
Appeal Decision

Site visit made on 6 July 2016

by R M Pritchard MA PhD MRTPI

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

Decision date: 12th August 2016

Appeal Ref: APP/W1715/W/16/3148910

Southwoods, Saltern Lane, Burlesdon, Hampshire, SO31 8DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Charles McCallin against Eastleigh Borough Council.
 - The application Ref C/15/76178, is dated 24 February 2015.
 - The development proposed is a new dwelling of exceptional design in a lake in the garden of an existing property.
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Decision

1. The appeal is allowed and planning permission is granted for a new dwelling of exceptional design in a lake in the garden of an existing property at Southwoods, Saltern Lane, Burlesdon, Hampshire, SO31 8DH in accordance with the terms of the application, Ref C/15/76178, dated 24 February 2015, subject to the conditions attached as a Schedule to this Decision.

Procedural Note

2. The proposal before me has had a long, and somewhat complicated, history. First discussions between the appellant's representatives and the Council took place in November 2013 and were concerned with a proposal for a lakeside house. Following a series of iterations that were the subject of comments from both Council officers and its independent Design Review Panel, an application was made in February 2015 that radically altered the proposal to one bridging the lake. That proposal went to the Design Review Panel at the end of April. The Panel made a number of comments to improve the proposal but the appellant entered into further discussions with Council officers that resulted in a different approach. The application 'sat on the table' throughout this period with an agreement to extend the deadline for determination to January 2016. The appellant suggests that at this stage, officers intended to recommend support for the application on the basis of the final design that had then emerged.
3. However, the application proved too late for the Council Committee meeting at the end of January 2016 and then also missed the March meeting due to the absence of the case officer. At that point, an appeal was lodged as there had been no written agreement to extend the deadline any further. Subsequent to the appeal being made, the Council concluded that it would have refused the application and its statement of June 2016 cites five reasons. The first three of

these are reflected in the main issue that I have identified below and relate to the proposed development's location in the open countryside and in an area where there are other protective designations.

4. The fourth and fifth reasons both refer to inadequate information being submitted in respect of the proposed development's impact on nature conservation interests and trees on or in the vicinity of the site. I have dealt with these two issues under Other Matters.

Main Issue

5. I consider the main issue to be whether the proposed development would represent a dwelling of exceptional quality or of an innovative nature so as to outweigh any material harm that would arise from its location in an area designated as open countryside.

Reasons

6. The appeal site, around 2 hectares in extent, is in a secluded location on the north west side of the Hamble estuary close to where that meets Southampton Water. It is separated from the estuary by the raised embankment of the Southampton-Portsmouth railway line. The site, which lies in a shallow valley, is dominated by a large, artificial lake that drains south-eastwards through a substantial culvert under the railway line via Badnam Creek into the Hamble. The landscape of the site is wooded to the west and north as well as around much of the rest of the lake's shoreline but the eastern part of the site is open grassland that rises to the north-east to a large, two-storey, detached dwelling, South Woods, within the ownership of which the whole of the site lies. Immediately to the north-west of the appeal site, but screened from it, is a sewage works.
7. South Woods is one of a group of four, individually designed properties that are sited around a circular shared driveway within a gated site. The properties lie at the south western end of Salterns Lane, a narrow highway that serves the scattered dwellings that substantially contribute to the character of Old Burlesdon. A track that is a public footpath and which carries access rights for the appeal property and for Railtrack, extends the Lane south to the railway line.
8. The site is subject to a range of policy designations. It is outside the existing built-up area in a location that is designated by the adopted Eastleigh Borough Local Plan Review as open countryside¹. It is also within the Burlesdon-Hamble-Netley Abbey Local Gap as defined by the Review. Its location means that it is subject to policies that substantially limit the circumstances where planning permission will normally be granted. 'Saved' Policy 1.CO of the Local Plan Review restricts acceptable development in the open countryside to that intended for agricultural, horticultural or recreational purposes, whilst Policy 3.CO limits development within the Local Gap to that which cannot be acceptably located elsewhere and which would not physically or visually diminish it.

¹ A replacement Submitted Borough Local Plan is in the process of proceeding to adoption. Whilst a material consideration, its policies can, as yet, carry little weight in my decision. I would observe, however, that its submitted policies do not vary substantially from the Local Plan Review in terms of their impact on the proposed development and the appeal site.

