
Appeal Decision

Site visit made on 8 May 2017

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 26th May 2017

Appeal Ref: APP/C1760/W/17/3168217

Nutburn Hollow, Sandy Lane, North Baddesley, Hampshire SO52 9EA

- 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 & Mrs G & J Lewis against the decision of Test Valley Borough Council.
 - The application Ref 16/01154/FULLS, dated 28 May 2016, was refused by notice dated 1 August 2016.
 - The development proposed is demolition of the existing dwelling and erection of 5 no houses with double garage / car ports.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are:
 - whether, having regard to the requirements of local and national planning policy for the delivery of housing, the appeal site is an appropriate location for the development proposed;
 - the effect of the proposed development on the character and appearance of the area, including upon a Local Gap and protected trees;
 - the effect of the proposed development on highway safety; and
 - whether sufficient information has been provided to enable an accurate assessment of any likely impacts upon protected species.

Preliminary Matters

3. One of the Council's reasons for refusal related to the fact that the proposed development failed to mitigate its impact upon the New Forest Special Protection Area (SPA), by failing to provide a suitable planning obligation. This appears to have been addressed by the provision of a unilateral undertaking by the appellant and, as such, is not pursued further here.

Reasons

Planning policy

4. Policy COM2 of the Test Valley Borough Revised Local Plan DPD (the Local Plan) sets out the settlement hierarchy for the borough. It allows for development within the defined boundaries of specified settlements. Anything outside these
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boundaries is, in effect, countryside, where development is restricted. Development here may be permitted where the criteria in other specific policies are met, which does not appear to be the case here. It must also be essential for the proposed development to be located in the countryside, which again is not the case here.

5. Planning law is clear that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This is reflected in the National Planning Policy Framework (the Framework).
6. The most significant material consideration that is often called into play is the absence in a local planning authority area of a five-year supply of deliverable housing sites. Where this occurs, the Framework is clear that relevant policies for the supply of housing should be considered out-of-date. This would include policies such as COM2. In such a situation, paragraph 14 of the Framework is considered, wherein it is clear that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
7. There is, however, no dispute that the Council is able to demonstrate such a supply. As such, full weight should be given to the up-to-date adopted development plan and to its settlement boundaries. Given that the appeal site is outside the settlement boundary, the appeal scheme is clearly in conflict with the locational requirements of this plan.
8. It is suggested that the boundaries should be treated flexibly if a site is otherwise uncontentious and could be regarded as being sustainable development. That may be so, but it is not in this instance for the reasons set out below. In any case, the settlement boundary for North Baddesley, like those around other settlements in the Borough, has a clear purpose, being drawn to ensure that planned development is directed to the most appropriate locations in order to achieve sustainable development.
9. Allowing development beyond the boundary purely on the grounds of being flexible would rather undermine its purpose. I am also mindful of the Local Plan Inspector's view that the idea of a policy allowing for development 'adjoining settlements', which he rejected, would lead to uncertainty being built into the plan.
10. My attention has been drawn to an appeal decision for North Baddesley in which an Inspector did permit residential development outside the development boundary. That site, however, is contextually very different to the appeal site, being adjacent to, and opposite, existing residential development and next to a main access route into the village. The Inspector found no conflicts with the character and appearance of the area, or in relation to other matters, which is not the case here.
11. Furthermore, I note that a subsequent appeal decision for North Baddesley recognises that locational policy in an up-to-date development plan, outlining settlement boundaries as part of the settlement strategy, provides for sustainable development as a whole, to include, social, economic and environmental dimensions.

12. Taking these factors into consideration, I give the decision cited by the appellant little weight as a precedent in favour of the appeal scheme.
13. I conclude, therefore, that having regard to the requirements of local and national planning policy for the delivery of housing, the appeal site is not an appropriate location for the development proposed. The appeal proposal would conflict with Local Plan policy COM2, the requirements of which are noted above.

