



Appeal Decision

Site visit made on 19 November 2018

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 28 February 2019

Appeal Ref: APP/J1535/W/18/3201230

Esperanza Nurseries, Stapleford Road, Stapleford Abbots, Romford RM4 1EJ

- 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 Tony Humphries (c/o WES & AWH Developments Ltd) against the decision of Epping Forest District Council.
 - The application Ref EPF/3216/17, dated 13 November 2017, was refused by notice dated 7 February 2018.
 - The development proposed is described as 'demolish Office, Boiler House and Two Glasshouses, erect 5 No. Dwelling Houses, Lay Out Access Drive and Turning Head, Amenity and Parking Areas, Alter Vehicular Access onto Stapleford Road and Form Meadow/Paddock'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal concerns an application that was made in outline, with all matters other than access and layout reserved for later determination. I have been provided with an 'illustrative proposed streetscene' and I have considered the appeal on this basis.
3. I have been referred to the emerging Epping Forest District Local Plan Submission Version 2017. Whilst this is the plan that the Council intend to submit for examination, its contents could be subject to change, and it does not yet form part of the adopted development plan. In accordance with Paragraph 48 of the National Planning Policy Framework ('the Framework') I attach limited weight to it.
4. There is no dispute that the proposal lies within the Green Belt and would not be inappropriate development as defined in development plan policy and the Framework. On the evidence before me I have no reasons to disagree with that position and the Council's statement is clear that the objection is due to the effect on the character and appearance of the area.
5. Further, the Council's statement refers to the effect of the proposal on Epping Forest Special Area of Conservation ('the SAC'). Consequently, I wrote to the parties seeking clarification on a number of associated matters and I have considered the responses I have received from both parties in my determination of this appeal.

6. During my determination of the appeal a revised Framework was published on 19 February 2019. However, having regard to the changes and my conclusions in this appeal I did not consider it necessary to seek further comments from the parties.

Main Issues

7. Given the above the main issues in this appeal are:
 - The effects of the proposal on the integrity of Epping Forest Special Area of Conservation.
 - The effect of the proposal on the character and appearance of the area.

Reasons

Background

8. The appeal site has a lengthy recent planning history and outline planning permissions have been granted by the Council in 2015, 2016 and 2017 for residential development. The most relevant to this appeal is the latter which was for 3 chalet bungalows and included a dwelling to the front of the site and two dwellings behind. On the evidence before me these permissions are extant and are a material consideration. I return to matters of weight below.
9. The appellant has now put forward a revised scheme following discussions with the Council and that has led to the appeal before me. The Council do not dispute that the proposal is for 5 dwellings of the same floor area as previously approved¹.

Epping Forest SAC

10. In this regard I must consider whether the proposal would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other projects. By way of background, Natural England ('NE') in their letter dated 1 October 2018 provided support for an interim approach to managing recreational pressures. This has identified a 'Zone of Influence' of 6.2km from the boundary of the SAC, together with an inner area of 3km. This is to be updated by the Council in 'the second half' of 2019. The appeal site is 8.6km away from the boundary of the SAC and outside the zone of influence of 6.2km advised by NE to be used to determine whether residential applications will have a recreational impact. NE is clear in their advice that such assessment is only required for projects within the zone of influence.
11. However, the final Mitigation Strategy to address air pollution on the SAC has not been completed and the Council is continuing to work on the Local Plan Habitats Regulations Assessment ('the HRA'). Natural England advise that it is going to be very difficult to identify suitable mitigation measures to minimise or remove any air quality impacts to enable a conclusion of no adverse effect on site integrity of the SAC to be reached at the individual planning application stage until the updated HRA has been prepared.
12. The appellant contends that it is not clear there will be an additional adverse impact on the special interest of the forest and air quality in general but NE

¹ LPA ref: EPF 0112/17.

