The Planning Inspectorate

Appeal Decision

Site visit made on 12 March 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 April 2019

Appeal Ref: APP/E1210/W/18/3217019
115 Mudeford Lane, Christchurch BH23 3HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Richard Guppy of RPS Group against Christchurch Borough Council.
- The application Ref 8/18/1384/FUL, is dated 29 May 2018.
- The development proposed is described as, demolition of existing dwelling and construct two new chalet bungalows, with associated parking and rear gardens.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 28 March 2019.

Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. The appeal is made against non-determination of the above planning application. Whilst the Council did not therefore issue a decision notice, it has set out a number of objections within its submissions, which I have taken into account. These relate to the effects of the proposed development on the character and appearance of the area, the living conditions of occupants in neighbouring dwellings, and on bats.

3. A revised version of the National Planning Policy Framework (the Framework) came into force during February 2019, and the results for the 2018 Housing Delivery Test (HDT) were also published during the course of the appeal. The parties were given the opportunity to comment on the implications of revised Framework and HDT on the appeal, and I have also taken them into account in reaching my decision.

Main Issues

4. The main issues are the effects of the development on:

   - the character and appearance of the area;

   - the living conditions of occupants of 115b Mudeford Lane with regard to outlook, and of the occupants of 47 Warren Avenue and 117 Mudeford Lane with regard to privacy; and

- bats.

Reasons

Character and Appearance

5. The site contains a single storey bungalow and is located between Warren Avenue and Cricket Close on the south side of Mudeford Lane. It stands within a row of bungalows, which, though sometimes linked by their garages, are generally well-spaced, of similar height and similar scale. Development facing onto Mudeford Lane within the broader setting of the site also principally consists of single storey bungalows, amongst which there is a scatter of slightly more bulky hipped roof chalet designs. There is therefore an overall sense of visual consistency within the street scene, which is currently complemented by the single storey bungalow located at 47 Warren Avenue.

6. Other building types and designs are visible within the broader street scene and also occur further along Mudeford Lane. These include 2-storey houses, flats, the Masonic Hall on Warren Avenue, and large pitched roof chalets at Raleigh Close opposite the site. However each appreciably forms an element of distinctly different developments, or in the case of the Masonic Hall, is individually distinct. As such they do not alter the general sense of consistency within the setting of the site. In this regard the Christchurch Borough-wide Character Assessment 2003 Supplementary Planning Document similarly notes that whilst the overall character of the surrounding area is mixed, it is nonetheless composed of individual areas of consistent character.

7. The proposed dwellings would be of substantially greater height than the dwellings to either side of the site, and indeed of greater height than any other dwelling located between Warren Avenue and Cricket Close. The difference in height would be greatly emphasised by the incorporation of large sheets of glazing and balconies at first floor level, whilst the increased length and pitched roof form of the dwellings would cause them to appear more bulky than others within the row when viewed in side profile. Whether or not the height of the proposed dwellings would itself fall within the generalised range expressed by all building types within the wider area, their height, bulk and general appearance would be atypical of development within the immediate setting of the site, giving rise to acute visual conflict.

8. When viewed from De Havilland Way opposite, both the perspective and the backdrop provided by the Masonic Hall would reduce the extent to which differences in height and bulk were apparent. However when viewed closer up, from elsewhere within Mudeford Lane, from the Masonic Hall, and from the gardens of the surrounding properties, the discordant height and bulk of the proposed dwellings would nonetheless be clear.

9. The proposed dwellings would be more closely spaced both in relation to one another, and to their neighbours than is typical within the immediate street scene. In terms of plot density, the development would fall just above the upper end of the local range. Be that as it may however, the arrangement would again appear at odds with its immediate setting, relative to which the narrow spacing would cause the development to appear cramped across its frontage.

10. I note the appellant's submission of photographs showing other dwellings and buildings within the wider area, including some which adopt 'contemporary' detailing. I also acknowledge that high quality materials could be used in construction of the proposed development. In view of my reasons above however, the fact that such developments exist and that a high specification could be achieved does not alter the harm that would caused by the failure of the appeal scheme to harmonise with its immediate setting.

11. The appellant has drawn attention to Policy LN2 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (the CS) in support of the proposed development. But whilst this policy requires maximisation of density on all sites, this is with the proviso that it is to a point 'acceptable for the locality'. The minimum target density of 30 dwellings per hectare is also considered subject to local character. In view of reasons my above, given the scheme's failure to integrate with its setting, Policy LN2 does not provide support for the proposed development.

12. I have taken into account advice in paragraph 122 of the Framework which states that decisions should support development which makes efficient use of land. However in doing so part (c) of paragraph 122 again highlights the desirability of maintaining an area's prevailing character and setting, in which regard the scheme fails.

13. For the reasons outlined above I conclude that the development would have an unacceptably adverse effect on the character and appearance of the area. It would therefore conflict with Policy HE2 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (the CS), which indicates that development will be permitted if it is compatible with or improves its surroundings, and saved Policy H12 of the Borough of Christchurch Local Plan 2001 (the LP), which amongst other things states that proposals for private residential development will be permitted provided that they are appropriate in character, scale and design to the immediate locality.