9. In addition to the above restrictions, the site is also at the southern edge of the Old Bursledon Conservation Area and partly within a Special Policy Area. It is thereby subject to 'saved' Policies 169.LB and 179.LB. The former policy carries forward the test set by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention should be paid to the desirability of development in a Conservation Area preserving or enhancing the character or appearance of the Area: the latter applies specifically to the Special Policy Area and limits development to the replacement or extension of existing dwellings in order to protect its '*...special loose-knit character...*'
10. Finally, the appeal site is also within the locally-designated Mallards Moor Site of Importance for Nature Conservation (SINC), which also contains an area of Ancient Woodland, and is in close proximity to the internationally designated Solent Maritime Special Area of Conservation (SAC) and Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, as well as the nationally designated Lincegrove and Hackett's Moor Site of Special Scientific Interest (SSSI) and the locally designated Badnum Copse SINC. As such, the appeal site is subject to 'saved' policies, 22.NC, 23.NC and 25.NC, all of which are intended to protect biodiversity and wildlife habitats.
11. The proposed development comprises a single, detached dwelling that would form a 'bridge' over the lake between its eastern shore and a series of small islands. The new dwelling would be raised on the '*...minimum of support piles...*' so as to appear to float above the water. It would use an existing access to the track that connects to Salterns Lane. The proposed dwelling would be accompanied by substantial landscaping and a separate, detached small garage/store would be provided towards the north east edge of the site.
12. There is no dispute that the proposed dwelling represents a new home in an isolated location in the open countryside and, in addition to the battery of local policies listed above, is therefore also subject to Paragraph 55 of the Government's National Planning Policy Framework ('the Framework'). Paragraph 55 states that '*...new isolated homes in the countryside ...*' should be avoided unless there are special circumstances. To be justified in terms of both national and local policy, the proposed dwelling therefore needs to meet at least one of the four such special circumstances quoted in Paragraph 55, the first three of which – provision for a rural worker, securing the future of a heritage asset and re-use of a redundant or disused building – are not applicable.
13. The appellant's case therefore rests on the fourth circumstance quoted in Paragraph 55 which states that the dwelling's design should be of '*...exceptional quality or innovative nature...*' Four criteria are put forward by which such design might be recognised – a) that it be truly outstanding or innovative and help to raise the standards of design more generally in rural areas; b) that it reflects the highest standards in architecture; c) that it significantly enhances its immediate setting; and d) that it is sensitive to the defining characteristics of the local area. These criteria are not alternatives. To meet the special circumstances required, all four must be achieved and they have proved to be a rigorous test when applied to new development.

A truly outstanding or innovative design

14. All the criteria set by the fourth special circumstance allowed by Paragraph 55 are, inevitably, subjective in assessment. The first, however, is exceptionally

so. Moreover, the addition of the adjective '*...truly...*' implies that the bar that has to be crossed is particularly high and that few projects are likely to succeed in meeting this criterion. I accept this and I conclude that it has to be the manner in which design and innovation are combined that provide evidence for this criterion having been met.

15. The appellant has also suggested additional factors that should be taken into account in assessing whether a proposal represents '*...exceptional design...*' I am wary of adopting all of these. Some of the factors – for example that it should '*...satisfy the Client's brief...*' - seem to me to be outside the scope of Paragraph 55, whilst others – for example that it should only be seen by '*...glimpsed views...*' - may actually be inappropriate for some schemes. Nevertheless, I accept that some of the additional factors that the appellant puts forward are potentially useful. I especially take note of the suggestion that it should be unlikely that the same design could be replicated elsewhere.
16. The concept of a dwelling 'bridging the lake' emerged from the iterative discussions described above. The Council acknowledges that it represents '*...a clever solution...*' to the issues associated with the site and a '*...potentially exciting prospect...*' However, whilst continuing to welcome the broad concept, the initial designs for a bridge house were criticised by both Council officers and by the Design Review Panel on the grounds that there would be too many steel piles required to support the structure with the consequence that the proposed dwelling would appear too heavy and fail to meet the design intention of 'floating over the water'.
17. As a result of these comments, the design was substantially revised. Fewer steel piles have been proposed with the support for the proposed dwelling being provided by a horizontal grid of deep section steel beams. The consequence, in the view of both Council officers and the Design Review Panel was a discontinuity between that support structure and the lightweight living areas above. A further design iteration then took place with the support structure being reduced in depth thereby resulting in a lighter weight and improved profile.
18. The scheme now before me is for a single storey, flat roofed Huf Haus² sitting on a timber floor plate made of engineered, cross-laminated spruce, around 1.5 metres above the water and fixed to a support structure of steel beams and piles. The living accommodation would comprise a central core suspended above the lake with two connecting wings. The dwelling would be fitted with triple glazed panels to increase passive solar gain and reduce heat loss. It would have a zero carbon footprint.
19. There is no doubt in my mind that the principal characteristic of the proposed development that potentially qualifies it as a '*...truly outstanding or innovative design...*' must be its position spanning the lake. As the Council correctly points out, the living areas comprise a reasonably conventional, timber framed structure and though of well thought-out design and to be constructed to the highest environmental standards, they cannot be described as innovative. Nevertheless, although other properties already exist which include many of the elements here proposed, the appellant has suggested, and I have seen nothing from the Council that disputes this, that the concept of an individual

² The proposed dwelling is designed by Peter Huf Architecture

house designed as a bridge is unique among contemporary properties in this country.

