

Appeal Decision

Site visit made on 5 June 2017

by **C Jack BSc(Hons) MA MA(TP) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th June 2017

Appeal Ref: APP/J1535/W/17/3170689

Fairlawn, Epping Road, Broadley Common, Essex EN9 2DH

- 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 Malcolm Hubbard against the decision of Epping Forest District Council.
 - The application Ref EPF/2927/16, dated 4 November 2016, was refused by notice dated 5 January 2017.
 - The development proposed is the demolition of garages and erection of 1 x 3 bedroom (5P) dwelling within curtilage of existing building.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council is of the view that the construction of a dwelling in this location would constitute limited infill in a continuous linear development of housing in the built up settlement of Broadley Common. Accordingly, it considers that the proposal would not be inappropriate development in the Green Belt and, as such, that the development is acceptable in principle. Paragraph 89 of the National Planning Policy Framework (the Framework) sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt, unless it would constitute one of a number of specified exceptions, including limited infilling. Having considered the provisions of the Framework and the evidence before me, I see no significant reason to disagree with the Council's position in this regard.
3. The Supreme Court handed down judgement on the *Suffolk Coastal District Council v Hopkins Homes Ltd and SSLG, Richborough Estates Partnership LLP and SSLG v Cheshire East Borough Council* case on 10 May 2017. Having regard to the judgement, I do not consider that it has any direct implications for the cases of the parties in this appeal.

Main Issues

4. The main issues are the effect of the proposed development on i) highway safety and ii) the character and appearance of the area, with particular regard to protected trees.

Reasons

5. The appeal site consists of part of the garden of Fairlawn, a Grade II listed building. It is proposed to erect one detached house to the side of the host
-

property, creating an infill property between Fairlawn and The Tudors. The existing detached garage building and sheds on the site would be removed. The new dwelling would be accessed from Epping Road using the existing vehicular access.

6. The new two-storey, three-bedroom house would have a drive and two parking spaces at the front, and a private garden area at the rear facilitated in part by the culverting of the existing stream. Two horse chestnut trees are situated at the rear of the site, on the far bank of the stream. The Council advises that these trees were made subject to Tree Preservation Order TPO/EPF/15/16 (TPO) due to their contribution to the local landscape.

Highway safety

7. The development would share the access to Fairlawn from Epping Road. It is proposed to enhance the visibility splays by realigning the hedges and fences to either side of the access. Epping Road is a main route between Harlow and Epping, which is identified in the Route Hierarchy Plan as a Secondary Distributor road in Essex County Council's Development Management Policies 2011, which the local highway authority (LHA) has adopted as supplementary guidance (SG).
8. The LHA identifies the principle purpose of a secondary distributor road as the carrying of traffic safely and efficiently between substantial rural populations and on through routes in built up areas. Saved Policy ST4 of the Epping Forest District Local Plan Alterations 2006 seeks to ensure that development will not be detrimental to highway safety, among other things. Policy DM3 of the SG seeks to protect the function of secondary distributor roads between defined settlement areas by, among other things, prohibiting the intensification of use of an existing access, except for developments of overriding public, environmental, national or regional need.
9. The site access is situated near the junction of Epping Road with Common Road. There are numerous examples of existing residential accesses onto Epping Road in the locality. During my site visit, on a Monday afternoon, I observed significant levels of traffic using Epping Road in both directions and a moderate number of interactions with Common Road. In the vicinity of the appeal site, Epping Road is subject to a 30mph speed restriction. However, a significant proportion of passing vehicles appeared to me to be travelling at speeds notably in excess of that legal limit.
10. Typical visibility requirements set out in Manual for Streets for a 30mph road require visibility of 2.4m x 43m in both directions. The Council is satisfied that on this basis adequate visibility to the north could be achieved. However, even with a reduced X distance of 2m, it has not been clearly demonstrated that Y axis visibility of 43m to the south could be achieved. The appellant considers that a further reduced X distance of 1.5m would be appropriate for a private access serving two dwellings and that this would allow for an achievable Y distance of approximately 50m to the south.
11. Given that I observed significant levels of traffic using Epping Road, and vehicle speeds often ostensibly in excess of 30mph, I am not persuaded that a reduced X distance of 1.5m is appropriate in this case. Manual for Streets advises that a reduced minimum figure of 2m may be considered in some very lightly-trafficked and slow-speed situations. However, and while I note that my visit

represents only a snapshot of road usage, it is clear to me that the criteria for a reduced X figure generally do not apply here. Furthermore, a significantly reduced figure of 1.5m would mean that the front of a vehicle leaving the site would be likely to protrude into the carriageway, with further potential safety implications as drivers and cyclists would be forced to manoeuvre around it.

12. No specific speed survey data has been provided to demonstrate that reduced visibility might be appropriate in this location based on the speed of the road. On the basis of the evidence before me, and my site visit, I am therefore of the opinion that the intensification of the use of the access would be detrimental to highway safety. In forming this view, I have had regard to the scale and nature of the proposal for one dwelling, which would generate only modest daily traffic movements. Nonetheless, this does not diminish my concerns that the intensified use of the access, even with realigned hedges and fences to improve visibility, would be detrimental to highway safety.
13. In light of the above, I conclude that the proposal would be detrimental to highway safety. It would therefore conflict with saved Policy ST4 of the Epping Forest District Local Plan Alterations 2006, the relevant requirements of which are set out above. Policy ST4 is generally consistent with the aims of the Framework in this regard and therefore I afford it very substantial weight in this appeal. The proposal would also conflict with Paragraph 32 of the Framework, which among other things requires that safe and suitable access to the site can be achieved for all people.

