
Appeal Decision

Site visit made on 3 October 2016

by D M Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 26th October 2016

Appeal Ref: APP/B1740/W/16/3147829

11 Uplands Avenue, Barton-on-Sea, Hampshire BH25 7BJ.

- 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 AJ Developments Ltd against the decision of New Forest District Council.
 - The application Ref 16/10142, dated 2 February 2016, was refused by notice dated 23 March 2016.
 - The development proposed is to sever land and erect 2 No 3-bed bungalows with parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with access, layout and scale to be determined. I have dealt with the appeal on that basis.

Main Issues

3. The main issues are the effect of the development on, firstly, the New Forest and Solent Coasts European Nature Conservation Sites (the conservation sites) and, secondly, the character and appearance of the area.

Reasons

Conservation sites

4. The Council has confirmed that a financial contribution is required to mitigate the impact of the development on the conservation sites. The requirement for mitigation is supported by Policy DM3 of the "*New Forest District Local Plan Part 2: Sites and Development Management 2014*" (the LP). However, it is apparent from the wording of the policy that for smaller developments such as the appeal scheme, the '*appropriate mitigation*' could only realistically take the form of a payment to the Council, in this case £8,500.
5. There is no planning obligation before me and as such, the Council has recommended a negatively worded condition which would require the proposed mitigation to be secured. I have read nothing in the Council's evidence to suggest that this condition could be discharged in any way other than a payment to the Council. For all intents and purposes the condition would therefore require a payment of money to the Council.

6. The problem with this approach is that the "*Planning Practice Guidance*" (the PPG) advises that conditions should not be used in this way. It also states that "*a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases*". It goes on to say that these conditions should only be used in "*exceptional*" circumstances where the case is "*complex*" and "*strategically important*".
7. On the evidence before me, I am not persuaded that the circumstances of the appeal scheme are sufficiently complex or exceptional in the context of the PPG and therefore, it would not be appropriate for me to deal with this issue by way of a planning condition. Therefore in the absence of an obligation I cannot be sure that the development would be acceptable in terms of its effect on the conservation sites. Consequently, I conclude that the proposal would conflict with Policy DM3 of the LP and the "*New Forest District Council Mitigation Strategy for European Sites Supplementary Planning Document*".

Character and appearance

8. The appeal site comprises part of the rear gardens of 11 and 15 Uplands Avenue¹. Both properties are 1/1.5 storey detached properties set in deep, spacious plots. Both front and rear gardens are covered extensively by mature landscaping much of which is overgrown thus making both dwellings highly inconspicuous in the Uplands Avenue street scene. Where clearings exist they are occupied by a plethora of animal enclosures and ponds leaving little useable outdoor amenity space for existing occupiers. The two proposed bungalows would be sited to the rear of Nos 11 and 15 in a symmetrical manner. They would be accessed via a new driveway between the two host dwellings.
9. Uplands Avenue is distinguished by an array of large detached houses occupying generous plots. Properties are set well back from the road behind landscaped front gardens and hard surfaced parking areas. This settlement pattern along with the presence of trees and grass verges within the highway are principal components of the locality. However, whilst Uplands Avenue is an attractive residential road, it is not particularly remarkable or sensitive in streetscape or architectural terms.
10. Whilst the Council's refusal reasoning refers to the creation of a back-land form of development, the appellant points out there are examples of this type of development in the locality. Furthermore, there is nothing in the policies cited by the Council that preclude back-land development per se. I accept the dwellings would undoubtedly create a more closely spaced pattern of development than is typical in Uplands Avenue. However, the proposed dwellings would sit comfortably within their plots with good separation between each other and their plot boundaries. Both would be accompanied by a commensurate amount of garden space and there is nothing before me to suggest that any local standards would be breached in this regard. Moreover, ample outdoor amenity space would be retained to the front and rears of the two host properties. The size of each plot would thus be comparable to bungalows on Westbury Close which are situated beyond the rear boundary.

¹ There is no No 13 and therefore Nos 11 and 15 are immediate neighbours.

