
Appeal Decision

Site visit made on 31 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: 23 February 2017

Appeal Ref: APP/B1740/W/16/3149862

Oakwood, 7 Rookes Lane, Lymington, Hampshire SO41 8FP

- 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 Miss V Hemsley against the decision of New Forest District Council.
 - The application Ref 15/11442, dated 30 September 2015, was refused by notice dated 13 January 2016.
 - The development proposed is described as “sever land to the front of 7 Rookes Lane and erect detached dwelling with access from Rookes Lane”.
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Decision

1. The appeal is dismissed.

Procedural Matters

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 mitigation to be agreed and secured prior to the approval of the development.
4. The appellant has submitted a signed and executed Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990.⁴ This seeks to secure a financial contribution which would be used by the Council to mitigate the effects of the residential development on the European sites. The

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

⁴ Dated 6 February 2017

Council is satisfied with this provision, which is in accordance with its adopted mitigation strategy. The funding would be used for mitigation measures not covered by its Community Infrastructure Levy (CIL), which includes contributions towards visitor management and monitoring.

5. The Council also states that a further contribution is required towards the infrastructure elements of mitigation. If the development is CIL liable, the payment would complete the contributions necessary to fully accord with the mitigation strategy and the Habitats Regulations. However, the Council is concerned that the appellant may be entitled to a reduction or waiver of CIL. In view of this, I cannot be certain 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.
6. 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. 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, as set out below.
7. The Council has confirmed that it is no longer seeking a contribution towards the provision of affordable housing in the District. It is not necessary, therefore, for me to consider whether the submitted Planning Obligation, pursuant to the Section 106 of the Town and Country Planning Act, meets the tests of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Levy Regulations 2010.
8. I have determined the appeal on the basis of the plan Ref: 2014-31-15 Rev D, which was submitted as part of the appeal documentation. The amendment is relatively minor and does not affect the proposal. Consequently, I am satisfied that neither party, nor those people with an interest in the appeal, would be prejudiced.

Application for costs

9. An application for costs was made by Miss V Hemsley against New Forest District Council. This application is the subject of a separate Decision.

Main Issues

10. 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

11. The Council has indicated that it may not be able to rely on a CIL payment to secure the infrastructure mitigation requirement, and it has suggested that a condition should be imposed. The condition would be able to be satisfied either through the payment of contributions towards the schemes of mitigation, as set out in the mitigation strategy, or through the provision of a bespoke mitigation scheme. 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 financial contribution towards the infrastructure schemes of mitigation would be required, in addition to the secured contribution towards visitor management and monitoring.
12. The most likely means of securing the required contribution, in order to comply with the condition, is through a further 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 ultimately constitute a reason for granting planning permission, which would be in breach of Regulation 123(2) of the CIL regulations.
13. 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.⁵
14. 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.
15. 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. 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.
16. The appellant has indicated that the suggested condition would be acceptable and there is no intention of claiming a CIL exemption. Nevertheless, a mechanism needs to be in place to secure the required mitigation prior to any

⁵ Paragraph 010, Ref ID 21a-010-20140306

approval. Without this, there is no certainty that the development would not adversely affect the integrity of the European sites.

17. Therefore, in the absence of details of a bespoke mitigation scheme or a secured infrastructure funding contribution, 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 Strategy⁶ which require development proposals to protect and, where possible, enhance sites of recognised importance for nature conservation.
18. 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

