



Epping Forest District Council

Governance Directorate
Civic Offices
Epping
Essex
CM16 4BZ
Telephone: (01992) 564000

Town and Country Planning Act 1990 (as amended)

Section 78

**Appeal against the refusal of planning permission
by Epping Forest District Council for
erection of an open-sided car port over car parking spaces
at 11 Key West Court, Block B, 120 High Road, Chigwell IG7 5AR**

**Local Planning Authority Ref: EPF/2764/19
Planning Inspectorate Ref: APP/J1535/W/20/3246752**

**Written Statement
Of
Epping Forest District Council.**

01 June 2020

1.0 Site and Surrounding Area

1.1 The appeal site lies within a recently constructed flatted development on the south east side of the High Road, around 100m south of Chigwell Station. The site comprises two buildings; a frontage block of part two, part three storeys containing 10 flats with an underground car park, and a two storey detached building to the rear comprising two flats. The site access is at the southern end of the plot.

2.0 Application, subject of the appeal

2.1 The application subject of the appeal was submitted in November 2019 and was described on the application form as 'Erection of open-sided car port over car parking spaces'. The application form confirmed that the development was complete and the application was determined on the basis that it sought permission for the retention of the works as built.

3.0 Relevant Planning History

3.1 Redevelopment of the site which originally contained a single dwelling into the present form was allowed on appeal in 2015

3.2 An application for a lawful development certificate was submitted in September 2019 for the structure, but was withdrawn when the Council advised it's view that the development did not benefit from permitted development rights, the works relating to a flat not a dwelling house.

4.0 Relevant Policies

4.1 The relevant policies in relation to considering this appeal contained within the Local Plan are specifically as follows:

CP2	Protecting the quality of the rural and built environment
DBE1	Design of new buildings
DBE2	Effect on neighbouring properties
DBE9	Loss of Amenity
DBE10	Residential Extensions

4.2 The above policies form part of the Councils 1998 Local Plan. Following the publication of the National Planning Policy Framework, policies from this plan (which was adopted pre-2004) are to be afforded due weight where they are

consistent with the Framework. The above policies are broadly consistent with the Framework and therefore are afforded full weight.

- 4.3 The Council published its Draft Local Plan in 2017, and Examination took place in early 2019. The Inspector has produced advice on modifications, and the Council is preparing these with a view to consultation and adoption in 2020/21. The Inspector has indicated that policies on which modifications are not recommended, will not be subject to further review. Accordingly the policies and evidence base should be considered as a material consideration and given significant weight in planning decisions. The relevant policies in this case, which are not subject to planned modifications are as follows:

DM9 – High quality design

DM10 – Housing design and quality

5.0 Planning Considerations

- 5.1 In determining the application, Members evidently took account of the general character of the site and buildings and the relationship of the structure to the adjacent block.
- 5.2 The structure lies within an area of open surface level car parking set within a well maintained landscaped area. There are fences framing this area but otherwise the essential open character evidently provided an amenity to residents in adjoining flats.
- 5.3 The structure itself in this context introduces a substantial built element into this managed landscape. It occupies an area in excess of 25 sq.m and while the sides are open, it is given a top heavy form by the substantial mass of the pitched roof finished in a dark slate material. In the context of the open character of the parking area in which it is located, this represents a substantial structure which has an evident visual impact on the character and therefore on those residents who look out onto the area.
- 5.4 The structure lies in close proximity to the rear block and Members were evidently concerned at the direct impact the structure had on the two flats herein. This impact is evident from the height of the building, the choice of materials and roof form, including the half hip elements and the cladding on the side of the roof void. It is submitted that the structure is needlessly tall and bulky, and a range of other roof forms with significantly less bulk may result in a more neighbourly development.

5.5 It is evident from the form and layout of the immediate adjacent flats that the open parking area contributes substantially to the sense and openness enjoyed by residents. The ground floor flat has a wrap around garden area which along with ground floor windows is dominated by the building. The first floor flat has a balcony to the side and rear which has a high amenity value in a compact development of this nature, and the siting and scale of the structure has a significant overbearing effect on this balcony in particular and on the visual amenity of the rooms along the side elevation facing it.

6.0 Comments on Grounds of Appeal

6.1 'Justification' – This section raises no material planning considerations or matters relevant to the merits and should be disregarded.

6.2 'Explanation of retrospective nature...', - the applicant has no evidence that such advice was given by a Duty Planning Officer. The Council is surprised the applicant did not in any event seek written confirmation or a lawful development certificate prior to undertaking the work, and the risk was entirely with them and their advisors at the time by not so doing. It is noted that following the visit by the Enforcement Officer, an application was submitted.

6.3 'Decision making process' – The suggestion that the decision was made on the basis of the number of objections is not borne out by the selected quotes from the Committee meeting. Councillor Knapman refers to the development as unneighbourly and overbearing, Councillor Sungar to the height and roof form, while Councillors Owen and Pond also refer to the height. Councillor Wixley comments on the loss of view. These are entirely legitimate considerations in assessing an application. The comments on individual Councillors are dealt with in the costs application comments below.

