
Appeal Decision

Site visit made on 10 October 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 01 November 2016

Appeal Ref: APP/W1715/W/16/3152170

1 Old Bridge House Road, Bursledon, Hampshire, SO31 8AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
 - The appeal is made by Mr Jim Ratcliffe against the decision of Eastleigh Borough Council.
 - The application Ref O/15/77275, dated 25 September 2015, was refused by notice dated 11 March 2016.
 - The development proposed is described on the application form as '*erection of dwelling following demolition of garage*'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is against refusal of outline permission with details of appearance, landscaping and scale reserved (the 'reserved matters'). As such, other than in so far as they relate to access and layout with are not reserved, the plans associated with the application are illustrative of the development proposed.¹
3. The Council note in their officer report associated with the application that the extent of the appeal site is, in their view, misrepresented. They contend that an 8 metre wide strip of land bounding the adjacent A27, which is included within the appeal site as illustrated on the relevant plans, is instead within the ownership of the highway authority and should therefore not be included.
4. The appellant appears not to address this matter directly. However there is reference within his appeal statement to the '*the adjacent highway verge*', and within the Arboricultural Statement accompanying the application to '*the oak tree in the immediate vicinity is located outside the curtilage of the site and within the management control of Eastleigh Borough Council*'.²
5. At the time of my site visit a close-boarded fence was present substantially set back from the pavement of the A27 which is given as the extent of the appeal site within the relevant plans. The intervening land between this fence and the

¹ The relevant plans are entitled '01 LOCATION PLAN', and 'Location Plan of SO31 8AJ', the reference given within the Council's decision notice to plan 'Blo 02' is an error.

² Arboricultural Statement prepared by SYLVA consulting Ltd., professional arboricultural & woodland consultancy.

pavement of the A27 was predominantly a grass verge and also encompassed a mature oak tree, established vegetation and a drainage ditch.

6. Therefore on the balance of the information before me and from my site visit observations, it appears to me that the appeal site is in actuality substantially smaller than it has been represented on the relevant plans, and I have approached the appeal on this basis.

Main Issues

7. The main issues are whether or not the proposed dwelling would provide for appropriate living conditions for its intended future occupants and the effect of the proposal on the character or appearance of the area.

Reasons

Living conditions

8. The appeal site is a triangular plot of land bounding Old Bridge House Road to the west with the A27 close by to the north east which currently hosts a large garage associated with No 1 Old Bridge House Road ('No 1'). The proposal is to subdivide the plot associated with No 1 to provide for a plot for a new dwelling which would be erected in place of the existing garage.
9. As scale and appearance are reserved matters, the statements made by the appellant as to the intended size and form of the proposed dwelling cannot unduly influence my decision. Nevertheless the footprint of the proposed dwelling, its situation within the appeal site, and the proposed arrangement of associated outside space relate to layout which is not a reserved matter.
10. The area around the garage, part hardsurfaced part lawn, slopes down towards the south east in line with the orientation of the A27. As described above the north eastern boundary of the site is demarcated by fencing, established vegetation, and a mature oak tree is present nearby. These features lead to a notable sense of enclosure within the appeal site to the side and rear of the existing garage, as indeed does the audible presence of vehicles using the A27.
11. Whilst the oak tree is apparently not illustrated on the plans before me, the appellant's Arboricultural Statement indicates that it falls close by, approximately 4 metres distant from the boundary fence. Therein the tree is identified as of high quality,³ and is covered by Tree Preservation Order No. 582. By virtue of its size, prominence and location alongside an arterial route, the oak tree clearly softens and contributes positively to the character of the environment, and has been protected accordingly.
12. At the time of my site visit the crown spread of the oak tree extended to a significant area of the appeal site, with some branches reaching almost level with the nearest side elevation of the existing garage. I further note that the Arboricultural Statement indicates that '*previously Eastleigh Borough Council have given authority to the owner at 1 Old Bridge Road permission to prune*

³ 'Class A' as defined within *British Standard 5837: 2012, Trees in relation to design, demolition and construction – Recommendations*.

back overhanging branches'. Whilst located to the north east of the appeal site, for the above reasons the oak tree significantly encloses the appeal site and is likely to significantly reduce the natural light reaching it at certain times of day, and in particular at certain times of year.