- advice, to which I give significant weight, is that neither an adverse effect nor a likely significant effect on the SAC can be ruled out². They have outlined clear concerns in relation to the impacts the proposed level of growth and development could have on the SAC as part of the local plan consultation process. On my reading of the evidence, NE is clearly of the view that there will be impacts but until the HRA has been updated the necessary critical information regarding how to deal with air pollution impacts does not exist. There is also uncertainty with respect to how long this interim approach would need to be in place, particularly given the current delay with the local plan.
13. As an interim approach NE advise that all residential and employment proposals within the district likely to have air pollution impact on Epping Forest SAC will need to be subject to a project level HRA. As the risk cannot be ruled out and as the appropriate authority I consider that it is incumbent on me to carry out an appropriate assessment. I have sought further evidence from the main parties on this matter and have the most up to date advice from NE³ on the site characteristics. Further consultation is not therefore required on this occasion.
 14. Since the application was originally considered by the Council there has also been a relevant High Court case and a Court of Justice of the European Union judgement⁴. The latter requires the decision maker, when considering the effect that a proposal may have on a European Site, to consider mitigation within the Framework of an Appropriate Assessment ('AA') rather than at the screening stage.
 15. Epping Forest is a site of national importance for the conservation of the fauna of invertebrates associated with the decaying timber of ancient trees. It features transitions and mosaics including grasslands, freshwater habitats and other woodland types. The SAC includes three of the main wood pasture types in Britain namely Beech-Oak, Hornbeam-Oak and mixed Oak. This mosaic of forest-wood pasture habitats supports a nationally important assemblage of ancient and veteran trees, bryophytes, fungi, invertebrates (including dragonflies and saproxylics such as stag beetle), amphibians, breeding birds and nationally notable lichens. It also includes other features of significant interest such as ancient soils and seedbanks and many species of national and county significance. Maintaining this characteristic diversity and range is critical for the conservation of site features, including stag beetles and the site's overall integrity.
 16. Advice from NE highlights the impacts of the effects of nitrogen emissions and other air pollutants from vehicles and whilst air quality monitoring is taking place the results are not before me. The SAC features are considered sensitive to changes in air quality due to air pollutants such as Nitrogen and Sulphur Dioxide. Amongst other things such pollutants modify the chemical status of the substrate, damage the wet heath community, and increase the dominance of insect pests and grasses and results in harmful changes in species composition and diversity. The advice of NE is that the epiphytes⁵ at the SAC have also declined, largely because of air pollution but it remains important for

² Natural England letter dated 15 June 2018.

³ At the time of this appeal and set out in Annexe 1 of NE letter dated 15 June 2018.

⁴ *Wealden District Council vs Secretary of State for Communities and Local Government and Lewes District Council and South Downs National Park and Natural England* (2017) EWHC (Admin) and *People over Wind and Sweetman v Coillte Teoranta* ECLI:EU:C:2018:244

⁵ An organism that grows on the surface of a plant.

- a range of rare species, including the Knothoel Mass and the site is rich in fungi, dead wood invertebrates and notable bryophytes and lichens.
17. Accordingly, an important consideration is any increase in traffic on roads in proximity to the SAC. There is little before me from the appellant in terms of such effects and no Air Quality Assessment has been submitted. The site is vacant appears to have been so for some time. The development of 5 dwellings, indicated as being 4 plus bedrooms on the application form would be an increase in the number of units on the site, including compared to the most recently approved scheme. Taking account of the likely number of visitors and deliveries associated with such properties the number of additional trips above and beyond the approved scheme is highly likely to be greater and include travel through the forest. In considering the SAC as a whole, giving significant weight to the advice of NE and taking a precautionary approach I am satisfied that whilst the effects are uncertain, they could be significant and adversely affect the integrity of that site.
 18. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European site. I may give consideration to any conditions or other restrictions which could secure mitigation and so enable it to be ascertained that the proposal would not adversely affect the integrity of the site. In this case, there is little before me regarding mitigation measures which could be applied to reduce or remove any impacts to enable a conclusion of no adverse effects to be reached. Nothing is proposed by the appellant for such mitigation that could include green travel planning or other measures such as electric vehicle charging points.
 19. The appellant has suggested a condition to secure a scheme of mitigation and an obligation that addresses the impacts in terms of recreational pressure and air quality. It is suggested that mitigation will be achieved in the future that would retrospectively cover the impact of development such as this. However, an intention to achieve mitigation in the future is not sufficient as I cannot be certain when or if it would be in place.
 20. The Planning Practice Guidance advises that negatively worded conditions requiring the submission of planning obligations would only be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of development would otherwise be at serious risk. This proposal is not, by itself, strategically important or complex so as to justify such an approach.
 21. Furthermore, any planning obligations imposed on future development would be subject to the test, set out paragraph 56 of the Framework that they are directly related to the development in question. An obligation imposed on future development that seeks to retrospectively address the impact of development previously approved by the Council would be unlikely to meet this test. The appropriate way to deliver sufficient certainty for all parties about what is being agreed is to enter into an agreement prior to granting planning permission.
 22. Overall, I consider that there is a potential for air quality impacts on the SAC through additional vehicular trips associated with this residential development and in combination with others, would adversely affect the integrity of this European site. These effects would not be mitigated in the proposal before me.

