
Appeal Decision

Site visit made on 17 January 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 9th February 2017.

Appeal Ref: APP/W1715/W/16/3159802

Midlands Estate, West End, Hampshire SO30 3AD

- 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 Richard Paine of First Wessex against the decision of Eastleigh Borough Council.
 - The application Ref F/16/78096, dated 19 February 2016, was refused by notice dated 12 August 2016.
 - The development proposed is described as: "Construction of two x 3 bedroom bungalows with associated landscaping, car parking, refuse and recyclables and cycle storage facilities".
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Decision

1. The appeal is allowed and planning permission is granted for the construction of two x 3 bedroom bungalows with associated landscaping, car parking, refuse and recyclables and cycle storage facilities at Midlands Estate, West End, Hampshire SO30 3AD in accordance with the terms of the application, Ref F/16/78096, dated 19 February 2016, subject to the conditions attached in the schedule to this decision.

Procedural Matter

2. The Council's decision notice cites policies contained within the Submitted Eastleigh Borough Local Plan 2011-2029 (July 2014). However, the Council advises that the policies of the Submitted Local Plan can only be afforded very little weight. I have, therefore, determined the appeal on this basis.
3. The appellant has submitted an amended plan¹ for consideration as part of the appeal. It is important that what is considered by the Inspector is essentially what was considered by the Council, and on which interested people's views were sought. Consequently, I have not considered the amended plan. To do so would be prejudicial to the interests of the Council and those people who commented on the scheme.
4. The Council is satisfied that survey information², submitted by the appellant, has demonstrated that bats are not using the retained oak and are unlikely to be affected by the development. Therefore, the Council has confirmed that it wishes to withdraw the third reason for refusal, which relates to the effect of the development on protected species.

¹ Plan Ref 1031-PD301 Rev: F

² Bat Survey Letter Report – dated 22 September 2016

5. A signed and executed Section 106 Unilateral Undertaking has been submitted as part of the appeal documentation. The Council has confirmed that the Unilateral Undertaking secures a contribution which would be used to fund wardening, and other site specific measures, as set out in the Solent Recreation Mitigation Strategy. As such, the in-combination impacts of the residential development on the internationally important interest features of the Solent and Southampton Water Special Protection Area (SPA) would be mitigated. Consequently, the Council has withdrawn the fourth reason for refusal, which relates to the effects of the development on European sites, designated for their international importance.
6. I have, therefore, confined my consideration of the appeal to the main issues set out below.
7. Since the appeal application was refused, the Council has granted planning permission for a detached three bedroom bungalow, which would include four residents' parking spaces, on the upper part of the site.³ This represents a valid fallback position which I have taken into account in the determination of this appeal.

Main Issues

8. The main issues are the effect of the development on: (i) highway safety and; (ii) the living conditions of future occupiers and existing residents.

Reasons

9. The appeal site comprises a parcel of land at the head of a cul-de-sac, in a predominantly residential area. It is currently occupied by a garage court containing eight individual garages, laid out in two blocks. The appeal site also includes an enclosed area of land to the rear of the garage court which is used as a garden. The land slopes from south to north and the adjoining property, No 64 Midlands Estate, is at a higher level than the site. The garden area is at a lower level than the majority of the adjoining properties. There are a number of trees in and around the site, some of which would be removed to accommodate the development. There is a group of protected trees just outside the site boundary to the east.

Highway Safety

10. The proposed development of two bungalows would utilise a shared access from the cul-de-sac. In addition to providing two car parking spaces to serve each of the bungalows, the development would include three additional unallocated car parking spaces for use by nearby residents.
11. Very few of the houses within this part of the Midlands Estate have off-street parking. As a result, the majority of parking takes place on the street. The garage court is used informally by residents for parking, although the appellant's Transport Technical Assessment⁴ has found that the majority of the garages are not in use and, out of those that are currently leased, only one is rented by a resident of Midlands Estate.
12. The development would result in the demolition of the two garage blocks on the site and the informal parking area would no longer be available for

³ Ref F/16/79239, dated 21 November 2016

⁴ Paul Basham Associates Ltd, dated October 2015

residents' parking. Also, two further garage blocks on land adjacent to the site would be unusable as the land would become landlocked.

13. The Council is concerned that the development would force the residents who routinely park on the garage court to park on the highway, which would be detrimental to highway safety. However, as explained above, there is a valid fallback position in that planning permission has been granted for a bungalow which would be sited on the garage court. This would require the removal of the two blocks of garages and would also prevent the use of the hardstanding for informal parking. That development would include four unallocated parking spaces for the use of residents.
14. The appeal development would include three unallocated car parking spaces and their provision can be secured through the use of a planning condition. I appreciate that the appeal development would provide three spaces, rather than the four which would be provided through the extant planning permission. This additional vehicle would have to be accommodated on the highway. However, the displacement of one car is unlikely to have a significant adverse effect on highway safety.
15. I conclude on this issue that the development would not have a material adverse effect on highway safety. Consequently, it would comply with Policies 59.BE, 100.T and 104.T of the Local Plan,⁵ which seek to secure development with a satisfactory means of access and layout, and adequate off-highway parking.

Living Conditions

16. The bungalow at Plot 2 would be sited on the lower part of the site, within the garden area. At the time of my site visit, this part of site was waterlogged and I saw several drainage ditches within and just outside the site boundary which contained standing water.
17. The Council advises that investigations suggest surface water from rainfall and natural springs in the area is directed down through the site due to the local topography. The watercourse which crosses the site appears to have been interrupted by gardening works, and the culvert which runs in a north-easterly direction though the central part of the site is blocked. The combination of these factors has created drainage issues.
18. The Council accepts that the appellant's site-specific Flood Risk Assessment⁶ (FRA) demonstrates that it would be possible to provide suitable drainage for the site. The implementation of an appropriate drainage strategy could be secured through a planning condition, which would overcome the Council's concerns about the boggy ground adversely affecting the living conditions of future occupants.
19. I have also considered the shading effect of the trees within the site and in the neighbouring gardens. The appellant has submitted a Tree Protection Plan (TPP),⁷ which shows the shading arcs of the trees. The positions and crown spreads of the trees are consistent with what I saw during my site visit. I am satisfied that the TPP demonstrates that any overshadowing of the main

⁵ Eastleigh Borough Local Plan Review (2001-2011), adopted 2006

⁶ Paul Basham Associates, dated May 2016

⁷ Tree Protection Plan Drawing No 12595 Rev A, dated 07/04/16

elevation of the bungalow on Plot 2 would not be material. Also a large proportion of the garden would not be overshadowed. Consequently, there would be adequate useable amenity space serving the bungalow in accordance with the Council's Supplementary Planning Document (SPD), "Quality Places".

20. The Council is also concerned that the displaced parking would result in inconvenience and conflict between residents. Whilst I appreciate that lack of off-street parking is an issue in the estate, I note that the garage court and informal parking area is privately owned and the appellant could therefore close the area with very little notice. The residents would then be forced to park on the highway. This situation could occur irrespective of the development.
21. I conclude on this issue that the development would provide suitable living conditions for future occupiers and would not have a material adverse effect the living conditions of nearby residents. Consequently, it would accord with Policy 59.BE of the Local Plan which, amongst other things, seeks to secure development that avoids unduly interfering, disturbing or conflicting with adjoining or nearby uses.

Other Matters

22. Part of the site falls within Flood Zone 3, which is identified by the Environment Agency (EA) as an area with a high risk of flooding, consequently the appellant has provided a FRA. The FRA includes an assessment in order to quantify the flood risk to a higher level of accuracy than is provided by the EA's Flood Map. This concludes that the site would effectively be within Flood Zone 1 and would therefore be at a low risk of fluvial flooding. The Council has accepted these findings. Consequently, I am satisfied that a Sequential Test need not be applied.
23. The assessment has also identified a potential issue associated with groundwater on the site and the neighbouring properties. However, as described above, this could be mitigated through improvements in the drainage. The development has potential to generate additional surface water run-off and it is likely that attenuation storage would be required. Provided that an appropriate drainage strategy is implemented, I am satisfied that the development would not increase flood risk elsewhere.
24. I have considered neighbours' concerns about loss of privacy. However, as the development would be a bungalow, which would be sited at a slightly lower level than the land to the south, any loss of privacy to nearby residents would not be significant.
25. Concerns about disturbance during construction can be addressed through appropriate conditions and I am satisfied that neighbours' living conditions can be protected.

Conditions

26. Where necessary, I have amended the wording of the Council's suggested conditions to ensure they are compliant with Paragraph 206 of the National Planning Policy Framework. I have not imposed the suggested condition in respect of energy efficiency and water consumption, as it has not been demonstrated that this is necessary by reference to a Local Plan policy.

27. In addition to the standard time limit condition, I have specified the approved plans as this provides certainty. To protect the living conditions of neighbouring occupants, I have imposed conditions restricting hours of work, the requirement for a construction method statement and to prevent burning of waste. The construction method statement is also required to ensure that there is no impact on the River Itchen Special Area of Conservation due to contamination entering the watercourse.
28. Development has the potential to be affected by contaminants associated with the garages, therefore, I have imposed conditions requiring a risk assessment and remedial measures. I have imposed conditions relating to materials approval, tree protection and landscaping to ensure the development complements the character and appearance of the area. Details of hard landscaping, levels, boundary treatments, cycle stores and lighting are to be submitted for the Council's approval, to ensure the development meets the required standards and that the living conditions of neighbouring occupants are protected.
29. I have imposed a condition to ensure the car parking areas and junction are laid out in accordance with the approved plans, in the interests of highway safety. A drainage condition is necessary to ensure surface water drainage is satisfactory and the development does not increase the risk of flooding elsewhere.
30. Several conditions are pre-commencement conditions which are necessary to ensure the Council is satisfied with the proposals.
31. I note the request from the Transport Policy Officer for contributions in accordance with the Transport Contributions Policy. However, there is no evidence to demonstrate that this is necessary.

Conclusion

32. For the reasons given above, the appeal is allowed.

Debbie Moore

Inspector

Schedule of 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: Site/Location Plan, Drawing No 1031-PD301 Rev E; Floor Plans and Elevations, Drawing No 1031-PD302.
- 3) Demolition or construction works shall take place only between 0800 to 1800 on Mondays to Fridays, and 0900 to 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii) safeguards to preserve the water quality and flows leaving the site.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 6) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters; and
 - ecological systems.

- 7) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 8) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) earthworks showing existing and proposed finished levels or contours;
 - ii) means of enclosure and retaining structures;
 - iii) boundary treatments;
 - iv) vehicle parking layouts;
 - v) hard surfacing materials;
 - vi) lighting and floodlighting;
 - vii) bin and secure cycle storage.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.

- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) No dwelling shall be occupied until space has been laid out within the site, in accordance with drawing no 1031-PD301 Rev E for seven cars to be parked in the locations shown, and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 11) Development shall not take place until details of the junction between the proposed access drive and the highway have been submitted to and approved in writing by the local planning authority; and the development shall not be occupied until that junction has been constructed in accordance with the approved details. The junction shall thereafter be retained.
- 12) All the trees and hedges shown on the landscaping plan 1064/01 Rev B as "to be retained" and/or any trees whose canopies overhang the site

shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 13) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that have first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 14) No burning of materials is to take place on the site during the construction and fitting out process.