11. The appellant argues that the density of the development would be 17.4 dwellings per hectare which is within the limits identified in the "*New Milton Local Distinctiveness Supplementary Planning Document 2010*" (the SPD). The Council takes a different view but its analysis excludes the area to the east of the appeal site and therefore is not truly reflective of the site and all of its surroundings. Irrespective of the mathematics, given their location to the rear of Nos 11 and 15, public views of the development would be limited to glimpses through the access. Consequently, I am satisfied that the dwellings would not appear cramped, intrusive or prominent in the Uplands Avenue street scene.
12. I have had regard to the Council's view that the driveway would be incongruous. Whilst it would not be a typical arrangement in the street scene, the geometry of the access would be modest and consequently I am not persuaded that its effect on the street scene could reasonably be described as harmful.
13. It is inevitable given the scale of development that a significant amount of vegetation would need to be cleared. However, as the Council's Arboriculturalist points out, the site is overgrown with an obvious lack of maintenance. From my observations, the extent of tree cover and its general condition particularly to the site frontage is at odds with the well maintained and manicured gardens that prevail along Uplands Avenue. The appellant's Arboricultural Statement states that 80% of the trees on site are either 'low quality' or 'unsuitable for retention'. Furthermore, with the exception of one tree which is not prominent from public viewpoints, those that are to be removed are in poor condition.
14. Given the size of the proposed plots I see no reason why a suitable landscaping scheme could not be secured at the Reserved Matters stage. The plan submitted with the Arboricultural Report indicates how it would be possible to maintain and supplement established planting on the site boundaries. I therefore concur with the Council's over-arching comment that the loss of trees on the site would not justify dismissal of the appeal.
15. Overall there would be some change to the character and appearance of the area, however, for the reasons given above, I find that the degree of change would not be at a level to cause unacceptable harm or to bring the proposal into conflict with the development plan. On the second main issue I therefore conclude that the proposed development would not cause unacceptable harm to the character and appearance of the area. It would thus accord with Policy CS2 of the "*New Forest District Council Local Development Framework: Core Strategy 2009*" (the CS) and the SPD which state, amongst other things, that all new development will be required to contribute positively to local distinctiveness and sense of place and should be appropriate and sympathetic to its setting in terms of scale, height, density, layout, appearance and materials.

Other Matters

16. Since determination of the application, the appellant has submitted a bat survey and a phase 1 Habitat Survey which found that there are no protected or notable species present on the appeal site. Accordingly, I conclude that the development would not have an unacceptable impact on ecology and would accord with Policy CS3 of the CS and DM2 of the LP. Collectively these seek

the protection of sites of recognised importance for nature and heritage conservation.

17. The Council's third reason for refusal states that an affordable housing contribution should be provided. However, in light of the Court of Appeal judgement dated 11 May 2016² and subsequent alterations to the PPG on planning obligations for affordable housing, I conclude that an affordable housing contribution is not required.
18. Local residents have expressed a wide range of concerns including but not limited to the following; noise and disturbance, loss of privacy /outlook and inadequate drainage. However, I note that these matters were carefully considered by the Council at the application stage. Whilst I can understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.
19. Although highway safety is clearly a concern for a number of residents, it did not form part of the Council's refusal reasoning. It is pertinent that there has been no formal objection from the Highway Authority. To my mind, the number of traffic movements generated by the development would not be significant and as I saw at the time of my visit, traffic volumes and speeds are low along Uplands Avenue. Visibility from the site access, off-street parking and internal turning provision would all be compliant with the requisite standards. As a result, there is no sound basis on which to conclude that the development would pose a threat to highway safety.
20. Concerns have also been raised that the scheme would create a precedent for similar proposals in the area. However, any such proposals would be judged on their individual merits and this is not a matter to which I have attached any great degree of weight.

Conclusion

21. Whilst I have found the proposal to be acceptable in terms of its effects on the character and appearance of the area, ecology and affordable housing, this does not outweigh the conflict I have identified with Policy DM3 of the LP. For the reasons given above, I therefore conclude that the appeal should be dismissed.

D. M. Young

Inspector

² Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.