Living Conditions

14. The existing bungalow is for the most part positioned to the rear of that at 115b. Given the modest scale of the existing bungalow, and the reasonable spacing between the dwellings limited harm is currently caused to the outlook from No 115b. The proposed development would however see a building of considerably greater length, height and mass positioned much closer to the boundary with 115b than at present. Viewed from within the garden of No 115b, and from the conservatory to the rear of the dwelling, the substantial increase in built form both adjacent to and along a greater proportion of the boundary, would have an oppressive effect. On account of the relative orientation of the dwellings, the adverse nature of the effect would be further amplified by the potential for an increase in the morning shading of No 115b. The combined effects would cause significant harm to the living conditions of occupants at No 115b.

15. The balcony of the northernmost unit would provide a vantage point from which direct views would be allowed into the garden of No 47. It is unlikely that these would be wholly screened by the proposed boundary planting. Though distance would limit the extent to which there was a potential for clear views into habitable rooms at No 47, the atypically elevated position from which such views would be possible could nonetheless give rise to a perceived sense of

overlooking. In both regards overlooking, and consequent loss of privacy, would be detrimental to the living conditions of the occupants ay No 47.

16. The rear balcony of the southernmost unit would provide only oblique views towards the back end of the garden, however the effect would be amplified in this case by the relatively shallow depth of the garden at No 117, and again by the atypically elevated position from which such views would be possible. The resulting loss of privacy would harm the living conditions of occupants at No 117.

17. For the reasons outlined above I conclude that the development would have an unacceptably adverse effect on the living conditions of occupants at No 115b with regard to outlook, and at No 47 and No 117 with regard to privacy. It would therefore conflict with Policy HE2 of the CS, which amongst other things indicates that development will be permitted if it is compatible with or improves its surroundings, including with regard to its relationship with nearby properties, and Policy H12 of the LP which amongst other things states that proposals for private residential development will be permitted provided that the residential amenities of existing and future occupiers of dwellings are not adversely affected by loss of light or privacy.

Bats

18. Bats are a protected species under the Wildlife and Countryside Act 1981, and a European Protected Species under the Conservation of Habitats and Species Regulations 2017. The Council indicates that on the basis of the recorded presence of bats within 300 metres of the site, proximity of suitable habitats, and presence of features within the existing building likely to support bats, their presence on site cannot be ruled out. With regard to the site and its setting I agree that there are reasonable grounds to consider that bats may be present or affected by the proposed development.

19. The planning application was not supported by a bat survey, and none has been provided during the course of the appeal. Therefore the effect of the development, and more particularly demolition of the existing building, cannot be ascertained.

20. Having regard to paragraph 99 of Circular 6/2005, which states that conditions requiring surveys should only be used in exceptional circumstances, I note that no exceptional circumstances appear to exist. As such it would not be possible to address the lack of survey evidence by means of imposing a condition.

21. Paragraph 175(a) of the Framework further indicates that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.

22. For the reasons outlined above I conclude that it has not been demonstrated that the appeal scheme would avoid or adequately mitigate unacceptable harm to bats. The development would therefore conflict with Policy ME1 of the CS which sets out the aim of the plan to protect, maintain and enhance the condition of all types of nature conservation sites, habitats and species.

Other Matters

23. The Council's officer report registers an objection to the scheme on the grounds of its failure to mitigate the adverse effects of increased recreational pressure

on the integrity of the Dorset Heathlands Special Protection Area, Special Area of Conservation and Ramsar habitats sites. A unilateral undertaking to pay contributions has been however been received during the course of the appeal, and the Council has confirmed that this addresses its concerns. Given that I am dismissing the appeal, this is not a matter I need to consider further.

24. My attention has been drawn to the Council's inclusion of the Masonic Hall to the rear of the site within its Strategic Housing Land Availability Assessment (SHLAA), and in particular the suggestion that the site could accommodate a number of 2-storey dwellings. However there appear to be no specific details of what form such a development would take, and given that the SHLAA is itself a technical study, it cannot be used to presuppose a future grant of planning permission. As such the SHLAA, and suggestion that the Masonic Hall site might be redeveloped, has not affected my consideration of the planning merits of the appeal scheme.

25. The Council's submissions drew attention to the 5 Year Housing Land Supply for Christchurch and East Dorset Councils 2018 – 2023 Interim Version 2018 (the HLS statement). This stated that when measured against the target set out in the CS, and including a 5% buffer, the Council could demonstrable 5.45 year supply of deliverable housing sites. The Council has however confirmed that the HLS statement has been superseded by a 75% score in the HDT, and the consequent requirement set out in paragraph 73(c) of the Framework that the Council's figures should include a 20% buffer. The Council has further confirmed that when this is taken into account its supply of deliverable housing sites falls to 4.77 years. Therefore policies most important for determining the application are out-of-date. Under paragraph 11 of the Framework planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the Framework that protect areas or assets of particular importance provide clear reasons for refusal.

26. In view of my reasons above, the combined weight of the harm that the scheme would cause to the character and appearance of the area, the living conditions of occupants in neighbouring dwellings, and protected species would in this case significantly and demonstrably outweigh the very modest public benefit that one additional dwelling would provide in addressing the shortfall in housing sites. Paragraph 11 does not therefore support the granting of planning permission in this instance.

Conclusion

27. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, I find that in this case material considerations do not indicate that my decision should be made other than in accordance with the development plan. For the reasons set out above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR