
Appeal Decision

Site visit made on 3 May 2017

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 26 June 2017

Appeal Ref: APP/B1740/W/17/3167763

11-15 Uplands Avenue, Barton on Sea, New Milton BH25 7BJ

- 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 AJ Developments Ltd against the decision of New Forest District Council.
 - The application Ref 16/11527, dated 3 November 2016, was refused by notice dated 11 January 2017.
 - The development proposed is the erection of two bungalows with associated access and parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two bungalows with associated access and parking at 11-15 Uplands Avenue, Barton on Sea, New Milton BH25 7BJ in accordance with the terms of the application, Ref 16/11527, dated 3 November 2016, subject to the conditions set out in the Annex to this decision.

Costs

2. An application for an award of costs was made by AJ Developments Ltd against New Forest District Council. This application will be subject of a separate decision.

Procedural matter

3. A planning obligation under Section 106 of the Town and Country Planning Act 1990 has been submitted by the appellants, which aims to mitigate the effect of the proposal on European nature conservation sites. I shall refer to this further below.

Main Issue

4. The effect of the proposal on the character and appearance of the surrounding residential area.

Reasons

5. Uplands Avenue is a pleasant, wholly residential road, characterised by a mix of dwelling types and designs, with varying set-backs from the road. The New Milton Local Distinctiveness Supplementary Planning Document (SPD) (adopted in 2010) refers to the road as speculative suburban house building on a more urban, grid-like layout compared to older areas of the Becton Bunny Valley character area. The appeal site is occupied by a pair of detached bungalows,
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with long, well vegetated rear gardens backing onto the shorter gardens of bungalows on Westbury Close.

6. It is proposed to construct a pair of bungalows in part of the rear garden, to be accessed by a private drive leading between the pair of existing bungalows. A material consideration in this case is the appeal decision¹ of 3 October 2016 relating to a pair of bungalows on the same site. That appeal was dismissed for reasons relating to the means of mitigating the effect of the proposal on European sites of nature conservation importance. In respect of character and appearance, the Inspector found that the proposal would not result in unacceptable harm or conflict with the development plan.
7. That application was in outline, but with access, scale and layout to be considered, showing 2 bungalows similar to those proposed here. There are no material differences between that scheme and this, and there have been no changes in circumstances in the meantime. However, the Council argues that the previous Inspector's reasoning was flawed, and, notwithstanding that in their report to Committee officers attached considerable weight to the decision, the Council felt that the refusal could be justified by a more robust defence compared to that previously put forward.
8. Whilst it is an important planning principle that like cases should be determined in a like manner, this appeal needs to be determined on its own merits. There are no development plan policies which preclude backland development. The National Planning Policy Framework (the Framework) indicates that planning authorities may wish to consider the case for setting out policies to resist inappropriate development of residential gardens, but does not rule out such development. Although the New Forest District (outside the National Park) Core Strategy (Local Plan Part 1) (CS) was adopted prior to the publication of the Framework, the Local Plan Part 2 - Sites and Development Management was adopted in 2014, well after its publication, but did not include any such restrictive policies. Nor are there any such policies in the emerging local plan to which I have been referred.
9. The only development plan alleged to be in conflict is CS Policy CS2, which deals with design quality. It seeks to ensure that development respects the character, identity and context of the area's towns, villages and countryside, and that it should contribute positively to local distinctiveness and sense of place, being appropriate and sympathetic to its setting in terms of scale, height, density, layout, appearance, materials, and its relationship to adjoining buildings and landscape.
10. The SPD denotes the back gardens to the Uplands Avenue properties as being "larger garden spaces or groups of tranquil garden spaces", and the trees in the rear gardens as being important. It warns that backland development which breaks into and destroys a peaceful oasis of rear garden land should be avoided. It illustrates such a scenario with a drawing showing 15 houses with roughly equally sized large gardens encircling an substantial open garden core. That is not the case here, where the garden sizes along this side of Uplands Avenue vary in length, with the rear gardens at Nos 3 and 5 Uplands Avenue being substantially shorter than those at the southern end of the road, and where they back onto the very short gardens of the bungalows on Westbury

¹ Ref: APP/B1740/W/16/3147829

Close. The gardens may have a degree of tranquillity, but notwithstanding the SPD designation, I consider that whilst the back gardens are pleasant, and provide immediate neighbours with an enhanced degree of privacy and amenity, they are not of such a special or distinctive character that warrants their protection from development.