20. I was especially taken by the appellant's description of the manner in which the proposed dwelling would be approached with its main living area sitting above the lake with panoramic views. I also welcome the impact of the walkways around the house that seemed to me almost to mimic the visual effects obtained from the deck of a ship. All these elements seem to me to combine to provide a proposal sufficiently original as to meet the criterion of being both outstanding and innovative in its design.

The highest standards in architecture

21. It might be considered that any proposal that meets the criterion of being '*...truly outstanding or innovative...*' in its design must, by definition, reflect the highest standards in architecture. However, I discern a significant difference between the first and second criteria that has been reflected in the comments of the Design Review Panel. The concept underpinning a proposed development could be outstanding and innovative – as I consider the Design Review Panel concluded here – but the manner in which it is delivered might fail sufficiently to meet those aspirations. That appears to have been at the heart of the Review Panel's comments on the first and second iterations of the design here put forward.
22. Has the final version of the design succeeded in overcoming those criticisms? I recognise that a key element in the design must be the manner in which the bridge structure relates to the lake below. The architect's intention, which I and the Review Panel applaud, is that the structure should appear to 'float' above the lake. That objective has to be set, however, against the simple engineering truth that a structure spanning the distance here involved has to have the necessary degree of support.
23. It is surprising to me that the final design iteration that forms the basis of the proposal before me did not go to the Design Review Panel as had the two previous schemes. That is particularly so given the appellant's comment that the final design owed more to the input of Council officers than to the comments of the Review Panel. The Council must, of course, have the final say in these matters but I am not clear as to what separated the views of officers and the Review Panel and what the former would have made of the design before me.
24. My own assessment is that the final design before me does achieve the necessary balance between lightness of form and structural integrity. The reduction in the number of steel pillars and the less heavy supporting structure are to be welcomed, especially as both would reduce any dominance of that structure when compared to the property's roof. I accept that it is difficult to achieve the impression of the proposed dwelling 'floating' above the lake, but to my mind the structure is sufficiently light as to achieve an attractive and appropriate relationship with the water below. I therefore conclude that the second of the criteria set for the fourth circumstance of Paragraph 55 is met.

The significant enhancement of its immediate setting

25. The appellant describes the appeal site as essentially part of South Woods garden. I understand why he does so, but that description seems to me to fail

to reflect the full flavour of the site. My own assessment is that it is better described as an area of parkland as might have been associated with a substantial country house. Moreover, whilst the appeal site obviously has great potential, its current state seems derived from many years of benign neglect. The lake is dirty with what appears to be poor water quality whilst the surrounding woodland appears to have had little positive management. Notwithstanding that assessment, my conclusion was that, if accompanied by the sensitive landscaping proposed, the development would provide a significant enhancement to its immediate setting.

26. Obviously any new building will alter the appearance of a site – perhaps radically so – but I do not consider that the appeal site, which is itself the product of substantial and relatively recent human interference, represents a setting that could not accept the proposed development. The proposed house would be low in height and seems to me to represent a complementary addition to an area of wooded parkland at the centre of which would be the focal point of the lake and the proposed dwelling.
27. It is accepted by both the Council and the appellant that there would be very limited public views of any completed development. The only public views would be from the windows of the trains passing along the railway line to the south east but I consider that those views would be both startling and attractive. In crude terms, the proposed building when seen from this perspective would possess a ‘wow’ factor that would go a long way to not only significantly enhance its immediate setting but also to encapsulate why I consider it represents a design of exceptional quality and innovative nature.
28. I therefore conclude that the outcome would be an attractive assemblage of the natural and man-made that would represent a significant enhancement of the immediate setting.

Sensitivity to the defining characteristics of the local area

29. I have already described the various policy designations to which the appeal site is subject. These include the Old Burlesdon Conservation Area and Special Policy Area. Nevertheless, the site is essentially of somewhat different character to the surrounding area from which it is physically and visually isolated. The Council describes the local area as ‘...rural...’ but concedes that its character is different from a conventional agricultural landscape. Furthermore, the appeal site seems to me to be significantly different in character both from the sewage works to the north-west and the sporadic residential development to the north-east.
30. In this context, the proposed development would be insufficiently strongly related to the characteristics of the surrounding area to make that issue especially sensitive. Rather, as I have already suggested above, the site needs to be assessed on its own terms. I therefore consider that the proposed development would be sufficiently sensitive to the defining characteristics of the local area. In particular, I conclude that it would produce no material harm to the Conservation Area or its setting. In those circumstances, whilst acknowledging the importance that they attach to heritage assets, the Courts have concluded that the test of preserving the character or appearance of the Area would be met.
31. The final criterion of the fourth circumstance of Paragraph 55 is thereby met.

Conclusions on Paragraph 55

32. It is my overall conclusion that the proposed development does meet the four criteria necessary for it to qualify as a dwelling whose design would be of exceptional quality and of an innovative nature and which would therefore justify its construction within the open countryside in an area where there are other protective designations. However, there are a number of other factors that also need to be taken into account before I come to my overall conclusion as to whether the appeal should be allowed or dismissed.

Other Matters

33. I have already mentioned the fourth and fifth reasons for refusal put forward by the Council that it would have advanced had it decided the application. These concern the effects of the proposed development on biodiversity and on tree cover in the area.
34. The Council's appeal statement elaborates on these matters but does so in a manner that suggests that its concerns are more limited. In respect of biodiversity and nature conservation interests, Natural England has commented that it considers that the proposed development would be '*...unlikely to have a significant effect...*' on any designated European nature conservation site or on the nationally designated Lincegrove and Hackett's Marshes SSSI. It has, however, expressed concerns about the possible impact on Ancient Woodlands and advised that some conditions may be necessary.
35. The appellant's ecological assessment of September 2014 by Ecological Survey and Assessment Ltd concluded that the appeal site was of '*...low ecological value...*' but the Council's appeal statement focuses on the potential of the site as a bat foraging and roosting site and the presence of bat flight paths across the site with which the proposed development might interfere.
36. Nevertheless, no evidence has been put to me that the ecological and nature conservation impact of the proposed development is sufficient that any material harm could not be ameliorated by the imposition of appropriate conditions. Furthermore, there seem to be significant opportunities to enhance the biodiversity of the site. I therefore conclude that none of these matters should weigh substantially against the proposed development.

Conclusion

37. For the reasons given above I conclude that the appeal should be allowed.

Conditions

38. I have considered the conditions put before me by the Council that it would wish me to impose were the appeal to be allowed in the light of policies towards conditions as now set out in the Government's Planning Practice Guidance (PPG) and the model conditions included in the still extant Annex to Circular 11/95, *The Use of Conditions in Planning Permissions*. I have, however, rationalised the Council's suggestions to eliminate some of the overlap in its original proposals. In this case, apart from the standard conditions that set a time limit on the development and ensure that it is carried out in accordance with the submitted plans, conditions are required that the Council give prior approval to the details of materials, elevations, boundary treatments, proposed ground levels, a lighting strategy that pays particular

attention to ensuring that bat flight paths are not adversely affected; secure bin and cycle storage, and an appropriate landscaping strategy. I shall impose appropriate conditions.

39. It is also necessary that proper arrangements are made to ensure that the appeal site does not experience unacceptable risks from flooding, that satisfactory arrangements for foul and surface water drainage are put in place and that the access, parking and turning spaces for vehicles are provided before the dwelling is first occupied. I shall impose conditions in all these respects.
40. I have commented on the need to preserve the natural condition of the appeal site and I therefore consider that conditions are needed that ensure suitable protection during construction for all those trees on site that are to be retained, that an effective ecological mitigation strategy is in place and that there is no pollution of the River Hamble. I shall therefore also impose conditions in these respects, together with the need for an approved Construction Management Plan to protect the living conditions of neighbours. Finally, I agree with the Council that there needs to be some means of measuring the final energy and water consumption footprints of the proposed dwelling and a condition will be imposed to ensure that this can be done.