Protected trees

14. There is disagreement between the parties including in relation to the historic management of the two horse chestnut trees and in relation to their ongoing contribution to the character and appearance of the locality including due to the presence or otherwise of bleeding canker, and the stage of progression of the disease. Both parties have provided evidence in from qualified arboriculture specialists with contrasting opinions on a number of points.
15. During my site visit I observed that the trees make a significant positive contribution to the visual amenity of the locality, as recognised by their recent inclusion in the TPO, albeit they are largely obscured by existing buildings and other trees in longer public views along Epping Road. While the overall height and spread of the trees may have been limited by management activities, including forms of pollarding at uncertain times and frequencies, they nonetheless currently make a significant positive contribution to the character and appearance of the Nazeing and South Roydon Conservation Area (NSRCA), within which the site lies, and to the setting of the listed building.
16. I saw some limited areas of leaf browning on specimen T2, which was visible from the road and may or may not be related to bleeding canker. No such browning was immediately apparent on T1 at the time of my visit. Whether or not one or both trees has bleeding canker, my overall impression was of two trees currently in reasonable health and not displaying any significant overt signs of stress, disease, or other indications that the necessary removal of either specimen would be particularly likely to be imminent.
17. The private garden area for the new house would be principally a modest provision at the rear. This area would be significantly dominated by the presence and proximity of the preserved trees, which would be situated

roughly to the east of the rear of the house. The rear elevation would be positioned outside but close to the canopy spread and therefore the existing trees would cause significant overshadowing for much of the day of both the garden and the large window forming the principle source of natural light to the main living / dining room. BS5837:2012 notes that the relationship of buildings to large trees can cause apprehension in this regard to occupiers, leading to pressure to remove the trees, and that buildings should be sited, among other things, having due consideration to the predicted height and canopy spread of the trees.

18. I accept that the construction of the development could be carried out without significant direct effects on the trees, as set out in the appellant's method statement. I also acknowledge that some shading can be desirable for residents and some people like trees close to buildings. However, I consider it likely that occupants of a family type house such as proposed would want a predominantly useable private garden area, free from excessive overshadowing and dominance from trees and the associated loss of daylight and sunlight, and free from excessive seasonal nuisance. The adverse effects on the garden area, coupled with the effects of overshadowing and restricted natural light to the main living space resulting from the proximity and orientation of the protected trees to the new house, would have a significant potential to adversely affect the living conditions of future occupants of the development. Consequently, this would be likely to give rise to pressure to reduce or fell one or both trees to allow for the future enjoyment and use of the property.
19. I note that the proposed house would be sited to allow the provision of off-street parking. I also note that it may be possible for the signs of bleeding canker to appear worse in some years than others, and that any limbs badly affected by disease would need to be removed which would be likely to have an adverse effect on the visual amenity value of the trees. In this vein, I also note that if the trees are subject to bleeding canker this would be likely to result in their decline and to have some limiting effect on their safe useful life expectancy.
20. Nonetheless, I am not persuaded that this is currently a significant concern, or that it has been demonstrated that it is likely to be the case for one or both trees in the near future, even if relatively early signs of disease are already present. Therefore, I am not satisfied that the possible signs of disease, or any other potential future concerns that might influence the life expectancy of the trees, weigh significantly in favour of a development that would be likely to lead to pressure to reduce or remove protected trees that currently have significant amenity value, including in relation to the character and appearance of the NSRCA and the setting of the adjacent listed building.
21. I therefore conclude that the proposed development would be significantly likely to result in pressure to reduce or remove the protected trees. It would therefore be detrimental to the character and appearance of the area, with particular regard to protected trees, in conflict with saved Policy LL10 of the Epping Forest District Adopted Local Plan 1998, which among other things seeks to ensure that adequate provision is made for the retention of trees, including in relation to the future enjoyment or use of the site by owners and occupiers. Policy LL10 significantly pre-dates the Framework but it is generally consistent with the aims of the Framework in this regard and therefore I afford it substantial weight in this appeal.

22. In light of my reasoning above, I further conclude that the proposed development would potentially fail to preserve the character and appearance of the NSRCA and the setting of the listed building, contrary to the expectations of the Framework. However, I would quantify the extent of this harm as being less than substantial when considered in the context of Paragraphs 133 and 134 of the Framework. Such harm needs to be balanced against any public benefits of the development, and I return to this below.

Other Matters

23. The Council advises that it cannot currently demonstrate five years' worth of supply of specific deliverable sites for housing. This calls into question whether development plan policies for the supply of housing are out-of-date in the context of Paragraph 49 of the Framework. Notwithstanding my conclusions on the main issues above, I have had regard to Paragraph 14 of the Framework and Footnote 9 therewith. In this context my decision would not be altered, even if relevant policies are out-of-date, because of the harms I have identified above. For the reasons set out above, the modest social and economic benefits that would arise from the provision of one dwelling, and the environmental benefits of replacing the existing garage which is of no particular merit in the street scene with a building of vernacular design, would be significantly and demonstrably outweighed by the harms that the development would cause, including in relation to the setting of the listed building and the NSRCA, which are designated heritage assets.
24. I note the County Council's scheduled casualty reduction scheme for the Epping Road/Common Road junction. However, this does not diminish my concerns above in relation to the intensification of the use of the existing access to Fairlawn and the lack of demonstrated suitable visibility there.

Conclusion

25. The proposal would not be inappropriate development in the Green Belt. However, it would result significant harm to highway safety and potential significant harm to the character and appearance of the area by way of pressure to reduce or remove the protected trees. Therefore, for the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR