
Appeal Decisions

Site visit made on 7 November 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 20th January 2017

Appeal A Ref: APP/B1740/W/16/3152060

Land at Flaxfields End, Fordingbridge, Hampshire SP6 1RT

- 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 Mr Stuart Ward against the decision of New Forest District Council.
 - The application Ref 16/10111, dated 26 January 2016, was refused by notice dated 24 March 2016.
 - The development proposed is 4 No. 2 bed dwellings with associated parking.
-

Appeal B Ref: APP/B1740/W/16/3157794

Land at Flaxfields End, Fordingbridge, Hampshire SP6 1RT

- 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 Mr Stuart Ward against the decision of New Forest District Council.
 - The application Ref 16/10681, dated 17 May 2016, was refused by notice dated 12 August 2016.
 - The development proposed is 4 No. 2 bed dwellings with associated parking.
-

Decisions

1. Both appeals are dismissed.

Procedural matter

2. The appeals concern applications on the same site for broadly similar developments, and it is appropriate that they be dealt with together.

Main Issues

3. The Court of Appeal has overturned a legal challenge¹ to the Written Ministerial Statement (WMS) of 28 November 2014. The WMS, amongst other things, indicated that, because of the disproportionate burden of developer contributions on small-scale developers, for sites of 10 units or fewer, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought. The Planning Practice Guidance (PPG) has since been amended to reflect the approach in the WMS.

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441, dated 11 May 2016

4. The Council has confirmed that in the light of these circumstances, it will not defend the reason for refusal contained in the decision in respect of Appeal A in relation to affordable housing contributions.
5. The Council has also confirmed that, following discussion with the Highway Authority, its highway concerns can be dealt with by the imposition of conditions.
6. Accordingly, the main issues are:
 - i) the effect of the proposals on the character and appearance of the surrounding residential area;
 - ii) the effect of the proposals on the living conditions of the occupiers of adjacent properties on:

Reeder Close (Appeal A and B) with particular regard to outlook and visual impact

15 Flaxfields End (Appeal A only) with particular regard to overlooking;
 - iii) whether satisfactory living conditions would be provided for the intended occupiers in respect of the adequacy of amenity space (Appeal A only), and,
 - iv) the effect of the proposals on flood risk.

Reasons

Character and appearance

7. The appeal site forms a rectangular area of overgrown open land which borders houses and parking areas on Flaxfields End, the rear gardens of a terrace of houses on Reeder Close and an open amenity area on the western boundary. The surrounding houses are a mix of modern two storey dwellings, which, whilst of pleasant design, lack any particular distinctiveness. There is no objection to the principle of the development, and the Council granted planning permission for 3 houses on the site in 2013, which has not been implemented.
8. Both proposals would see a pair of dwellings placed on either side of a central access and parking courtyard. There are parking courtyards elsewhere in Flaxfields End, and there is variety in the layouts of houses in the area, with small and large terraces as well as semi-detached properties. I consider that a small grouping of a pair of houses on either side of a parking and turning area would not appear incongruous in such a mix.
9. However, owing to the need to provide parking for the proposed houses and the two parking spaces displaced by the access into the site, the courtyards proposed would be substantial, particularly in respect of the proposal subject of Appeal A. There is little scope for landscaping within the courtyard. There is insufficient space between the parking area and the tall fence line of the Reeder Close houses to provide meaningful planting, and the strip of land between the appeal site and the existing car park is a weed-strewn margin and as it is outside of the appellant's control it could not be relied upon to contribute to landscaping.

10. In my judgement, the scheme subject of Appeal A would be dominated by the courtyard, creating an unrelieved hard urban form, with car parking along the side elevations facing Flaxfields End and in a wide block between the houses. The dwellings and their small rear gardens would appear pushed into the sides of the site. I consider that this would not create a high quality layout and it would detract from the appearance of the area.
11. The scheme subject of Appeal B would have a smaller courtyard and notwithstanding that the buildings would be larger than those proposed in the Appeal A scheme, the more generous spacing would make it appear less cramped. It would also have some small scope for landscaping, and I consider that on balance, it would not appear harmful in the mixed context of the site.
12. I therefore conclude on the first main issue that the proposal subject of Appeal A would result in material harm to the character and appearance of the surrounding residential area and would conflict with Policy CS2 of the New Forest District (outside the National Park) Core Strategy: Adopted 26 October 2009 (CS) which deals with design quality.

Living conditions – existing residents

Reeder Close – Appeals A and B

13. In both appeal schemes the houses on Plots 1 and 4 would be close to the boundary with the houses on Reeder Close, which have gardens of some 12-13m in length. The Council has not referred me to any standards in respect of spacing, and I note that the previous approval, although in outline, showed a fairly similar indicative position in respect of Plot 2, which was not referred to in the officer report as a concern which needed to be remedied in any reserved matters submission.
14. In my judgement, the combination of distance, the lower level of the appeal site, the gaps between the houses on Plots 1 and 4, and the limited depth of the proposed dwellings would be sufficient to ensure that the houses would not have a materially harmful impact on the outlook of occupiers of the houses in Reeder Close.

