

## Appeal Decision

Site visit made on 24 July 2018

by **Martin Chandler BSc MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 4 September 2018**

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**Appeal Ref: APP/J1535/W/18/3194783**

**93 Manor Road, Chigwell, IG7 5PN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Brian Dalziel against the decision of Epping Forest District Council.
  - The application Ref EPF/2669/17, dated 29 September 2017, was refused by notice dated 22 November 2017.
  - The development proposed is 3 No detached dwellings and associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. During the course of the appeal, the revised National Planning Policy Framework (the Framework) has been published. Both main parties were given an opportunity to comment on any relevant implications for the appeal, and any comments received have been taken into account in my reasoning.

### Main Issues

3. The main issues are (i) the effect of the proposal on the Epping Forest Special Area for Conservation (SAC) (ii) the effect of the proposal on the character and appearance of the area; and (iii) the effect of the proposal on the living conditions of neighbouring properties, with particular regard to privacy.

### Reasons

#### *Effect on the SAC*

4. Whilst not part of the Council's reasons for refusal, in their supporting evidence the Council has identified that the site is located some 3km from the SAC. Due to this location, the Conservation of Habitat and Species Regulations 2017 (the Regulations) places a duty on competent authorities to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives.
5. The Regulations go on to state that a person applying for permission, must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an

- appropriate assessment is required. Circular 05/06<sup>1</sup> advises that the decision on whether an appropriate assessment is necessary should be made on a precautionary basis.
6. The appeal has not been accompanied by any supporting evidence in relation to the proximity of the site to the SAC. Furthermore, no evidence has been provided in relation to the potential effect that development might have on the conservation objectives of this European site which has the highest level of protection. Whilst the appellant states that the Council should not raise new issues in their Statement of Case, they have not taken the opportunity provided through the appeal to address this matter.
  7. In the absence of any objective evidence in relation to the effect of the development on the SAC with regard to recreational pressure and air pollution in accordance with advice from Natural England, it is not possible to discharge the duty within the Regulations. Consequently, the proposal fails to meet its statutory obligations in relation to conserving and enhancing the SAC.
  8. Notwithstanding the above, the Council accept that they cannot provide a 5 year supply of deliverable housing sites, with the position as low as 1.58 years at the time of writing the officer report. Whilst the Council is in the process of developing a new local plan, it is yet to be adopted, so for the purposes of decision-taking, I am satisfied that paragraph 11 of the Framework and its presumption in favour of sustainable development, is engaged.
  9. Footnote 7 to this paragraph confirms that where a local planning authority cannot demonstrate a 5 year supply of deliverable housing sites, with an appropriate buffer, policies which are most important for determining proposals should be considered to be out-of-date. The consequence of this is that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
  10. Due to the lack of evidence in relation to the effect of the development on the SAC and in light of the precautionary approach advocated by Circular 05/06, I conclude that the proposal would not accord with paragraph 170 (a) of the Framework. This requires planning decisions to protect and enhance valued landscapes and sites of biodiversity or geological value in a manner commensurate with their statutory status. On this basis, and in accordance with paragraph 11 of the Framework, there is a clear reason for refusing the development proposed.
  11. To support this issue, the Council make reference to emerging policies DM2 and DM22 of the Epping Forest District Local Plan, Submission Version 2017. These policies seek to conserve and enhance the biodiversity, character, appearance and landscape setting of the SAC as well as protect the district from the impacts of air pollution. However, as these policies are yet to go through public examination, I afford them limited weight.

