
Appeal Decision

Site visit made on 22 November 2016

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 2nd February 2017.

Appeal Ref: APP/B1740/W/16/3156750

8 Malthouse Gardens, Marchwood SO40 4XY

- 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 and Mrs L Bundy against the decision of New Forest District Council.
 - The application Ref 16/10833, dated 15 June 2016, was refused by notice dated 10 August 2016.
 - The development proposed is described as "two storey extension to provide one dwelling".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. New Forest District includes and is close to a number of significant environmental designations of international nature conservation importance.¹ The Council advises that the Habitats Regulations Assessment (HR assessment) of the Local Plan identified potentially harmful recreational impacts arising from new residential development on both the New Forest and the Solent Coastal European Sites. This has led the Council to adopt a Supplementary Planning Document (SPD)² setting out a mitigation strategy, which seeks to avoid significant adverse effects from future developments, either individually or cumulatively.
3. The SPD supports Policy DM3 of the Local Plan Part 2³ which sets out the required suite of measures for mitigating the effects of new housing. Amongst other matters, it identifies the need for individual developments to provide for appropriate mitigation and/or financial contributions towards off-site mitigation. The policy requires that this will need to be agreed and secured prior to the approval of the development.
4. No planning obligation or other scheme of mitigation has been submitted. Therefore, having regard to the HR assessment, it cannot be concluded that the proposed residential development would not have a significant effect on the internationally important interest features of the site. As a consequence, I am required to carry out an Appropriate Assessment (AA).

¹ New Forest European site comprising the New Forest SAC/SPA/Ramsar site and Solent Coast European site comprising Southampton Water SPA/Ramsar site, Solent and Isle of Wight Lagoons SAC, Solent Maritime SAC

² Mitigation Strategy for European Sites Supplementary Planning Document, June 2014

³ New Forest District Council Local Development Framework: Local Plan Part 2: Sites and Development Management, 2014

5. An increase in the residential population of the District is likely to lead to an increase in residents visiting the areas designated for their nature conservation importance. This may lead to disturbance to the habitat of ground nesting birds, overwintering waders and wildfowl which contribute to the designation of these areas as European nature conservation sites. Consequently, it is likely that the proposal would have a significant adverse effect on the integrity of the sites. Therefore, it is necessary to consider whether the identified adverse effects can be mitigated or overcome by conditions or other restrictions. I consider this matter below.
6. Notwithstanding that the matter does not form part of the Council's reasons for refusal, the statutory duty derived from the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) is sufficient for this to be elevated to a main issue in the appeal.

Main Issues

7. The main issues are the effects of the development on: (i) the New Forest and Solent Coast European sites and; (ii) the character and appearance of the area.

Reasons

European Sites

8. The Council advises that the mechanism through which it ensures appropriate habitat mitigation measures are secured is through the use of a condition which is able to be satisfied either through the payment of contributions towards the schemes of mitigation, as set out in the SPD, or through the provision of a bespoke mitigation scheme. The Council has indicated that, in the majority of cases, most of the mitigation requirement would be met through its Community Infrastructure Levy (CIL). In addition, required mitigation measures not covered by CIL, which includes contributions towards visitor management and monitoring, would need to be secured.
9. In the case of the appeal proposal, there is no evidence that a bespoke mitigation scheme would be provided. Consequently, it is likely that a payment of contributions towards schemes of mitigation would be required. However, the appellants have indicated that they wish to claim self-build exemption for payments required under CIL. This means that funding for infrastructure must also be provided in lieu of that which would otherwise have been secured through the CIL payment. This would be in addition to the required contribution towards visitor management and monitoring.
10. As explained above, no funding has been secured and, therefore, the Council has suggested that its standard condition should be imposed. The most likely means of securing the required contributions, in order to comply with the condition, is through a Section 106 planning obligation. However, it is unlikely that a Section 106 planning obligation could be used in this instance as Regulation 123(3) of the Community Infrastructure Levy Regulations (2010) (the CIL Regulations) restricts the use of pooled contributions towards items that may be funded via CIL. Furthermore, the planning obligation would constitute a reason for granting planning permission, which would be in breach of Regulation 123(2) of the CIL regulations.
11. Moreover, I am mindful of the advice given in the Planning Practice Guidance (PPG) that states 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. However, in exceptional circumstances a negatively worded condition may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.⁴

12. The Council considers that its approach is not at odds with the PPG advice because housing completions on small sites, such as the appeal site, are an important element of housing supply in the District. I appreciate the Council's reasoning that small scale housing developments are, in combination, of strategic importance. Nonetheless, the approach set out in Policy DM3 of the Local Plan supports the Council's development strategy by enabling housing development, providing appropriate mitigation is agreed and secured prior to approval of the development. In the case of the appeal proposal, the Section 106 planning obligation would need to be agreed, or the mitigation measures otherwise secured, before planning permission is granted.
13. I note that the Council's approach, securing mitigation measures through the use of a condition, has been supported by other Inspectors determining appeals in the District and elsewhere. I have considered the decision letters that have been provided. However, the full balance of considerations that informed those decisions is not before me and I am unable to determine whether the site-specific circumstances are applicable to the current appeal.
14. Therefore, in the absence of a suitable planning obligation to deliver the mitigation strategy, or any other details of a bespoke mitigation scheme, the appeal scheme would, in combination with other development, be likely to have a significant adverse effect on the integrity of the European sites. The development would therefore be in conflict with Policy DM3 of the Local Plan Part 2, and Policies CS3 and CS25 of the Core Strategy⁵ which require development proposals to protect and, where possible, enhance sites of recognised importance for nature conservation.
15. It has not been demonstrated that there are no alternative solutions that would have a lesser effect, such as locating the residential development elsewhere. In the circumstances, I am obliged to take a precautionary approach under paragraph 118 of the Framework and find the scheme unacceptable in relation to this issue.

Character and Appearance

16. The appeal site comprises the side garden of a link-detached house located within an estate of similar properties, although No 8 has an unusually long frontage due to the curvature of the road. There is a driveway in front of the house, and the front garden area is enclosed by railings. The side garden is enclosed by timber panel fencing, with a sliding panel to enable vehicular access to this part of the garden. There are two protected trees adjacent to the site, which make a positive contribution to the area.
17. The development has been designed to replicate an approved two storey side extension⁶ in terms of its size, scale and design. The differences in design are

⁴ Paragraph 010, Ref ID 21a-010-20140306

⁵ New Forest District Council Local Development Framework: Core Strategy, October 2009

⁶ Ref 14/11216, granted 18 February 2015

restricted to the provision of front and rear doorways and minor alterations to the fenestration. The main difference between the two schemes is the sub-division of the plot and the alterations to the garden area to create the driveway and off-street parking for the new house. This would require the removal of a length of timber panel fencing.

18. The appeal site is located in a prominent position at the entrance to the estate and the development would be highly visible in views from the road. However, there is a valid fallback position in that planning permission has been granted for an extension of the same proportions as that now proposed. The development would have a marginally greater impact on the street scene due to the removal of the timber boundary fence along the site frontage, and the creation of the off-street parking area. However, the overall development would not have a significantly greater impact than the approved scheme. Moreover, the effect of the development could be softened with appropriate landscaping. Also, the boundary fence to be removed presents a somewhat overbearing feature which is uncharacteristic of the estate. Its removal would not be detrimental to the character and appearance of the wider area.
19. To conclude on this issue, I find that the development would not have a greater impact on the character and appearance of the area than the approved two storey side extension. Consequently, the development would meet the aims of Policy CS2 of the Core Strategy which seeks to ensure that new development contributes positively to local distinctiveness.

Conclusion

20. Whilst I conclude that the proposal would have an acceptable effect on the character and appearance of the area, the harm that has been identified in relation to the effect on the European sites would not be offset.
21. For the reasons given above, the appeal is dismissed.

Debbie Moore

Inspector