11. Moreover, the proposed bungalows would not have a significant impact on the Uplands Avenue street scene; they would be largely hidden by the existing bungalows and retained trees and the proposed planting would also contribute towards screening. In the same way, the depth of the rear gardens is not readily discernible when seen from the road. Planting in neighbouring gardens would also soften the impact. There would be sufficient space around the buildings to prevent them appearing cramped. I do not consider that a rear garden length of 10m would be "small" – it is typical of many houses where there is an imperative to make an efficient use of land. Whilst it would be smaller than most of the properties on Uplands Avenue, in the circumstances I have described above, and discussed further below, I do not believe that it would be harmful to important aspects of local character or distinctiveness.
12. The Council refers to the contribution that trees on the site make to the landscape structure of the area. Whilst it is true that the trees form part of a cohesive group, which collectively contribute to a valued sylvan hinterland, there is no evidence to refute the appellants' arboricultural survey which shows that few of the trees are of good condition. There are no formal protections in place to ensure the trees' preservation, and it is likely that most of the trees would either fail of their own accord or would be required to be felled as part of good management. As it is, it is proposed to retain four trees, ranging from about 6m to 17m in height, mostly with extensive canopies, and it is proposed to plant others which would contribute to the group value of the trees on the site. I therefore consider that the loss of trees would not cause material harm.
13. The density would be similar to that of the Westbury Close development, but I appreciate that the dwellings would be seen more in the context of the lower density dwellings along Uplands Avenue. However, a higher density in itself not axiomatic of harm – rather it is the effect on the wider character and appearance that is important, and in my judgement, the proposed dwellings would fit in satisfactorily in their surroundings.
14. The dwellings would be served by a single track access drive running between the two existing bungalows. There is scope for planting on either side of the drive, which would soften its appearance. In my view, the Council's concern that it would be an "obvious departure from the existing pattern of development" is overstated. It would not be dramatically dissimilar to the private drives serving garages and hardstandings in the road, and would not stand out as an alien or harmful intrusion into the street scene. The bungalows would be somewhat disconnected from the street scene, as is true of most backland development, but it is their muted impact which leads me to the view that the proposal would not be damaging to the area.
15. I have been referred to a number of other backland developments within 0.5km or so of the site. Whilst none of these exactly replicates the circumstances of this proposal, they nevertheless demonstrate that backland developments can be integrated successfully into an otherwise linear street pattern, without causing undue harm to local character.

16. Taking all these matters into account, I can see no reason to arrive at a different conclusion to that reached by the Inspector on this issue in the previous appeal. I therefore conclude on the main issue that the proposal would not result in material harm to the character or appearance of the surrounding residential area, or conflict with CS Policy CS2. Nor would there be any material conflict with the SPD to which I have referred above. A neighbour has alleged a conflict with CS Policy CS3. Whilst this deals with the protection of special environments, it does so with reference to heritage and nature conservation interests, neither of which would be prejudiced by this proposal.

Other matters

17. The planning obligation submitted by the appellants offers to make financial contributions to mitigate the effect of increased recreational pressure on nearby European nature conservation sites. However the Council has pointed out that the obligation would not comply with the Community Infrastructure Levy Regulations 2010, and it would therefore be unlawful for me to take it into account. Instead, the Council has suggested the imposition of a negatively-worded condition. This issue was critical to the dismissal of the previous scheme, when the Inspector found that the imposition of a condition would contravene national guidance.
18. However, the Council has now explained in greater detail how a negatively-worded condition would be appropriate in these circumstances, the use of which has been accepted by Inspectors in more recent appeals. I therefore consider that this would be an acceptable means of ensuring that there would be no significant adverse effect on the protected habitats, and that the concerns expressed by the previous Inspector can be overcome through such a means.
19. Each of the proposed dwellings would have two parking spaces, and there is space for tandem parking in front of those, which might be appropriate for visitors. Even if some overspill parking were to occur on Uplands Avenue, this would make no material difference to the current position. I have had regard to other concerns about highway safety, drainage, noise, privacy and wildlife, but none of these is sufficient to alter my conclusion. The existence of a restrictive covenant is a private matter which cannot affect the outcome of a planning appeal.

Conditions

20. The Council has suggested a number of conditions which I have considered in the light of national guidance. A condition to require the development to be carried out in accordance with the approved plans is needed to ensure certainty. Conditions relating to trees and their protection and landscaping are needed in the interests of appearance. Car parking spaces are required to be provided and retained in the interests of highway safety. Cycle parking is needed to promote travel other than by car.
21. The implementation of ecological measures is needed to promote biodiversity, whilst details of surface water disposal are required to ensure that the site is appropriately drained. A condition relating to mitigating the effect on European nature conservation sites is needed for the reasons I have explained above.

