



## Appeal Decision

Inquiry Held on 6-8 and 11-12 December 2023

Site visit made on 12 December 2023

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15<sup>th</sup> February 2024

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Appeal Ref: APP/J1535/W/23/3327649

13-15a Alderton Hill, Loughton, Essex IG10 3JD

- 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 Elysian Loughton Site Limited against the decision of Epping Forest District Council.
  - The application Ref EPF/1822/22, dated 27 July 2022, was refused by notice dated 20 February 2023.
  - The development proposed is Demolition of existing buildings at nos. 13, 15 and 15a, **Alderton Hill, and the erection of linked blocks of elderly persons' apartments, with integrated care facilities (Use Class C2) with supporting amenity facilities, landscaping, car and cycle parking and all associated ancillary works and structures.**
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Epping Forest Local Plan 2011-2033 (LP) was adopted in March 2023 after the Council made their decision on the application. This now forms the adopted development plan for the area. Relevant policies to the proposal have been submitted to me and agreed between the main parties. I am required to make my determination based on the policy in place at the time of my decision.
3. During the course of the appeal, amended plans were submitted seeking to address matters raised within the second main issue which stemmed from one **of the Council's refusal reasons. The plans related principally to amendments to the window details on apartment No.s 35, 56 and 71 (No.71) on the eastern side of the site close to the boundary with 17 Alderton Hill (No.17).**
4. A consultation exercise was undertaken and I was asked that the amended plans replace the earlier submitted versions. They were accepted as this did not prejudice the opportunity of interested parties to make representations on the matter and I have made my decision on the basis of those plans.
5. The matter of whether the proposal would have an adverse effect on the integrity of the Epping Forest Special Area for Conservation (SAC) was initially identified as a main issue. However, during the course of the appeal a planning obligation in the form of a Unilateral Undertaking was submitted which included the provision of financial contributions towards mitigation schemes. It was subsequently agreed between the main parties that the refusal reason relating

to this matter should be removed. I have no reason to take an alternative stance.

6. Because the scheme is unacceptable for other reasons, there is no need for me to undertake an appropriate assessment and I shall not consider this matter further.

#### Main Issues

7. The first main issue therefore is the effect of the proposal on the character and appearance of the area with regard to the bulk, massing and height of the proposal. The second is the effect of the proposal on the living conditions of future occupiers. The third is the effect of the proposal on the living conditions of existing occupiers at No. 17 with regard to privacy. The fourth is whether the scheme should be subject to a review mechanism in order to secure affordable housing were the viability of the scheme to change before completion.

#### Reasons

##### *Character and appearance*

8. The site is currently occupied by three dwellings which would be demolished. Extending away from these properties are their rear gardens, which are all of a good length, stretching southwards towards the Central Line. No.17, a well sized residential property sits to the north-east.
9. To the south-west is Poets Place retirement living which has street facing aspects onto both Alderton Hill and Roding Road. Buildings which appear to be associated with Roding Valley High School sit to the western side of Roding Road and to the north of Alderton Hill. They form a cluster of development of substantial bulk and mass, contrasting with the detached residential properties extending up Alderton Road.
10. In terms of the Alderton Hill Street Scene, Poets Place is the bookend building and its height, bulk, scale and mass are reflective of the larger institutional style buildings that are located around the Alderton Hill/Roding Road junction.
11. Large parts of that building have three storeys, however moving away from the Alderton Hill/Roding Road junction, the wing of the building closest to the appeal site is viewed as two storeys from the street, bridging the gap between the larger scale and massing of Poets Place and the buildings of more modest scale and massing on Alderton Hill.
12. The design features and proposed materials are not inconsistent with those evident locally where the buildings are of mixed materiality and design and I accept that it would not be inappropriate to increase the quantum, massing or scale of development to some extent at the appeal site to provide an extra care scheme.
13. However, whilst noting the removal of a gable feature included within the previous scheme, the three storey plus roof space height within the western end of the building combined with its bulk and massing when viewed from the street would mean that it would appear as a stark and dominant feature when viewed from Alderton Hill. It would be out of step with the two storey design that is offered by the adjacent wing of Poets Place, which as it stands offers a natural transition to the two storey dwelling at No.13 Alderton Hill (No.13). The

- latter property also shares a broadly similar roof design with the wing of Poets Place further easing the transition.
14. Instead, the appeal scheme would open at this point on Alderton Hill with a building of effective four storey height including accommodation within the roof space served with gable and dormer features.
  15. This would result in an awkward and discordant relationship between the wing of Poets Place and the building on the appeal site. This would be despite the separation between the appeal proposal and Poets Place, the planned screen planting and the existing height difference between the ridgeline of the wing of Poets Place and that at No.13.
  16. Now I focus my attention on the eastern end of the scheme when viewing from Alderton Hill. I accept that the increase in the height of ridgelines moving eastwards up Alderton Hill does not bear out between every property moving up the slope. However, it remains that it is the case that the arrangement broadly prevails stepping up the hill.
  17. The ridgeline on the eastern frontage building would be broadly the same as that of No.17, although that would owe somewhat to a 1.4m reduction in land levels proposed on the site.
  18. This part of the building would be provisioned with three storeys, along with accommodation within the roof space. As a result, the height of this part of the proposal in contrast to No.17 and the dwellings beyond would lead it to form an overly bulky and dominant feature in views from Alderton Hill.
  19. Turning to the rear of the site, the building that is proposed would at its tallest, be five storeys in height in addition to the accommodation within the roof space. The height of that building would form a highly unfamiliar and uncomfortable feature within the immediate area, especially when considered against the rear wing of Poets Place which is much lower. Whilst I accept that the building would have limited visibility from many surrounding viewpoints and roads, that does not equate to it being without visibility.
  20. It would be a notable feature for the many occupants of Poets Place which has its principal garden area to the east, an area which would likely allow views towards the appeal site. The height of the rear building would also be particularly notable from the allotments set to the rear of properties on Roding Road and to the south of the Central Line, especially when the trees, which provide some screening, were not in leaf. In these views, it would appear very much out of step with building heights either side of the appeal site.
  21. The allotment site is large and likely to play host to a substantial amount of allotment holders over time. Whilst the appeal building would be reduced in height towards its eastern end, it would form a prominent and unfamiliar feature in views from the adjacent garden of No.17. I therefore conclude on this issue that the proposal would cause significant harm to the character and appearance of the area as a result of the bulk, massing and height of the scheme. It would subsequently conflict with Policies SP2 and DM9 of the LP.
  22. These policies, amongst other things require that development proposals maintain and enhance the character of existing settlements and relate positively to their locality having regard to building heights and the form, scale and massing around the site.

*Living conditions of future occupiers*

23. As a result of the amendments to the scheme, the two bedrooms serving No. 71 would be provided with rooflights only. Given the height of these windows above floor level, outlook from those windows is likely to be in the main towards the sky and as such, limited. A bedroom is a habitable room and therefore I consider a reasonable outlook to be important. The limited outlook from those bedroom windows would have an adverse impact on the living conditions of the future occupiers of No.71.
24. Obscure glazing would be provided to windows on the east facing elevations of the first and second floor apartments - No.s 35 and 56 respectively. Despite the provision of a further non-obscure glazed window opening, the future occupiers of those flats would suffer from limited outlook within the combined kitchen/dining/living room, especially when occupying the northern ends of those rooms, identified on the plans as kitchen areas.
25. In terms of daylight, 20% of rooms in sole use as living rooms would fail to meet the Average Daylight Factor target of 1.5%<sup>1</sup>. I accept that significantly more living rooms would pass than fail the test and that 92% of habitable rooms meet the requirements. However, that would still leave the development hosting a significant number of flats with living rooms with constrained levels of daylight to their main habitable space. Whilst I acknowledge there would be other communal and outside areas available to residents within the scheme, this would not overcome the lack of daylight within the private space.
26. There would be compliance with the guidelines if the proposed balconies were to be removed, but they are included and that is the position before me. In any event, removing those balconies would be to the detriment of the living conditions of the occupiers whose balcony were removed.
27. The affected flats would be likely to host many future occupants over the years and residents of those flats would likely have an excessive reliance on artificial lighting within their living rooms. The limited levels of daylight to the living rooms of those flats would be likely to have a significant adverse impact on the living conditions of their future occupiers.
28. In terms of environmental noise, only a limited number of apartments have been identified as being capable of achieving the internal noise level requirements detailed within the noise report<sup>2</sup>. This would in practical terms, mean that only the occupiers of those flats could open their windows during the daytime to achieve internal noise levels in line with those recommendations while none of the apartments could achieve the standard if opening windows at night. It is therefore likely that if many of the residents wished to open their windows, they could be subject to levels of noise that could be likely to have an adverse impact on their living conditions.
29. I do not have significant concern with the corridor access arrangements to the apartments given that time spent in these areas would be highly transient.
30. I accept that the external circulatory route would be somewhat hemmed in by the proposed buildings and site boundaries. Nevertheless, it would provide a

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<sup>1</sup> Daylight & Sunlight Report 13-15 Alderton Hill July 2022.

<sup>2</sup> Hoare Lea Acoustics Environmental Noise Survey June 2022.

functional and safe route were occupiers wishing to remain on site for some outdoor exercise. I consider this route to be acceptable.

31. Although I find no harm in respect of internal and external circulation, I do find harm in respect of daylight, outlook and noise. I therefore conclude that the proposal would not provide acceptable living conditions for future occupiers. It would therefore conflict with Policy DM9 of the LP which requires amongst other things that development proposals provide good daylight. It also requires that proposals should not result in an overly enclosed form of development which materially impacts on the outlook of the occupiers of the proposed development, and that issues of noise should be addressed.

*Living conditions of existing occupiers at No. 17*

32. The amendments that have been made to the scheme in terms of the layout and window arrangements would in substance mean that there would be very limited opportunities for overlooking from apartments No.s 35, 56 and 71 towards the rear patio or pool area at No.17.
33. Whilst some sense of perceived overlooking could remain for the occupiers of No.17, this would perhaps be greatest when those windows were illuminated by internal lighting during hours of darkness. These are however times when the patio and pool area would be likely to be in limited use.
34. Whilst I note that screening and boundary planting would be provided, this would not provide an immediate solution as it would take a number of years for the trees to reach effective screening height. There would therefore be likely to be some overlooking to the rear garden of No.17 from the eastern end of the rear building for a number of years as that elevation effectively aligns with a gap in between the planting on the boundary of the appeal site and No.17.
35. I therefore conclude on this issue that this would cause some, albeit limited harm to the occupiers of No. 17 given that any overlooking would be towards the lower and likely lesser used end of the garden. That issue would not be likely to be immediately resolved via the proposed boundary planting. There would therefore be some conflict with Policy DM9 of the LP which requires proposals to avoid overlooking and loss of privacy detrimental to the living conditions of neighbouring occupiers.

*Review mechanism*

36. It is common ground between the main parties that the development cannot afford to make a contribution to affordable housing based on the submitted Financial Viability Assessment.
37. The supporting text to Policy H2 at 3.16 states that for new larger-scale residential development that will be delivered on a phased basis, the Council will require planning obligations to include mechanisms for viability reviews and 'clawback' clauses (or similar).
38. There is nothing to indicate that this proposal would be delivered on a phased basis and it has been clarified that the proposal would be developed as a whole single scheme. Therefore, even were I to consider that the inclusion of that supporting text within the policy could trigger the need for a viability review, the scheme would not draw conflict with Policy H2 of the LP.

39. My attention was also drawn to a guidance note<sup>3</sup> covering matters of viability. This guidance at 10.4 suggests it is likely that review mechanisms will be sought for amongst other things, large developments. However, there is no definition as to what a large development would constitute in terms of the guidance.
40. Bearing in mind the Planning Practice Guidance<sup>4</sup> which states that plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development, I cannot therefore find specific conflict with that guidance note as the note is not specific in terms of what scale of development would require a review mechanism. Further, the note does not have the status of a supplementary planning document which reduces the weight that I afford to it.
41. I therefore conclude on this matter that there is nothing within the evidence to indicate that this particular proposal should be subject to a viability review mechanism. There would be no conflict with Policy H2 of the LP or the guidance note.

#### Other Matters

42. A similar, albeit slightly larger scheme has been the subject of a previous appeal decision Ref. APP/J1535/W/18/3203410. I accept that this scheme has attempted to address the reasons on which that appeal was dismissed. I am aware of the principles of consistency of decision making and the submitted judgement<sup>5</sup>. The majority of analysis within that decision focuses on the interaction of the public frontage of that scheme to Alderton Hill.
43. It also focuses on the scale of the building when moving along Alderton Hill and the previous gable feature at the western end of the building that is not part of this proposal.
44. However, the previous Inspector noted that the formerly proposed gable would have been 8.34m higher than the lower wing of Poets Place which extends towards 13 Alderton Hill as well as being forward of this feature. They noted that the substantial height difference with Poets Place would appear excessive resulting in an awkward, discordant relationship between rival bookend buildings.
45. Despite the removal of the gable feature and the lowering of the ridgeline on the western end of the western building, a significant height difference remains, especially to the lower wing of Poets Place. The western section of the building remains forward of that lower wing. When approaching up Alderton Hill a significant section of the west elevation of the scheme would remain visible and include multiple stories.
46. The Inspector also identified that a key characteristic of the detached houses on the southern side of Alderton Hill is the manner in which they step down the slope. He describes the previously proposed set down from No.17 to the ridgeline of that previous scheme at 1cm as being an imperceptible amount.