I have not been referred to any specific development plan policy in this regard but there would be conflict with Policy CP1, CP2 of the Epping Forest District Local Plan and Alterations ('the LP') insofar as they seek to protect the natural environment and ecology. The proposal would also conflict with the Framework insofar as it seeks to ensure that there are no adverse effects on the integrity of protected sites.

Character and appearance

23. The appeal site is part of a small linear settlement with commercial and residential ribbon development stretching along Stapleford Road. The properties are set back from the highway behind landscaped front gardens. There are significant amounts of development to the rear of the frontage plots in the form of dwellings and rural buildings and glasshouses. There are a variety of irregular gaps and spaces in front of and between the properties which afford views of sky and mature trees to the rear that positively contributes to the character and appearance of the area.
24. The alignment of the existing road has been retained and this would allow for the perception of these views to be maintained. The arrangement and consolidation of the pairs and their siting would allow for sufficient gaps around them so that they would not appear cramped. The extant permission included 2 substantial 'T' shaped dwellings located in the same position and with a ridge height not exceeding 5.9m. The proposal before me indicates the dwellings would be between 7 and 7.8m in height which would be broadly comparable to the height and scale of residential dwellings in the locality. Although taller than previously approved, they would not be notably or markedly so. Although of a different form they would have no greater impact on the character and appearance of the area than that scheme.
25. Further, although scale is a reserved matter I see no reason why a scheme could not be negotiated at that stage to achieve an entirely sympathetic scale and appearance, not least given the variety of dwelling styles and designs that exist along Stapleford Road. The existing greenhouses are substantial structures in terms of overall scale and the removal of these structures, large expanses of associated hardstanding and overgrown vegetation would also represent an environmental enhancement of the site, in visual terms.
26. For these reasons, the proposal would not cause harm to the character and appearance of the area. Accordingly, it would not conflict with Policies CP2, CP3, CP7 of the LP insofar as they require new development the scale and nature of development respects the character and environment of the locality and allows for use of higher densities where compatible with the character of the area.

Other Matters

27. The appellant contends that the extant scheme could be implemented with no mitigation at all but in accordance with the Habitats Directive and Habitats Regulations, the existence of this scheme is not a consideration in assessing the effect of the proposal before me on the protected site. Furthermore, that is also an outline permission and it will always be a requirement where no assessment was undertaken when the outline application was being considered. It does not therefore alter my view in relation to the first main issue.

28. The appellant refers to the lack of a 5-year housing land supply and the operation of the so called 'tilted' balance within paragraph 11 of the Framework. However, the proposal is likely to have a significant effect on a habitats site and my AA has concluded that there is no suitable mitigation strategy in place and the proposal would adversely affect the integrity of that site. The presumption in favour therefore does not apply, in accordance with paragraph 177 of the Framework.
29. My attention has been drawn to other developments in the locality, including a grant of planning permission at The Drive, Stapleford. Given my findings in relation to the matters in dispute and my conclusions on the second main issue I find it is not necessary to consider these any further. In any event each case must be determined on its own merits.

Conclusion

30. Although I have found no harm insofar as character and appearance are concerned, my findings in respect of the effects on the integrity of the SAC are decisive and are not outweighed by other considerations.
31. Having regard to all other matters raised, including support from Stapleford Abbotts Parish Council I therefore conclude that in this particular case the appeal should be dismissed.

Richard Aston

INSPECTOR