13. The Council cited in their decision notice in respect of living conditions that the proposal would conflict with the approach within saved policy 59.BE of the *Eastleigh Borough Local Plan Review (2001-2011)* adopted originally in May 2006 (the 'Local Plan'). However policy 59.BE does not appear to explicitly relate to the living conditions of future occupants of proposed buildings, but is instead principally focussed on matters of design. Hence I have not found that it is necessary to conclude in respect of this main issue as to whether the proposal complies with saved policy 59.BE.
14. Policy DM1 '*General criteria for new development*' of the submitted *Eastleigh Borough Local Plan 2011-2029, Revised Presubmission* (the 'submitted plan') sets out that development should not have an unacceptable impact on, and where possible should enhance, '*residential amenities*'. Whilst bullet point 4 of paragraph 17 of *The National Planning Policy Framework* (the 'Framework') similarly sets out that planning should always seek to secure a good standard of amenity for all existing and future occupants of buildings, the weight that can be accorded to policy DM1 must be qualified given that the submitted plan is, in the Council's words, '*no longer progressing*'.
15. The Council also cited in their decision notice that the proposal would conflict with the approach in their *Quality Places Supplementary Planning Document* adopted in November 2011 (the 'SPD'). In respect of residential amenity the SPD sets out that for houses '*the absolute minimum for private amenity space of at least 60% of the floor space will be required*', noting that this size will need to increase where '*excessive shading renders significant areas of the garden unusable*'.
16. Whilst not part of the development plan the approach in the SPD nevertheless accords with that of the Framework identified above, and indeed with *The Planning Practice Guidance* (the 'Guidance') which guides in particular as to how new development can respond appropriately to the existing layout of buildings, streets and spaces.⁴ As such the SPD can be accorded due weight, notwithstanding that whether a proposal is appropriate is largely a matter of judgement based on the nature of the development proposed and its particular context (rather than a matter which can be settled via exact metrics).
17. The appellant expresses concern, however, that the Council have not referenced in this context the *Partnership for Urban South Hampshire's Quality Place Model Supplementary Planning Document* (the 'PUSH SPD'), an element of which is reproduced in Appendix D of the appellant's statement. The PUSH SPD does not contain the 60% private amenity space threshold within the SPD, though similarly indicates that the size of private outside space will need to increase where excessive shading renders significant areas of the garden unusable.

⁴ Reference ID: 25-024-20140306.

18. I acknowledge that the proposal may result in a proposal which meets the minimum internal floorspace standards set out in the Government's *Technical housing standards: nationally described space standard*, published in March 2014, notwithstanding that the size of the property would be smaller than that of many homes nearby.
19. Although the total area of the appeal site, compensated for accordingly with reference to paragraph 6 of this decision, is broadly comparable with or exceeds that of properties nearby, it is of a markedly different configuration. Properties nearby tend to be set in long rectilinear plots with gardens falling squarely to the rear, rather than is proposed here where the outside space of the proposed dwelling would fall in broadly equal proportions to the rear and side of the proposed dwelling.
20. Whilst I note that the Council indicate that the proposed dwelling would likely benefit from outside space exceeding 60% of its footprint as is the threshold set in the SPD, nevertheless such outside space provision would inevitably be modest given the confines of the site and as a significant proportion of the plot associated with the new dwelling would be taken up by a parking area.
21. The modest scale and arrangement of the outside space proposed is significant. The protected oak tree nearby would, in my view, enclose and overshadow a significant proportion of it by virtue of its scale and crown spread. Given the protection accorded to this tree there is no robust evidence before me to indicate that it could realistically be pruned to significantly reduce these effects, albeit that some more minor pruning may be required in any event.
22. Moreover, given the drop in the topography of the land to the south east the outside space to the rear is also likely to be overshadowed at certain times by the form of the dwelling proposed and that of nearby No 1, which would fall to the west and fall to the south west respectively. Established vegetation and existing fencing demarcating the north eastern boundary of the appeal site alongside the audible presence of the A27 would furthermore undermine a pleasant enjoyment of the outside space proposed.
23. On this basis I am satisfied that the outside space proposed would feel significantly overshadowed, unduly enclosed, and unwelcoming. The proposal would therefore fail to provide for appropriate living conditions for its intended future occupants. Consequently in this respect the proposal conflicts with the relevant provisions of policy DM1 of the submitted plan, the approach within the SPD and the PUSH SPD and with relevant elements of the Framework and the Guidance.

Character and appearance

24. The appeal site is within a comparatively low density residential area. Nearby properties are typically detached and of comparatively recent construction. Those to the west of Old Bridge House Road are of understated suburban form. Those to the east are of a contemporary design, part single storey, part two storey buildings with single pitched roofs which commonly host balconies, and are regularly arranged in deep rectilinear plots.