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<sup>3</sup> Epping Forest District Council Guidance Note to Planning Applicants on the Submission of Viability and Financial Appraisals for Affordable Housing – January 2017.

<sup>4</sup> How should viability be reviewed during the lifetime of a project? Paragraph: 009 Reference ID: 10-009-20190509.

<sup>5</sup> *Dunster Properties Ltd v First Secretary of State* [2007] EWCA Civ 236 2 P & C.R.26.

The ridgeline of the appeal scheme at the eastern end would remain broadly at the same level as that on No.17, although I note that the ridgeline of the western block now steps down twice.

47. I accept that the previous Inspector's concerns over the height and scale of the rear building appeared to be limited as they considered the rear part of the site visually well contained on three sides from public view.
48. However, I do not consider that the assessment of the visual impact of a building should be so limited as to only take account of public areas when it could be viewed by many people from private areas. These views are an important aspect of how a building would be experienced day to day by those in the locality and I consider them important.
49. Whilst I am aware that issue was not found with regard to living conditions in association with the previous larger scheme, I have nonetheless had to have appropriate regard to the evidence that has been placed before me with regard to this particular scheme. The Council has drawn my attention to issues surrounding living conditions. Consideration of that issue is important in the context of the overall quality of the scheme which I have had to consider in totality based on the identified and agreed main issues of the case.
50. There would be social and economic benefits to the scheme. These would include the provision of a large number of space standard exceeding older persons apartments within a sustainable location within Loughton close to transport links within a context of need. There would be a likelihood that some market housing within the area would be released through some local residents moving to the site. There could be some reduction in demand for local NHS services as a result of the in house care provision. The scheme proposes the introduction of 18 FTE jobs.

### Planning Balance

51. I have identified harm on multiple fronts relating to the character and appearance of the area as well as the living conditions of future occupiers and the living conditions of existing occupiers. This combination of issues points towards a certain level of overdevelopment at the site and a mismatch of the extent of development proposed versus the capabilities of the site to host it.
52. The harms that I have identified when considered together would be substantial and would outweigh the significant benefits of the scheme.
53. This would be the case even if the need for the scheme is as great as claimed by the appellant and even if the Frognall Lane site is not delivered within the near future.
54. However, in any event the LP has only recently been adopted and there is nothing within the evidence which would lead me to conclude convincingly that the LP will not deliver its planned requirements with regard to this type of housing.

### Conclusion

55. The proposal would conflict with the development plan and there are no other considerations, including the provisions of the Framework, which indicate the

proposal should be determined otherwise than in accordance with it. Therefore, the appeal is dismissed.

*T Burnham*

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Gwion Lewis KC, instructed by Elysian Loughton Site Limited

He called

Mr Dominic Hailey      ColladoCollins Architects Ltd

Mr Kevin Murphy      KM Heritage

Mr Marginson      DP9

FOR THE LOCAL PLANNING AUTHORITY

Megan Thomas KC, instructed by EFDC Council Legal Services

She called

Ms Kathryn Firth      ARUP

Mrs Dhadwar      Epping Forest District Council

INTERESTED PARTIES

Ms C Hampshire & Ms S Hampshire

Mr A Telling

Mr P Murch & Mr K Mc Caughey

Mrs F Khachy & Mrs C Daly

Mr J Spray, Mr D Kimber, Mr K Hawkins & Mrs J Nice

Mr M Benbow

Mr D Linnel

Cllr Carol Davies

Jane Jacobs Mason



#### DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Appellant opening submission.
2. Epping Forest DC opening submission.
3. Traffic Images from Mr Benbow.
4. Suggested site visit viewpoints from Mr Benbow.
5. Draft Unilateral Undertaking & Associated Plans.
6. Draft Planning conditions.
7. Inquiry statement script from Mr Benbow.
8. Additional information from ColladoCollins regarding steps on external route around the building.
9. Elysian Residences letter to EFDC RE Local plan (dating from 2018)
10. EFDC Decision notice & Report - Land west of Froghall Lane, Chigwell, Essex.
11. EFDC Closing submission.
12. Appellant Closing submission including legal judgements<sup>6</sup>.

#### DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Completed Unilateral Undertaking & Associated Plans.
2. Email from Loughton Residents Association Plans Group regarding revised NPPF.

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<sup>6</sup> *Dunster Properties Ltd v First Secretary of State* [2007] EWCA Civ 236 2 P & C.R.26 and *The Queen on the application of Cherkley Campaign Limited v Mole Valley District Council & Longshot Cherkley Court Limited* [2014] EWCA Civ 567.