plan that seek to avoid such harm. There are no material considerations in this case that indicate a decision other than in accordance with the development plan.
15. In light of the above, the appeal is dismissed.

Michael Boniface

INSPECTOR

Appeal Decision

Site visit made on 22 August 2018

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th September 2018

Appeal Ref: APP/J1535/W/18/3194953

Land adjacent to 26 Maypole Drive, Chigwell IG7 6DE

- 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 J Oddi against the decision of Epping Forest District Council.
 - The application Ref EPF/2785/17, dated 11 October 2017, was refused by notice dated 8 December 2017.
 - The development proposed is demolish existing structure and construct a one bedroom, two storey dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the determination of the application the revised National Planning Policy Framework (the revised Framework) was published on 24 July 2018. The main parties have been consulted and provided comments on the revised Framework in relation to this appeal. I have therefore considered the development against the relevant aims and objectives of the revised Framework.

Main Issues

3. The main issues are the effect of the proposed development on
 - (i) the character and appearance of the area;
 - (ii) the living conditions of the occupiers of the neighbouring properties at Nos. 26 and 28 Gravel Lane with particular regard to light and outlook; and
 - (iii) the living conditions of the future occupiers of the proposed dwelling with particular regard to private amenity space

Reasons

Character and appearance

4. The appeal site comprises of a double garage building with a hipped roof on a small enclosed parcel of land located at the northern end of Maypole Drive. Maypole Drive is a mature well-established residential cul-de-sac, typically characterised by a mixture of two storey semi-detached and terraced properties with gabled roofs. The properties are relatively evenly spaced, of comparable scale and front building line, interspersed with paired side garages

and set back behind open plan front gardens/driveways. There is a subtle shift in the streetscape at the northern end of the cul-de-sac resulting from the long high garden fence along the east side of the street and the more distant presence of the adjacent two storey properties along Gravel Lane whose gardens back onto the appeal site. However, where garages and other structures exist between dwellings, these are very low, clearly subsidiary, and have little impact upon the sense of space and openness, which adds to the open character and appearance of the street scene.

5. The proposal would involve the demolition of the existing building and the erection of a two storey one bedroom dwelling. The proposal would be positioned close to the back edge of the footway and turning head of the road in front of the adjacent properties, with a small garden area and associated parking at the side. The development characteristics differ from the previous dismissed appeal and enforcement notice appeal schemes on the site in 2016¹ that related to the conversion of the existing garage into a one bed dwelling.
6. Whilst visually the design of the proposed dwelling would be acceptable, the two storey form of the dwelling would nevertheless be substantial and the position of the dwelling close to the footway and turning head of the cul-de-sac would be different to those typically found in the area. Such positioning, on what would be an atypically narrow plot, would compromise the sense of space and openness between the dwellings, interrupting the established pattern of development in the area and appear as a visually cramped and incongruous addition to the street scene.
7. These shortcomings would be exacerbated by the proposal's prominent position, which would be visible from a number of public vantage points along Maypole Drive. I therefore consider that the proposed development, by virtue of its scale, siting and layout, would fail to promote or reinforce the distinctive characteristic of the area and would adversely harm rather than positively contribute to the character and appearance of the area.
8. I have considered the appellant's arguments that the scale and design of the proposed development would be in keeping with the other properties in the area and has been carefully redesigned in response to the Council's comments and the previously dismissed appeal scheme on the site in order to minimise any impacts on adjacent dwellings and the area. Whilst the use of matching materials, fenestrations, landscaping and the boundary treatment would assist in integrating the proposal with the area, these aspects do not overcome the adverse effects outlined above.
9. Consequently, I conclude that the proposed development would have a harmful effect on the character and appearance of the area. The development conflicts with Policy DBE1 of the Epping Forest District Local Plan 1998 (EFDLP) and Policy CP2 of the Epping Forest District Local Plan Alterations 2006 (EFDLPA). These policies, amongst other things, seek to ensure that new development safeguards and enhances the setting, character and townscape of the urban environment and that new buildings respect their setting in terms of scale, siting, massing, height and orientation. In addition, it would not accord with the aims of the revised Framework that seek to ensure developments secure a

¹ APP/J1535/W/15/3137118 and APP/J1535/W/15/3137218

high quality of design (paragraph 124); and are sympathetic to local character, including the surrounding built environment (paragraph 127).

Living conditions of the occupiers of the neighbouring properties

10. The rear elevation of the proposed dwelling would be set back between about 1.0m and 1.5m from the common shared boundary with the adjacent properties at Nos. 26 and 28 Gravel Lane (Nos. 26 and 28) immediately to the east of the site. The small rear gardens of Nos. 26 and 28 would be set slightly below and separated from the appeal site by a close boarded fence of about 2m high running along the common shared boundary. The two storey dwellings at Nos. 26 and 28 currently have uninterrupted views over the single storey garage building on the appeal site and the open garden areas at the rear of the neighbouring properties that provide space and light between the properties.
11. I have considered the appellant's arguments that the proposed design and layout of the dwelling has been carefully considered in order to minimise any impacts on occupiers of the adjacent properties. Whilst the use of obscured glazed windows at first floor level, the hipped roof design and the proposed boundary treatment would reduce the impact of the proposal to some degree, the rear elevation of the proposed dwelling would be situated in close proximity to the common shared boundary with the small rear gardens of Nos. 26 and 28. The occupiers of these properties would use these garden areas to carry out leisure activities, particularly during the summer months.
12. I have viewed the appeal site and given the overall height, massing and siting of the proposed dwelling, modest size of the rear gardens, orientation of the buildings and the separation distance between the properties, I consider that the proposed dwelling would impact on the views and available light currently enjoyed by the occupiers of the neighbouring properties. It would introduce a dominant and enclosing structure on the common shared boundary that would severely restrict the available sunlight at different parts of the day reaching the rear garden at No. 28 and to a more limited extent, the rear garden at No. 26. It would also severely restrict the outlook from the garden areas of Nos. 26 and 28 and, to a more limited extent, the outlook from the living room and bedroom windows on the rear elevation of No. 26 and as such would result in a significant change in the living conditions for the occupiers of the neighbouring properties.
13. Consequently, I conclude that the proposal would result in significant harm to the living conditions of the occupiers of the neighbouring properties at Nos. 26 and 28 with particular regard to privacy and outlook. The development conflicts with Policy DBE9 of the EFLP. This policy seeks, amongst other things, to ensure that new development does not result in excessive loss of amenity for neighbouring properties in terms of visual impact, overlooking and loss of light. In addition, it would not accord with the revised Framework that development should seek to create places that promote health and well-being, with a high standard of amenity for existing and future users (paragraph 127).