25. Saved policy 59.BE of the Local Plan, broadly stated, seeks to ensure that the design of all development integrates appropriately with the character of the area. Likewise policy DM1 of the submitted plan establishes that development should take appropriate account of the context in which it is proposed, and the SPD guides as to how development can be sensitively designed in respect of its surroundings. Similarly the Framework sets out that planning should always seek to secure high quality design and that it is appropriate to seek to reinforce local distinctiveness.
26. Whilst of some vintage, the approach in saved policy 59.BE is nevertheless broadly consistent with that of the Framework and can thus be accorded due weight, as can the approach in the SPD for the same reasons (notwithstanding that it does not form part of the statutory development plan). For the reasons given in paragraph 14 above, the weight that can be accorded to policy DM1 in this respect must necessarily be tempered.
27. The Council is of the view that the proposal would introduce an incongruous dwelling relative, in particular, to the character of the row of properties to the east of Old Bridge Road described above. It is important to pause at this point to note that matters of scale and appearance are reserved.
28. As explained above the appellant's intention is to create a dwelling of no greater height and overall scale than that of the existing garage within the appeal site. Consequently this approach would not necessarily lead to a physical presence which is notably different to the present situation, or thereby detrimental to the character or appearance of the area.
29. Furthermore the plot that would result would have a frontage with Old Mill House Road commensurate with or exceeding the width of plots associated with other properties in the area, and would not readily be visible from the south east on account of the substantial boundary features present. There is therefore nothing inherent in the proposal before me to indicate that a dwelling could not be created here which would appear broadly consistent with the existing nature of the surrounding built environment.
30. Therefore on the basis of the information before me, given that outline permission is sought, I cannot reasonably conclude that the proposal would be unacceptable in respect of its effect on the character or appearance of the area. In this respect the proposal therefore complies with the relevant provisions of saved policy 59.BE of the Local Plan and policy DM1 of the submitted plan, and with relevant elements of the SPD and the Framework. However that the proposal would not be unacceptable in this respect does not outweigh the harm that I have identified above that would result in respect of the first main issue.

Other Matters

31. I acknowledge that the garage may, subject to relevant consents, be put to use as ancillary accommodation associated with No 1. However in this scenario the outside space associated with the use of the garage would likely remain shared with No 1 as an ancillary use would not result in an independent unit. Therefore were the garage to be used as ancillary accommodation the adverse consequences that I have identified above in respect of living conditions would not arise.

32. This equally qualifies the extent to which application Ref F/06/57709 is relevant here. That permission, brought to my attention by the appellant, relates to the conversion of the garage of No 6 Old Bridge House Road to form '*annexe accommodation*' rather than a separate dwelling. From the limited information before me, it further appears that application Ref F/06/57709 was determined before the Council's adoption of the SPD and the publication of the Framework and the Guidance, and in any event each proposal must be determined on its particular merits.
33. Whilst I note the appellant's points that the proposal itself would not necessarily affect the wellbeing of trees worthy of protection nearby, and that the Council have no objection to the access or parking provision proposed in respect of highway safety or compliance with relevant standards, these are neutral factors rather than matters which weigh positively in favour of the proposal.
34. There is a signed copy of a unilateral undertaking related to the development before me, dated 21 January 2016, which relates to contributions towards community infrastructure, public open space and play provision, sustainable transport, and mitigation of the environmental effects of the proposal. However the Council have confirmed at appeal that following changes to the *Planning Practice Guidance* post-dating their decision notice, which sets out that tariff based obligations for minor development as is the case here should not be sought,⁵ that they do '*not intend to enact the legal agreement*'. On this basis no such contributions are required and consequently the unilateral undertaking has not influenced my decision.
35. The proposal would have some social and economic benefits in supporting employment during construction and as future occupants would make use of local services and facilities. The proposal would also result in a new home in an existing residential area. However even if the Council are unable to demonstrate a five-year supply of deliverable housing sites, and I must clarify that there is no evidence before me in respect of this matter, the benefits of one new dwelling would be small and essentially confined to a numerical contribution to housing stock rather than in terms of quality. As such the adverse impacts of the proposal significantly and demonstrably outweigh its benefits. Therefore neither this matter, nor any other, is sufficient to outweigh my findings in respect of the first main issue in this case.

Conclusion

36. For the above reasons, and taking all other matters into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. The proposal does not represent sustainable development, and I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

⁵ Reference ID: 23b-031020160519.