19. The appeal site comprises the garden of a detached house, located within a predominantly residential area. Although there is a mix of house types in the area, the site is visually related to Rookes Lane which is characterised by detached houses facing onto the road. The area has a spacious appearance due to the front gardens, hedges and other planting, and the recreation ground opposite. The existing house is sited towards the rear of plot and consequently, the front garden is relatively large. There is a mature hedge to the eastern and southern boundaries, and there are protected trees adjacent to the driveway.
20. The proposed development is a detached house which would be sited in front of the existing dwelling. The position of the vehicular access would be altered to provide the required visibility splays, which would involve the removal of part of the hedge.
21. The Council considers that the development would be out of character with the area, in particular due to the plot size, the siting of the house and the forecourt. I appreciate that the plot size would be smaller than others in the vicinity. However, in comparison with Nos 9 and 11, it would not be significantly smaller. I accept that the frontage would be slightly narrower than others along Rookes Lane. However, the plot tapers, and its width toward the rear of the site is comparable to that of the neighbouring gardens. I have also considered the evidence submitted in relation to the development density. The site is unusual due to its shape and the siting of the existing house. Rookes Lane does not have a standard estate layout, or a uniform density, and it is difficult to successfully apply density standards in order to assess the suitability of the development. The house would be sited close to No 9, but this is not unusual in the area.
22. The forecourt would provide parking for the new house, and the vehicular access and part of the driveway would be shared, but this would not be visually harmful. Several other houses in the area have large areas of parking to the front of the dwelling. The appearance could be softened though the use of appropriate planting, which would be necessary to compensate for the loss of part of the hedge on the front boundary.

⁶ New Forest District Council Local Development Framework: Core Strategy, October 2009

23. The house would be sited within 1 metre of the mature hedge on the eastern boundary and the Council is concerned that the hedge would be adversely affected by the development. This could be mitigated through the use of planning conditions to ensure the hedge would be protected during construction and supplemented should it die back or decline in future years.
24. To conclude on this issue, I find that the house would be appropriate and sympathetic to its setting in terms of scale, height, siting and design and its relationship to adjoining buildings and landscape features would be acceptable. Consequently, it would not be out of character with the area of harmful to the appearance of the street scene. The development would meet the aims of Policy CS2 of the Core Strategy, and the Council's Local Distinctiveness SPD,⁷ which seek to ensure that new development contributes positively to local distinctiveness.

Other Matters

25. Interested parties have raised further concerns with regard to the principle of the development, loss of light, outlook and privacy, dominance, highway safety, precedent and human rights. The site is garden land and is within the built-up area of Lymington. There are no objections from the Council in relation to the principle of the development. In relation to precedent, it is unlikely that there are similar schemes awaiting approval in the vicinity. In any event, every case is determined on the basis of its own site-specific merits.
26. During my site visit I viewed the site from the neighbouring property at No 9. The house would be close to the west facing windows of No 9 and there are concerns that there would be a loss of light and the outlook, particularly from the kitchen window. However, this is not the only source of light to the room as there is a further window at the rear, and light percolates down from the landing window. Consequently, the development is unlikely to result in a material loss of light or outlook.
27. Due to the orientation of the house, the rear garden of No 9 only receives limited sunlight and the neighbour uses the side patio as a sitting area. The development is likely to affect levels of sunlight to this patio in the late afternoon and evening. However, the majority of the garden would be unaffected by the development. As the proposed house would not extend to the rear elevation of the conservatory, it is unlikely that it would be overshadowed. Therefore, I agree with the Council that the loss of light would not be significant and, consequently, that the living conditions of the neighbouring occupiers would not be materially affected.
28. The neighbour is concerned that the proposed ground floor windows and the rooflights would lead to a loss of privacy. The evergreen hedge would provide screening from the ground floor windows and any views from the rooflights would be restricted due to the roofslope. Consequently, there is unlikely to be a material loss of privacy.
29. I saw that the side patio of No 9 is lower than the appeal site, however, the ridge height of the proposed house would be only marginally higher than the neighbouring house. As the roof would slope away from No 9, its impact in terms of dominance would be limited.

⁷ New Forest District Council Lymington Local Distinctiveness Supplementary Planning Document (2011)

30. In relation to highway safety, I note that the Council is satisfied with the proposed access and parking arrangements and I find that there would be no adverse effect on highway safety.

Conclusion

31. 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.
32. For the reasons given above, the appeal is dismissed.
33. The neighbour's rights under the European Convention on Human Rights, which is incorporated into the Human Rights Act 1998, have been raised and must be considered. Article 1 concerns the protection of property and Article 8 deals with the right to respect for family life and the home. As the appeal is dismissed, there would be no interference with their home and family life or with their property.

Debbie Moore

Inspector