6.4 'Design' – It is noted that the refusal for refusal refers to the design of the structure only in the context of its impact on neighbouring properties, not in specific terms of the architectural form taken in isolation as this section appears to be attempting. The photograph is misleading and irrelevant, the reason for refusal does not raise specific issues around the siting in the context of how it looks from the site access, only its impact in close proximity to the adjacent flats. The appellants have also responded directly to the comment by a Councillor about a polycarbonate roof but this misses the key point the Councillor was making – that had the applicant sought permission before implementing the works then a more appropriate form which does not impact adjoining properties could have been discussed and incorporated into the scheme.

- 6.5 'Height and position' – The appellants again refer to informal advice which is open to interpretation, and due to Council process would not have involved a site visit. The responsibility for not seeking appropriate written confirmation or the appropriate consents lies with the appellant. The height of the structure is not governed by the height of the appellants current vehicles as the roof structure is entirely irrelevant to the clearance height. In any event, the first consideration must be the impact the development has on the material planning issues rather than the height of vehicles, otherwise the reasoning could see a carport raised to accommodate a transit van for example.
- 6.6 The comparison with what may be permitted development is irrelevant – the development does not benefit from permitted development and is not comparable to a property where such rights might apply. The exclusion of flatted buildings from GPDO Sch 2 Part1 Class A rights is deliberate and made for sound planning reasons, such as that flatted developments are often more compact than dwelling houses and development that may be appropriate on a spacious plot has a greater impact where there is less separation between structures.
- 6.7 The statement emphasises comments made in the officers report. Members took a contrary view as they are entirely entitled to do, placing greater weight on their assessment of the relationship of the development to the adjoining flats.
- 6.8 'Impact on visual amenities' – The photographs supplied by the appellants are similar to a number available to Members in determining the application They do serve to illustrate the way in which the structure dominates the space within which it sits, being considerably higher than the surrounding fences, and emphasise the scale and mass of the roof. Previously, the open aspect with the low fences and views across the open area to the well maintained beds and to the trees within the open space at the rear provided a level and standard of amenity that has been significantly altered by the works.
- 6.9 The extracts from the flat layouts and the commentary thereto appears to undervalue the importance of the wraparound balcony to the first floor flat, which extends along the elevation facing directly on to the structure. It also seems to give less importance to the general benefits of an open aspect which the flats enjoyed before the structure was erected.
- 6.10 The Council notes the appellants comments in respect of individual national and local policies which appear simply to recite the arguments elsewhere in the grounds of appeal which have already been dealt with above.

7.0 Costs application

- 7.1 The Council has commented on the planning merits issues in paragraph 6.3 above, members of the Area Planning Committee may have discussed other matters in the debate, but it is evident that they discussed matters material to the planning application merits and came to a view on those issues, as is reflected in the reason for refusal. Those reasons are clear and precise and related to material planning considerations.
- 7.2 The appellant refers to PPG paragraph 49 with specific reference to the Council's actions 'preventing or delaying development'. It is unclear how this is relevant to this case as evidently the works the subject of the appeal are complete.
- 7.3 It remains a core principle of the planning system that applications are determined by a Committee of elected members and that those members have the authority to come to a different view to their officers on the merits of the application, and in particular what weight to give to their conclusion. The fact officers may recommend an application, particularly where matters are finely balanced and open to interpretation does not prevent members coming to a different conclusion.
- 7.4 As to specific remarks about individual Councillors, the Council comments as follows:
- The ownership of the land is not referred to in Members reasons for refusal, while the Councillor may have wished for clarification, he has not sought to have this issue pursued further (for example by seeking to defer determination)
 - While a Councillor may have made an individual comment about precedent, this again clearly has not formed part of Members reasons for refusal.
 - The appellants analysis of the members discussion of the appearance seems of itself to overstate the emphasis of the issues raised. The view from the ground floor flat is clearly impeded, and the view from the first floor flat is clearly altered by introducing a permanent building into what is currently an open area. Members are entitled to conclude that this impact is overbearing, whether the appellant agrees with this or not.
 - Comments on the wider complex, or the contribution of the development to the site, may have been a view expressed by an individual member, but this is not referred to in members final reasoning for refusal.
 - The appellants cannot establish that a Committee member voted out of spite, particularly when the named member has also voiced legitimate planning reasons for opposing the development. The appellant has no written record of any advice they were purportedly given, and the Council contends that the risk not proceed without this is entirely with the appellant. As the grounds of appeal

state, the appellants 'poor luck' is not a material planning consideration, and should not influence the costs application either.

- 7.5 The Council submits therefore that the application was properly considered by the Committee who attached greater weight to their view that the development was harmful and overbearing and accordingly acted reasonably in determining the application.

8.0 Conclusion

- 8.1 The Council maintains that the issues in this appeal are finely balanced. Introducing a large structure with a substantial roof form as this into a confined open area will inevitably have some impact, and Members concluded that such impact was excessive and unacceptable on sound planning grounds.
- 8.2 The Inspector is urged to recognise this impact and dismiss the appeal.
- 8.3 If however the Inspector is minded to allow the appeal, officers recommended two conditions in the report to Committee which are set out in the grounds of appeal. No additional conditions beyond these two are considered necessary.