Character and appearance

14. The appeal site is the plot of Nutburn Hollow, which features a bungalow set within a sizeable garden. The garden is largely grassed and contains a number of mature trees. The site is clearly visible from two public footpaths, albeit that views from the north are filtered by vegetation. It has fields and woodland around it on three sides, is heavily rural in character and appearance and reads as part of the wider wooded countryside.
15. The dwellings proposed by the appeal scheme would be considerably taller than the current, relatively low key bungalow. They would be a substantial block of development, notably to the west of the site, prominent in views from the nearby public rights of way. Extending a finger of development out into the open countryside, they would appear incongruous in their otherwise verdant, undeveloped surroundings.
16. The development would require the felling of some trees on the site, which would give rise to some change in its wooded appearance. Most significant, however, are the implications of the juxtaposition between the remaining trees and the proposed dwellings. At the time of my 1000 site visit, on a sunny day, there was almost full shade over the site of the proposed dwelling on plot 3, with the garden of proposed plot 2 also almost completely in shadow. The proposed dwellings on plots 4 and 5 would be in close proximity to substantial trees too, with the likelihood of commensurate adverse effects upon light and outlook.
17. This being so, in my judgement there is likely to be pressure from future occupiers for the felling of additional protected trees on the site, to reduce overshadowing and to address maintenance issues. This would be harmful to the characteristic wooded appearance of the site and the wider area.
18. It is asserted that problems between retained trees and new dwellings are rare. No evidence is provided in support of this assertion. Even if true, in my judgment this is unlikely to be so on this site.
19. The presence of trees close to occupied areas is likely to be beneficial to human wellbeing. Nonetheless, one must draw a distinction between trees being present in a wider area, contributing to its character and appearance, and being in very close proximity to, and thus overbearing upon, a dwelling house.
20. The site lies within a Local Gap between North Baddesley and Valley Park, as set out in Local Plan policy E3. Development within these gaps is only permitted if it would not diminish the physical separation and/or visual separation between settlements and would not compromise the integrity of the gap.

21. The Local Gap between North Baddesley and Valley Park is substantial, with significant amounts of woodland between the two settlements. The appeal scheme would extend out into the Local Gap but, given the extent of the Local Gap and the contained nature of the site when viewed from a distance, I conclude that there would be no diminution of the sense of separation between North Baddesley and Valley Park, and that the integrity of the gap would not be compromised.
22. I nonetheless conclude that the appeal proposal would have an adverse effect upon the character and appearance of the area. It would conflict, therefore, with Local Plan policy E2. This seeks, among other things, to ensure that new development does not have a detrimental effect on the appearance of the immediate area and does not result in the loss of important local features such as trees.

Highway safety

23. There remains an outstanding objection before me from the local highway authority, on the basis of highway safety, specifically in relation to visibility from the access from Sandy Lane onto Nutburn Road. It was evident from my site visit that this is not an unfounded concern, notably given the presence of a substantial hedgerow when looking north from Sandy Lane. Nor is there any technical highways evidence before me to suggest otherwise.
24. The appellant states that the highway authority would lift its objection if certain works to the highway were undertaken. Nonetheless, there is no such confirmation of this from the highway authority before me and, on this basis, a precautionary approach is reasonable.
25. I conclude, therefore, that the appeal scheme would conflict with policy T1 of the Local Plan. This seeks, among other things, to ensure that new development does not have an adverse impact upon the safety of the local highway network.

Protected species

26. A Walk Over Ecology Assessment (the Assessment) of the site has been submitted. This provides a high level assessment of the potential for the presence of protected species on the site, with evidence of bat roosts identified.
27. Given this evidence, the Assessment recommends that additional survey work is undertaken during the active season to identify the level of bat use of the site and buildings. *Government Circular 06/2005 - Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system*¹, to which I afford significant weight, is emphatic that:

"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances..."

¹ This remains 'live', contrary to the appellant's assertion.

28. There is nothing exceptional about the circumstances relating to the appeal proposal and, as such, I do not consider that securing the recommended additional surveys by condition is appropriate.
29. It may be that the Assessment takes a position that protected species would be found and takes a precautionary approach, but that is not the point. It still recommends additional survey work and, in my judgment, one cannot be certain of the most appropriate mitigation (if, indeed, it would be appropriate for development to proceed at all) without having a complete picture of the protected species activity on and around the site.
30. I conclude, therefore, that insufficient information has been provided to enable an accurate assessment of any likely impacts upon protected species. As such, the appeal proposal would conflict with Local Plan policy E5, which seeks to conserve, and where possible restore and / or enhance, biodiversity.

Other Matters

31. There is no dispute that North Baddesley is a Key Service Centre in the Local Plan, or that the appeal site is relatively close to local services and facilities. Nonetheless, it remains outwith the settlement boundary, the implications of which I have addressed above.
32. The provision of a turning head for all vehicles using Sandy Lane could be of some benefit, but there is no evidence before me to suggest that the lack of such a turning head has proved problematic to date.
33. The appellant's Final Comments allude to the site being previously developed land. I am far from persuaded by this, given the definition of such land set out in the Framework and the fact that North Baddesley is a built-up area. Nonetheless, as it is not determinative I have not addressed it further. That said, even the classification of the site as previously developed land would not, in my judgment, be sufficient reason to grant planning permission given my findings of harm above.
34. The appeal proposal would provide some additional housing in the Borough. As the Council is able to demonstrate a five-year supply of deliverable housing sites, however, this factor attracts only moderate weight. It, along with any (albeit unquantified) economic benefit arising from the development, is too light a benefit to outweigh the fundamental conflicts with the development plan outlined above.

Conclusion

35. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal proposal conflicts with the development plan when taken as a whole and, thus, that the appeal should be dismissed.

Richard Schofield

INSPECTOR