
Appeal Decision

Site visit made on 25 April 2017

by H Porter BA(Hons) PGDip IHBC

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

Decision date: 06 June 2017

Appeal Ref: APP/C1760/W/17/3167560

Filkins, River View Close, Chilbolton, SO20 6AA

- 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 M Southcott against the decision of Test Valley Borough Council.
 - The application Ref 16/02253/FULLN, dated 14 September 2016, was refused by notice dated 14 November 2016.
 - The development proposed is demolition of existing dwelling and erection of three detached dwellings with associated access, parking and landscaping (Revised application).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are (i) the effect of the proposed development on the character and appearance of the area; (ii) the acceptability of the proposal having regard to its effects upon protected species.

Reasons

Character and appearance

3. The appeal site is located off River View Close, a residential cul-de-sac on the outskirts of the village of Chilbolton. The local topography and mature vegetation largely screen any surrounding development, so that River View Close is read as a distinct residential enclave. While architectural styles vary, the River View Close properties tend to be detached, set deep within generous, well-defined overall plots. The plot layout gives views to mature trees and private planting, which contribute positively to the sense of a verdant and spacious environment.
 4. The appeal site and its neighbour terminate the view along the southwest extension of the cul-de-sac. Both plots both have large detached dwellings, set centrally within a generous garden behind a well-defined front boundary. Though populated by buildings of differing designs, these two plots clearly define the extent of the River View Close as a discrete development. Moreover, the views to lawns and planting positively reinforce the sense of greenery that is intrinsic to the area's character and appearance.
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5. The appeal proposal would demolish the existing bungalow and introduce three, four-bedroom detached dwellings on the plot of the redundant bungalow. The latest design iteration has sought to reduce the amount of hard surfacing and built form and omits a garage associated with Plot 1, replacing it with 'landscape verge' to the side of that development plot; as well as the addition of a front boundary hedge.
6. While the plot layout and urban grain may be tighter along Station Road and Branksome Close, these nearby streets do not readily define the built context. Indeed, the proposed site comparison plan and context plans both emphasise the incongruity of the proposed plot layout with the existing situation, in which the River View Close properties tend to be positioned centrally within a generous garden plot. Regardless of the proposed building-to-plot ratio may be in percentage terms, the context plan clearly shows the proposed dwellings would occupy significantly smaller overall plots in comparison to the majority of the dwellings that make up the prevailing character along River View Close. Notwithstanding the provision of bin and cycle storage, and the fact that the size of the proposed plots may be ample to provide acceptable living conditions, they are notably smaller compared to the size that predominates in River View Close. Fundamentally, the introduction of three dwellings would result in a cramped form of development, atypical of the local area.
7. The properties on the south side of River View Close may have relatively open frontages, however, they still have very definite, individual plot boundaries. Despite the fact that the boundary along River View Close would be maintained, it would become a front boundary shared between the proposed three dwellings. Although the proposed dwellings would have their own areas for parking, as well as outdoor space, individually, they would lack a well-defined plot with a clear relationship to the River View Close frontage. Rather, the shared access driveway would create, in itself, a discrete cul-de-sac style development that would erode the legibility of River View Close as a separate residential enclave.
8. The proposed development would involve the removal of several mature trees, as well as a significant reduction in the lawned area. Though the most recent design would create more space for shrubs and trees, the ratio of built form to open space would still be significantly increased. The appellant has provided some clarity on the proposed height of the dwellings and the development's response to the upward-sloping site. Even though there are other dwellings in the vicinity that have retaining walls and a similar ridge height, cumulatively these elements would add to an increase in built form and reduction in space and greenery. Because of both the location of the appeal plot and the position of the proposed dwellings within it, the development would stand prominently and incongruously within the otherwise spacious and verdant context of the River View Close scene.
9. In terms of scale, detailed design and material treatment, the proposed dwellings would sit comfortably with the local area. However, it is not the detailed design per se, but rather the increased level of density and relationship to River View Close that would be uncharacteristic and appear as harmfully out-of-place. Moreover, the sense of a cramped and suburban development would be compounded by the reduced front boundary treatment, which would reveal a significant increase in built form and hard standing compared to the existing situation. As such, the proposal would fail to

integrate within its context, introducing a harder, denser, more suburban layout that would be at odds with the local area and detrimental to its character and appearance.

10. I note the recent development at Chestnut Corner, where a single dwelling has been redeveloped to provide five detached dwellings. I do not know the planning considerations that led to this development; however, the plot layout and relationship of dwellings to Station Road and Coley are notably different from the appeal site. While the five houses at Chestnut Corner may be in a more prominent location compared to the appeal site, they appear well spaced and of an overall plot layout and density appropriate to their surroundings. I therefore consider that the site-specific circumstances are materially different, such that the Chestnut Corner development does not justify the appeal proposal.
11. For all these reasons, I conclude the proposed development would cause material harm to the character and appearance of the area, thus being contrary to Policy E1 of the revised Local Plan DPD 2011 – 2029, January 2016 (the RLP), insofar as it requires development to respect and complement the character of the area in which it is located, including in terms of layout and appearance. The proposal would also conflict with Policy E2 in that there would be a detrimental impact on the appearance of the immediate area and landscape character of the area. The proposal would also conflict with Guideline 7) of the Chilbolton Village Design Statement Supplementary Planning Guidance, 2003 (the SPG), which states that new buildings should be designed to fit in sympathetically with the general design of their neighbours and the character of the village in general. Finally, the appeal scheme would run contrary to the policies and principles of the Framework, namely where they seek to ensure a development responds to and takes account of the different roles and character of different areas.