#### *Character and appearance*

12. The appeal site is a large 'L'-shaped parcel of land currently occupied by a single detached dwelling that fronts Manor Road. It is located within a large perimeter block formed by Manor Road, Fencepiece Road, The Shrubberies,

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<sup>1</sup> Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system

- and Bracken Drive, and which has little development within it. The proposal would see the demolition of the existing house and an indicative layout suggests its replacement with a building to the front of the site and a vehicular access adjacent to the eastern boundary that would provide access to 2 additional properties to the rear.
13. The site is dominated by a number of mature and protected trees and it is noted that the general locality of the site was formerly part of Hainault Forest. The trees that are within the appeal site and in neighbouring gardens to the south, east, and west make a positive contribution to these amenity spaces. They also contribute to the wider locality due to glimpsed views between and over existing buildings.
  14. The proposal would see a number of trees within the appeal site removed to facilitate the proposed development. Whilst this would alter the character and appearance of the appeal site, given the volume of other large trees within the perimeter block, the effect on the wider surroundings would be difficult to perceive. This is because views between and over existing buildings would still reveal a number of large and mature trees and in this respect, the views would not significantly change. Consequently, I conclude that the proposed tree removal to facilitate the development would not harm the character and appearance of the area.
  15. The proposal would see the creation of two new dwellings in a backland location which would not be typical to the character and appearance of the area. Despite this, due to the size of neighbouring houses and gardens and the resultant size of the perimeter block, the appeal site cannot be distinguished from the public realm. Furthermore, given the presence of the surrounding trees in the locality, the site is a somewhat secluded and anonymous parcel of land.
  16. As a result of this context, the addition of two new dwellings would not be perceptible from within the public realm. I am therefore satisfied that subject to a suitable design and layout at the reserved matters stage, the introduction of 2 dwellings within the existing garden would not harm the character and appearance of the area.
  17. The proposal would also see the demolition of the existing dwelling and its replacement with a house and vehicular access. The existing houses along this part of Manor Road all vary in terms of scale, mass, and external appearance. Whilst they are all set-back from the highway in a consistent manner, the presence of large trees and other mature landscaping to the front of the existing houses and the variety of boundary treatments makes it difficult to appreciate any rhythm in terms of void and form. Instead, the prevailing character of the street scene is that of architectural variety and mature landscaping. In this context, I am satisfied that a replacement dwelling and vehicular access could be suitably designed so as to at least preserve the character and appearance of the area.
  18. The Council also suggest that development of the appeal site in the manner proposed would set an undesirable precedent. Given the size of surrounding gardens, if planning permission were to be granted it would not be possible to rule out future proposals of a similar nature on neighbouring land. That said, given the nature of the perimeter block, the extent of any potential future development would be self-limiting. However, every case must be determined

on its own merits and development on different sites may result in very different conclusions. I am therefore satisfied that the potential consequences of granting planning permission do not outweigh my general findings in relation to this main issue.

19. For the reasons identified above, the proposal would not harm the character and appearance of the area. Accordingly, it would comply with the Epping Forest District Local Plan Alterations (2006) (LP) and in particular with policies CP2, CP3, CP7 and DBE1, which taken together, promote development that will safeguard, enhance, and respect the character of the urban environment.

#### *Living conditions*

20. The appeal site is surrounded by neighbouring gardens and due to its 'L'-shape, the site wraps around the end of the garden of 95 Manor Road. The topography of the site is such that land levels fall from north to south and the indicative layout suggests that two detached dwellings would be located to the southern end of the appeal site.
21. The combination of the shape of the site and the site levels means that development could give rise to opportunities for overlooking, and in this regard the comments from the Chigwell Parish Council are noted. Nevertheless, the proposal seeks outline consent with all matters reserved and the layout submitted is purely indicative at this stage. The size of the appeal site and neighbouring gardens is such that development could achieve suitable window to window distances as well as protecting adjacent garden space. Furthermore, the ability to retain perimeter landscaping as well as the presence of neighbouring trees would help to reduce the sense of neighbouring properties from being overlooked.
22. Consequently, I am satisfied that the site could be developed in a manner that safeguards existing privacy levels. The proposal would therefore accord with policy DBE9 of the LP which requires development to not result in an excessive loss of amenity due to overlooking.

#### **Conclusion**

23. Whilst in accordance with the development plan policies brought to my attention, the potential harm to the SAC is such that it would conflict with the requirements of the Framework and the Regulations. Therefore, in this instance, the conflict is a material consideration which outweighs the compliance with the development plan. Therefore, for the reasons identified above, the appeal is dismissed.

*Martin Chandler*

INSPECTOR