22. A neighbour has asked for a condition limiting hours of construction; in view of the relationship to neighbouring gardens, I think that this appropriate, and I will impose it to protect living conditions.

Conclusion

23. For the reasons given above, I conclude that the appeal should be allowed.

JP Roberts

INSPECTOR

ANNEX

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development permitted shall be carried out in accordance with the following approved plans: 8689/200, 8689/201, 8689/202.
- 3) Before development commences a scheme of landscaping of the site shall be submitted for approval in writing by the Local Planning Authority. This scheme shall include :
 - a) the existing trees and shrubs which have been agreed to be retained;
 - b) a specification for new planting (species, size, spacing and location);
 - c) areas for hard surfacing and the materials to be used;
 - d) the treatment of the boundaries of the site and other means of enclosure, and
 - e) a method and programme for its implementation and the means to provide for its future maintenance.

No development shall take place unless these details have been approved and then only in accordance with those details.

- 4) All external works (hard and soft landscape) shall be carried out in accordance with the approved plans and details and in accordance with the approved programme of implementation.
- 5) The works hereby approved shall be undertaken in full accordance with the provisions set out within the Gwydion's Tree Consultancy Arboricultural Impact Appraisal and Method Statement reference GH1622 dated 3/5/2016 or as may otherwise be agreed in writing with the local planning authority.
- 6) During the construction period for the development hereby approved, no fires, building operations, storage of goods including building materials, machinery and soil, or discharge of any chemical substances, including petrol and diesel, shall be undertaken within the tree protection zones as set out in the Gwydion's Tree Consultancy Arboricultural Statement or within the canopy spreads, whichever is the greater, nor shall any change in soil levels or routing of services within those defined areas be carried out without the prior written approval of the local planning authority.
- 7) The development hereby permitted shall not be occupied until the spaces shown on plan 8689/200 for the parking of motor vehicles have been provided. The spaces shown on the approved plan shall be retained and kept available at all times for the parking of motor vehicles for the dwellings hereby approved.
- 8) Before the commencement of development, details of the proposed cycle storage/parking facilities shall be submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the approved cycle parking areas have been provided and those cycle parking areas shall be permanently retained thereafter.

- 9) The works hereby approved shall be undertaken in strict accordance with the Ecological Survey methodology and details (Ref 25042016) dated 8/5/2016 unless otherwise first agreed in writing with the local planning authority.
 - 10) Before first occupation of the development hereby approved, a surface water sustainable drainage system (SuDS) shall be designed and installed to accommodate the run-off from all impermeable surfaces including roofs, driveways and patio areas on the approved development such that no additional or increased rate of flow of surface water will drain to any water body or adjacent land and that there is capacity in the installed drainage system to contain below ground level the run-off from a 1 in 100 year rainfall event plus 30% on stored volumes as an allowance for climate change as set out in the Technical Guidance on Flood Risk to the National Planning Policy Framework. Infiltration rates for soakaways are to be based on percolation tests in accordance with BRE 365, CIRIA SuDS manual C753 or a similar approved method. In the event that a SuDS-compliant design is not reasonably practical, then the design of the drainage system shall follow the hierarchy of preference for different types of surface water drainage system as set out at paragraph 3(d) of Approved Document H of the Building Regulations. The drainage system shall be designed to remain safe and accessible for the lifetime of the development, taking into account future amenity and maintenance requirements.
 - 11) No development shall be carried out until proposals for the mitigation of the impact of the development on the New Forest and Solent Coast European Nature Conservation Sites have been submitted to and approved in writing by the local planning authority, and the local planning authority has confirmed in writing that the provision of the proposed mitigation has been secured. Such proposals must:
 - a) Provide for mitigation in accordance with the New Forest District Council Mitigation Strategy for European Sites SPD, adopted in June 2014 (or any amendment to or replacement for this document in force at the time), or for mitigation to at least an equivalent effect;
 - b) Provide details of the manner in which the proposed mitigation is to be secured. Details to be submitted shall include arrangements for the ongoing maintenance and monitoring of any Suitable Alternative Natural Green Spaces which form part of the proposed mitigation measures together with arrangements for permanent public access thereto.
- The development shall be carried out in accordance with and subject to the approved proposals.
- 12) Demolition, tree removal or construction works shall take place only between 08:00 hours and 18:00 hours on Mondays- Fridays and 08:00 hours and 13:00 hours on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.