Protected species

12. The Ecological Report¹ establishes that bat surveys were conducted at the appeal site in November 2014, April and May 2015 that confirmed the existing bungalow supports a non-breeding summer roost for bats. Consequently, the redevelopment of the site would result in a breach of the protection afforded to bats as a European Protected Species under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). Policy E5 of the RLP establishes that development likely to result in the loss, deterioration or harm to habitats or species of importance, either directly or indirectly, will not be permitted unless the proposal satisfies supporting criteria. The criteria are consistent with the Habitats Regulations, which establish a three-step process must be satisfied.
13. The case law² referred to by the appellant has provided some clarity regarding the duties placed on the LPA or the Inspector, as the competent authority, by the Habitats Regulations, 2010. It is clear that the function of Natural England, as the licensing authority, is to be satisfied that the three tests have been met. That said, there remains a duty on the competent authority to have regard to the requirements of the Habitats Directive in the exercise of their functions.

¹ Lindsay Carrington Ecological Services Ltd, June 2015

² Morge (FC) v Hampshire CC, 2011; Prideaux v Buckinghamshire CC and FCC Environment UK Ltd, 2013; Cheshire East Council v Secretary of State for Communities and Local Government, Rowland Homes Ltd, 2014.

My role within this appeal is to form a view on the likelihood of a licence being granted by Natural England, rather than undertaking an exercise involving application of the tests.

14. Paragraph 112 of Circular 06/2005³ establishes that licences may only be granted where the licensing authority is satisfied that the first two tests are met. While the licensing regime is distinct from planning, there remains a duty to consider the merits of the application and the likelihood of the proposed development being granted a licence. It is undisputed between the parties that the proposed mitigation would ensure bats are not disturbed, killed or injured, and are provided with alternative roosting opportunities. Whilst the appellant has established that they do not own an alternative site, there is limited information before me to demonstrate any imperative reasons of overriding public interest, or beneficial consequences of primary importance for the environment.
15. The appellant refers to other examples of housing development being allowed where there would be an impact on protected species⁴. In both of these cases, the development involved demolition of one existing dwelling and replacement with one single dwelling, rather than the net increase that is proposed under this appeal. While I note that discussion within the officer reports is limited regarding the three tests, I do not know the level of supporting information that was put before the planning and ecology officers in these cases. As the circumstances are materially different, I cannot be sure therefore that the Council has been inconsistent in its decision making. In any event, I have determined this appeal on its own merits.
16. On the limited information available to me, I cannot be satisfied that there is a likelihood that a licence would be granted by Natural England. In these circumstances I consider it appropriate to adopt a precautionary approach. I am not concluding that there is no prospect of a licence being granted, just that there is insufficient information before me, at this time, to persuade me that there is a likelihood of a licence being granted. As such, I cannot be satisfied that the proposal would not have unacceptable effects upon protected species or that the appeal proposal would not run contrary to Policy E5 of the RLP.

Planning Balance

17. The Council cannot demonstrate a deliverable 5-year housing land supply. Paragraph 49 of the National Planning Policy Framework (the Framework) advises that relevant policies for the supply of housing should not be considered up-to-date in such circumstances. I note the recent Supreme Court judgement concerning the interpretation of paragraph 49⁵, which makes clear that the primary purpose of paragraph 49 is to trigger the operation of the tilted balance in paragraph 14 of the Framework. In this context, it means granting permission unless any adverse impacts would significantly and demonstrably outweigh the benefits.

³ Government Circular: Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system, 16 August 2005

⁴ 14/02095/FULLS and 15/01645/FULLS

⁵ [2017] UKSC 37 *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLEG v Cheshire East Borough Council*

18. A net increase of two dwellings would make only a modest, yet still beneficial, contribution to housing supply. There would also be social and economic benefits such as supporting the local economy, bringing benefits through the construction and the provision of two additional four-bedroom dwellings, contributing to the mix of market housing available in the area. The provision of two additional dwellings inside an existing settlement would also support the range of services and facilities therein.
19. On the other hand, while the location may be suitable, the development would result in harm to the character and appearance of the area that would significantly and demonstrably outweigh these benefits and I cannot be satisfied that there would not be detrimental effects upon protected species. The environmental dimension of sustainable development would therefore not be achieved. Overall, the proposal would not represent sustainable development as defined in the Framework.

Other matters

20. I have borne in mind the concerns expressed by interested parties, including those in relation to loss of light and privacy; trees; slow worms; increased noise disturbance; drainage and highway matters. However, mindful of the scope to address some of these matters at a detailed stage, I would not have found any of these considerations to be of overriding concern, had the scheme been deemed acceptable in relation to the main issues.

Conclusion

21. For the reasons given above, and in consideration of all other matters raised, I conclude that the appeal should be dismissed.

H Porter

INSPECTOR