15 Flaxfields End (Appeal A only)

15. The upper floor of Plot 4 would have two bedroom windows which would overlook the rear garden of 15 Flaxfields End at a close distance, allowing views of much of the garden, which currently is not directly overlooked and where occupiers can enjoy a reasonable degree of privacy.
16. The indicative scheme of the previous approval showed no windows at first floor level in the detached house which would have had a similar relationship to the boundary, a design which responded to the need to avoid overlooking. Whilst bedrooms may be used less intensively than other habitable rooms, that is not always the case, and regardless of the actual use made of the bedroom, there would be a perception of being overlooked from those windows. Occupiers of 15 Flaxfields End would suffer a serious loss of privacy which would materially harm their living conditions. This would conflict with CS Policy CS2 which includes overlooking as one of its criteria.
17. I therefore conclude on this issue that the proposal subject of Appeal A would result in material harm to the living conditions of the occupiers of 15 Flaxfields

End and would conflict with CS Policy CS2. Neither proposal would cause material harm in respect of the impact on the living conditions of the occupiers of neighbouring houses in Reeders Close.

Living conditions – intended occupiers (Appeal A only)

18. The scheme subject of Appeal A would provide small rear private gardens, and in particular those of Plots 3 and 4 would have depths of less than 4m and would be no wider than the dwellings. As good sized two-bedroom houses, it would be reasonable to expect that they may be occupied by families with children. I consider that the garden sizes would be inadequate to provide the good standard of amenity that the National Planning Policy Framework (the Framework) seeks for all existing and future occupants of land and buildings. It would conflict with CS Policy CS2, which amongst other things seeks well-designed and attractive private spaces.

Flood risk

19. Only the proposal subject of Appeal B was refused for reasons relating to flood risk, but it is clear that the Council's concerns about that scheme must apply equally to the proposal subject of Appeal A, and thus I have considered them in relation to both of the appeals. The flood risk reason was not recommended by officers in the report to Committee, but the reason has been robustly defended in the Council's evidence. Whilst CS Policy CS1 addresses flood risk, it does so with reference to the since cancelled PPG25, and therefore it is out of date, and this justifies my determining the issue with reference to the Framework.
20. Part of the access to the site lies within Flood Zone 2. Occupiers of the proposed houses would need to cross this area in order to get to and from their homes. In such zones not only is a Flood Risk Assessment required as set out in paragraph 103 of the Framework, but the need to carry out a Sequential Test is also engaged, the object of which is to divert development, where possible, away from areas of highest risk. There is no evidence before me to show that it is not possible to build 4 houses elsewhere in Flood Zone 1, and thus the Sequential Test is not passed.
21. The Environment Agency did not object to the current appeal proposals, but in respect of the previous application, it noted that whilst modelling indicated that the site was not at risk from river flooding, there may be localised reasons why flooding might occur and referred to other studies prepared in connection with a Strategic Flood Risk Assessment which indicated that the area might be susceptible to surface water flooding. Although this does not conclusively indicate that the site is liable to flooding, I nevertheless consider that it provides an authoritative indication that there may be a risk of flooding.
22. The Council's Land Drainage Section (LDS) recommended that a Flood Risk Assessment (FRA) be submitted in the light of recorded flooding of properties nearby. I am not clear exactly where the flooding referred to occurred, but it seems that it occurred "four properties away" from the appeal site, which given the size of nearby properties is relatively close. Moreover, I attach considerable weight to the view that a FRA was required. Whilst the LDS took the view that the FRA could be sought by the imposition of a condition, I disagree. The full implications of flood risk need to be assessed before a decision can be made on the acceptability of the proposal.

23. Local residents have referred to the site being flooded and water collecting on it. On my visit, I found the site to be dry, but a visit on a single day can only give a very limited picture of the local hydrology. I also saw on my visit the drainage channel running west of West Street through the recent residential development at West Mills Road, which was also dry, but its substantial capacity suggests that this is unlikely always to be the case. The occurrence of flooding on nearby West Street and of the Fire Station to the north of the site has not been refuted, and the claims of local residents reinforce the concerns referred to above.
24. Against this background are the site specific circumstances, where the level of the site is about 1m below that of the land within Flood Zone 2, and where a considerable amount of hardsurfacing is proposed as part of both proposals, all of which may make the development more susceptible to the risk of flooding. The Framework attaches importance to ensuring that development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. The footnote to paragraph 100 says that a site-specific flood risk assessment is required not only for sites in Flood Zones 2 and 3, but also for proposals where a proposed development or a change of use to a more vulnerable class may be subject to other sources of flooding (my emphasis).
25. The proposed dwellings are classed as “more vulnerable” development. The evidence suggests that the site may be at risk of flooding, and in such circumstances I consider it essential that a Flood Risk Assessment is carried out to enable flood risk to be properly assessed and, if appropriate, managed.
26. I therefore conclude that insufficient information has been provided to ensure that the proposal would not result in an unacceptable flood risk, contrary to paragraph 103 of the Framework.

Conclusions

27. I have found that the proposal subject of Appeal A would result in harm to the character and appearance of the area and would be harmful to the living conditions of the occupiers of 15 Flaxfields End, and to those of intended occupiers. It also fails to provide satisfactory information on flood risk. Whilst I have found that the proposal subject of Appeal B would not result in material harm to character and appearance or to the living conditions of neighbours or intended occupiers, this is outweighed by the failure to provide satisfactory information on flood risk, to which I attach particular importance. I therefore conclude that both appeals should be dismissed.

JP Roberts

INSPECTOR