R.M Pritchard

INSPECTOR

SCHEDULE OF ATTACHED CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos 3151/01/A, 114. b100a, b110a, b111a, b113a, b120a, b121, b122a, b123a, 703_01 Rev A, the 3D montage and the Construction Details and Section at 1: 10 scale.
- 3) No development, including site clearance, shall take place until the following details have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the dwelling hereby permitted shall not be first occupied until those approved details have been fully implemented. The details shall include –
 - i. Samples of all materials to be used in the construction of the external surfaces of the buildings hereby permitted;
 - ii. The construction of all elevations, including cross-sections and how the dwelling hereby permitted will link to the ground;
 - iii. The alignment, height and materials of all walls, fences and other means of enclosure;
 - iv. Proposed ground levels and their relationship to existing levels both within the site and on adjoining land;
 - v. A lighting strategy for the whole site, including its access, to ensure that light spillage is minimised and bats, including their flight corridors, are not adversely impacted by the development hereby permitted;
 - vi. Provision for secure bin and cycle storage; and
 - vii. A landscaping strategy for all surfacing, trees and planting that must be completed within 12 months of the first occupation of the dwelling hereby permitted.
- 4) No development, including site clearance, shall take place until a flood risk assessment and, if necessary, details of a mitigation scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with any approved mitigation measures and to a timescale to be agreed in writing by the local planning authority.
- 5) No development, including site clearance, shall take place until details of a sustainable drainage system have been submitted to and approved in writing by the local planning authority. The details shall include the layout of foul sewers and surface water disposal, a timetable for its implementation, a management and maintenance plan and arrangements, including for possible adoption by any public body or statutory undertaker, to ensure its effective operation throughout the lifetime of the development hereby permitted. The system shall be implemented in accordance with the approved details before the first occupation of the dwelling hereby permitted and shall be retained, managed and maintained thereafter.
- 6) No development, including site clearance, shall take place until details of the access have been submitted to and approved in writing by the local

planning authority. These details shall include the width, alignment, gradient, sight lines and form of construction of the site access and drive, as well as arrangements for a turning space within the site to enable vehicles to enter and leave in a forward gear. The dwelling hereby permitted shall not be first occupied until the approved details have been fully implemented.

- 7) No development, including site clearance, shall take place until details of an Arboricultural Impact Assessment, Method Statement, Tree Survey and Protective Fencing Plan have been submitted to and approved in writing by the local planning authority. These shall include both trees within the site and along its access. The development shall be carried in accordance with the approved details and the appropriate British Standard but shall not begin until the local planning authority has inspected and approved in writing the protective fencing.
- 8) No access by vehicles or placement of goods, chemicals, fuels, soils or other materials shall take place within the fenced areas established by Condition 7) and the fenced areas shall be retained throughout the course of the development hereby permitted.
- 9) No development, including site clearance, shall take place until an ecological mitigation and monitoring strategy has been submitted to and approved in writing by the local planning authority. The strategy shall provide for the protection and enhancement of protected species and their habitats within the site both during and after the construction of the development hereby permitted. No clearance of vegetation shall take place during the bird nesting season (i.e. from 1 March until 31 October) unless supervised by a qualified ecologist.
- 10) No development, including site clearance, shall take place until a Construction Environmental Management Plan (CEMP) detailing means to ensure that there is no pollution to the River Hamble has been submitted to and approved in writing by the local planning authority. The approved CEMP shall be followed in full throughout the process of constructing the development hereby permitted.
- 11) No development, including site clearance, shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. Construction work shall only take place in accordance with the approved Statement which shall include –
 - i. A programme, including phasing where necessary, for all construction work, including the provision of the access and landscaping;
 - ii. The location of all temporary site buildings, compounds, material and plant storage areas;
 - iii. Arrangements for the routeing and turning of lorries and all other construction traffic needing access to the site;
 - iv. Arrangements for all deliveries including the loading and unloading of plant and materials;
 - v. Measures to prevent mud and dust on the public highway and arrangements for the restoration of any damage to the public highway, including vehicle crossovers and grass verges;
 - vi. Measures to control the emission of dust and dirt and the generation of noise and vibration;

- vii. The erection of any security hoarding;
 - viii. Temporary lighting; and
 - ix. The protection of any pedestrian routes that may be affected by the construction process.
- 12) No burning of materials is to take place on the site during the construction process.
- 13) No construction work, including site clearance, shall take place outside the hours of 08.00 to 18.00 hours on Mondays to Fridays; of 09.00 to 13.00 hours on Saturdays; and at no time on Sundays and public holidays.
- 14) No development, including site clearance, shall take place until details of how the dwelling hereby permitted shall achieve Code Level 4 requirements for energy or water consumption (or any equivalents set in national legislation or policy) have been submitted to and approved in writing by the local planning authority. The submitted details shall have reference to design stage SAP data and the BRE water calculator and the dwelling hereby permitted shall not be first occupied until the works have been completed and written confirmation has been submitted to the local planning authority that the requirements for energy and water consumption have been achieved.