Living conditions of the future occupiers

14. The proposed dwelling would be provided with a small garden area, measuring about 74 sqm, with bin store and cycle storage at the side that would be separated from the house by a parking space for a car and enclosed by a boundary fence and gate.

15. Policy DBE8 of the EFLP states that residential developments will be expected to provide private amenity space that will usually be sited to the rear of the dwelling; be directly adjacent to and easily accessible from it; be of a size, shape and nature which enables reasonable use; have an aspect which receives a reasonable amount of sunlight; not have an excessive slope and provide privacy. The supporting text of the policy sets out that the Council expects the rear gardens of dwellings to provide a minimum of 20sqm per habitable room.
16. The proposed garden area would be level, landscaped with planted beds, receive a reasonable amount of sunlight, privacy and appear to meet the minimum requirement in terms of size. However, these benefits of the garden, in my view, are outweighed by its triangular shape which limits its amenity, as highlighted by the Inspectors for the previous appeals on this site and, its separation from the house and enclosure by the proposed boundary treatment. Notwithstanding the reduced expectation for garden space when it comes to one bedroom properties more generally and the small soft landscaped areas provided to the front of the proposed dwelling, I consider that the users of the garden space at the side would experience an enclosed environment, lacking in quality as usable, private amenity space.
17. I acknowledge the appellant's comments regarding the provision of private amenity space on the side of other properties in the area. However, this does not set a precedent for such an inappropriate residential development in this location. I therefore consider that the proposal would result in a poor quality living environment and would not provide a satisfactory private amenity space for the future occupants of the proposed dwelling in this particular case.
18. Consequently, I conclude that the proposal would result in harm to the living conditions of the future occupiers of the proposed dwelling with particular regard to private amenity space. It would conflict with Policy DBE8 of the EFLP and would not accord with the aims of the revised Framework that development should seek to create places that promote health and well-being, with a high standard of amenity for existing and future users (paragraph 127).

Other Matters

19. I have noted the Council's comments regarding the new requirements, since the original planning application was determined, to assess the potential adverse impacts of new development on the Epping Forest Special Area of Conservation, air quality in the District and any potential mitigations measures in light of the advice from Natural England. However, in light of my findings on the main issues above, it is not considered necessary to look at this matter in detail, given that the proposal is unacceptable for other reasons.
20. I have noted the appellant's reference to Policies SP2 and H1 from the emerging Epping Forest District Submission Version Local Plan 2017 (EFSLP) relating to housing supply and need in the District. The EFSLP is at an advanced stage. However, as I do not have evidence before me as to whether there have been any significant objections to the above policies and these policies have not yet been examined, having regard to the advice provided in the revised Framework², I give these policies in the emerging Development Plan limited weight as a material consideration.

² Paragraph 48 of the revised National Planning Policy Framework (2018)

21. I have noted the objections raised by Chigwell Parish Council and local residents to the proposal. However, in light of my findings on the main issue of the appeal, my decision does not turn on these matters.

Overall Planning Balance and Conclusion

22. The appellant's appeal statement states that the Council cannot demonstrate a five year supply of deliverable housing sites and no substantive evidence has been provided by the Council to contradict the appellant's claim. The revised Framework states that relevant policies for the supply of housing cannot be considered up to date if the local planning authority cannot demonstrate such a supply. Paragraph 11 of the revised Framework sets out the presumption in favour of sustainable development. For decision making this means that where the development plan is absent, silent or relevant policies are out of date, planning permission will be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Paragraph 8 of the revised Framework requires the social, economic and environmental objectives of sustainability to be considered together.
23. The appellant states that the proposal would provide an additional low cost housing opportunity that would be well connected to existing services and facilities and provide some social and economic benefits through contributing to the supply and mix of housing in an accessible location. The additional dwelling would make a positive, albeit modest contribution to the supply of housing in the area and the vitality of the local services. These benefits weigh in favour of the proposal.
24. However, while I note the appellant's view that the scheme's design and the use of the under-utilised site would amount to environmental benefits, I have found above that taken overall the development would harm the area's character and appearance, the living conditions of the neighbouring properties and the living conditions of the future occupiers of the proposed dwelling. In addition, I found that the provision of the dwelling in this location would be in conflict with Policies DBE1, DBE8 and DBE9 of the EFLP and Policy CP2 of the EFDLPA. These policies relate to matters of design, character and appearance, amenity and private amenity space.
25. The harm set out above would conflict with the environmental objective of sustainable development and, in my view, would be sufficient to significantly and demonstrably outweigh the scheme's benefits when assessed against the policies in the revised Framework as a whole. The proposal would not therefore amount to sustainable development in the terms of the revised Framework. The Framework is a material consideration. However, in the circumstances of this appeal, the other material considerations do not justify making a decision other than in accordance with the development plan.
26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR