
Appeal Decision

Site visit made on 25 June 2019

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

an Inspector appointed by the Secretary of State

Decision date: 09 July 2019

Appeal Ref: APP/B1740/W/19/3222760

Barberry House, Wildground Lane, Hythe SO45 4HJ

- 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 Richard Paine of Imperial Homes Southern against the decision of New Forest District Council.
 - The application Ref 18/11512, dated 13 November 2018, was refused by notice dated 21 January 2019.
 - The development proposed is demolition of existing detached house and construction of 4 no. 3 bed and 2 no. 2 bed houses with associated cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the development on:
 - the character and appearance of the area, including protected trees;
 - highway safety;
 - on-site biodiversity and green infrastructure; and
 - the living conditions of neighbours with particular regard to the outlook from and privacy of garden space.

Reasons

Character and appearance

3. The existing 2-storey dwelling is of reasonably large size and stands within a spacious plot. Though it has a broad frontage on, and is accessed from Wildground Lane, it faces towards Butts Ash Lane.
4. Butts Ash Lane contains mixed residential development, which in the immediate vicinity of the appeal site is predominantly characterised by large, detached, 2-storey dwellings, positioned within large plots and set back from the street frontage. The existing dwelling therefore fits the prevailing pattern, and indeed appears as an integral part of the streetscene along Butts Ash Lane.
5. Wildground Lane is a short, reasonably well-enclosed single track access. At present only 4 dwellings both directly face onto and are accessed from it. These dwellings are well-spaced, detached, and with the exception of a single 2-storey house, consist of very modest single storey bungalows, whose scale

- and visual character differs markedly to that of the dwelling on the appeal site. Notwithstanding its strong presence on Wildground Lane therefore, in my view the primary visual relationship of the existing dwelling is with the streetscene along Butts Ash Lane, rather than that of Wildground Lane.
6. The proposed development would see this relationship shifted through provision of a closely spaced layout of 3 semi-detached houses which would directly face onto Wildground Lane.
 7. The dwellings would be similar in height to the existing 2-storey dwelling to the north, and would be located at a similar distance from the lane. They would however present a frontage whose density and massing was starkly at odds with that of existing development along Wildground Lane viewed as a whole. The sense of over-intensification would be accentuated by comparison to the more modest scale of existing single storey bungalows, and by the extensive area of proposed open frontage parking space. Relative to the width and enclosed character of Wildground Lane this area of hard surfacing would be appear visually prominent and harsh in character.
 8. The elevation of Plot 1 facing Butts Ash Lane would be largely blank, and the orientation of the development, and its positioning closer to the frontage would be appreciably at odds with Butts Ash Croft and Elmcroft to either side. Notwithstanding the fact that some alignment with the frontage of Paddocks, west of Butts Ash Croft, would exist, the development would otherwise show little engagement with the streetscene along Butts Ash Lane, and would indeed appear visually intrusive in this context.
 9. I acknowledge that the site is not located within a conservation area. However it is not essential for a development to be so located in order to cause harm to the character and appearance of an area.
 10. I further acknowledge the fact that dense layouts of terraced and other housing occur to the north of Wildground Lane, and indeed further along Butts Ash Lane. However, neither plays a role in directly informing the character of Wildground Lane or Butts Ash Lane in the immediate vicinity of the site.
 11. It is further apparent that the development would not make any obvious architectural attempt to reflect 'vernacular' design. Insofar as this can be understood to involve use of traditional materials and forms distinct to the locality, this is however also true of the existing dwelling. As the immediate vicinity is generally otherwise characterised by mixed modern development, no undue harm would arise from the general architectural design of the dwellings proposed.
 12. The site also contains number of trees protected by Tree Preservation Order. With the exception of a walnut, these trees are located across the Butts Ash Lane frontage, and make a prominent and positive contribution to the appearance of the street. As confirmed by the appellant's tree report, several of these trees are young and thus have the potential for future growth.
 13. The canopies of the trees across the Butts Ash Lane frontage would largely cover the garden space allocated to Plot 1, and would extend very close to rear elevation of the dwelling. In time it is likely that growth of some of these trees would result in even more extensive coverage of the garden. Given that the trees occupy space towards the south-east, south and south-west of Plot 1,

heavy shading of the garden space and parts of the rear elevation would inevitably occur, adversely impacting upon their use. Some pressure to prune or fell trees across the Butts Ash Lane frontage could thus be reasonably anticipated in the future.

14. In a general sense, legal protection of the trees should provide strong grounds to resist and request to carry out harmful works to them. Requests for heavy pruning or removal might nonetheless be hard to resist if the trees caused unacceptable living conditions, as indeed would be likely for future occupants of Plot 1. A realistic prospect therefore exists that were the development to take place, the long-term future of the protected trees on the Butts Ash Lane frontage would be placed in doubt. Harm to the character and appearance of the streetscene as a result of heavy pruning or removal of the trees would therefore be likely to arise.
15. For the reasons outlined above I conclude that the development would cause unacceptable harm to the character and appearance of the area, including protected trees. It would therefore conflict with Policy CS2 of the New Forest District (outside the National Park) Core Strategy 2009 (the CS) which requires that development is well designed to respect the character, identity, and context of the area's towns and villages. Whilst the Council's decision also quoted Policies CS1 and CS3 of the CS, and Policy DM2 of the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management 2014 in relation to this matter, none appears to be directly relevant to this matter. This is because Policy CS1 sets out a number of sustainable development principles, none of which are applicable, Policy CS3 relates to nature and heritage conservation, and Policy DM2 more narrowly to nature conservation.

Highways

16. Butts Ash Lane, together with adjoining Roman Road, provides a link between the Hythe By-pass and Fawley Road, serving a large number of residential streets in-between. It is reasonable to consider therefore that Butts Ash Lane carries predominantly local traffic, but that it is nonetheless likely to experience busy periods, for instance at either end of the work and school days, and at weekends.
17. Visibility from Wildground Lane onto Butts Ash Lane is restricted by the width of the access, and by adjacent boundary features. The Local Highways Authority however indicates that it is satisfied with the existing visibility splay. I see no reason to find otherwise.
18. Nonetheless, unrestricted on-street parking is available along Butts Ash Lane, and the potential therefore exists for visibility to become obstructed from and towards the entrance of Wildground Lane by vehicles parked on-street. I observed this during my visit, and taking into account further reports of this within the submissions, it is reasonable to consider that on-street parking close to the entrance to Wildground Lane is a common occurrence.
19. There are therefore likely to be occasions when the drivers of vehicles either approaching or leaving Wildground Lane cannot clearly see vehicles doing the opposite. In these circumstances a modest risk of collision would exist.

20. Wildground Lane is itself single track. Where a vehicle wishing to turn into Wildground Lane meets a vehicle in transit along, or exiting it, scope exists for the latter to reverse with little apparent risk. There is however no certainty that this occurs in all circumstances. Indeed, a driver either choosing or forced to reverse back onto Butts Ash Lane, particularly in the presence of vehicles parked on-street, would have greatly restricted vision, as would a driver approaching. A further, more significant collision risk could thus arise.
21. Additionally, as inter-visibility between pedestrians crossing the entrance to Wildground Lane, and vehicles reversing from it is clearly limited, further potential for collision between vehicles and pedestrians also exists in this regard.
22. Even if the driver of a vehicle wishing to turn into Wildground Lane was fully aware of a vehicle wishing to turn out, on-street parking could again result in some manoeuvring on the highway. This is because Butts Ash Lane is not generally wide enough to allow 2 vehicles to pass comfortably where parked vehicles are present. Such manoeuvring could again be hazardous.
23. Whilst potential for the above can all be considered to exist at present, the small number of dwellings currently accessed from Wildground Lane reduces the probability of incidents occurring. As the development would however provide a significant relative increase in the number of dwellings accessed, with up to 14 vehicles accommodated within the proposed layout, it follows that there would be a significant relative increase in risk. The level of increased risk would be unacceptable.
24. I have had regard to paragraph 108(c) of the National Planning Policy Framework (the Framework), which states that in assessing applications for development it should be ensured that any significant impacts on highway safety, can be cost effectively mitigated to an acceptable degree. In this case no scope exists to widen the access adjacent to its junction with Butts Ash Lane in order to allow vehicles to simultaneously enter and access Wildground Lane. As such, the increased risk to safe use of the highway that arising from the development cannot be mitigated. As such paragraph 109 of the Framework confirms valid grounds for refusal of planning permission.
25. For the reasons outline above I conclude that the development would have an unacceptably adverse impact on highways safety. Whilst the Council quoted Policy CS2 of the CS and Standing Advice in its decision, Policy CS2 does not relate to highways safety, and I have not been provided with a copy of the Standing Advice. The development would nonetheless conflict with the Framework as outlined above.

Biodiversity and green infrastructure

26. The proposed development would require in some limited removal of on-site trees, and greater coverage of the site by buildings and hard surfaces. The areas that would be affected for the most part currently contain a mixture of domestic lawn and garden planting.
27. An ecological survey submitted with the planning application concluded that the site was of generally low ecological value, that no protected species would be affected, and that the development would otherwise have a negligible impact on biodiversity. I saw no evidence during my visit to suggest otherwise. I

therefore consider that the impact of the scheme with regard to both on-site ecology and green infrastructure would be very limited.

28. Against this context, scope for enhancement of on-site biodiversity as part of the development clearly exists. Though the on-site enhancement measures specified within the ecology report are somewhat limited, they are nonetheless enhancements, and I am satisfied that further details of additional enhancement measures could be secured by condition. As such I see no fundamental conflict with Policy CS3 of the CS, which amongst other things states the intention to ensure that development contributes, where possible, to biodiversity by designing in wildlife.
29. The ecology report contains reference to a financial contribution that would be made to Hampshire and Isle of Wight Wildlife Trust towards a tree planting scheme in the area. However, the Council has not indicated that such a contribution would be necessary, and otherwise questions whether the intended purpose of the contribution could be achieved. Furthermore, the contribution itself is not clearly specified, and no means exist by which it could be appropriately secured. As such I have not taken it into account in reaching my decision.
30. For the reasons outlined above, I conclude that the development would not have an unacceptable impact with regard to on-site ecology and green infrastructure. It would therefore comply with Policy C3 of the CS which amongst other things states the intention to ensure that development contributes, where possible, to biodiversity by designing in wildlife.

Living conditions

31. The development would result in an increase in built form across the length of plot, and a change in orientation. On account of the differing layout and density of development towards the east and west, some scope for impact on occupants of neighbouring dwellings would thus exist. In this regard the Council's specific concern is in relation to garden space.
32. The increase in built form would substantially reduce the openness of the existing outlook on the east side of the front garden of Butts Ash Croft, and the first floor windows of Plots 1-3 would have views into this garden. The front garden of Butts Ash Croft is however largely occupied by a driveway and parking space. The resulting loss of privacy for neighbouring occupants would therefore be limited. As a reasonable gap would also exist between the proposed dwellings and the boundary, it is unlikely that the increased sense of enclosure would be unduly oppressive in its effect.
33. A substantial hedge currently exists between the site and Butts Ash Croft. Retention of this hedge could be secured by condition. Taking this and the relative positions of Plot 6 and the dwelling at Butts Ash Croft into account, very limited scope for overlooking of the private back garden space would exist, and there would be a negligible effect upon its quality of outlook. As such, overall, no unacceptable harm to the privacy and outlook of garden space at Butts Ash Croft would arise.
34. Modest overlooking of Elmcroft and Nyetimber to the east would arise. However a sufficient distance would exist between the development and these

dwellingings that the effects upon privacy and outlook would again be very limited, and private back garden space would be largely unaffected, if at all.

35. For the reasons outlined above I conclude that the development would not have an unacceptable effect on the living conditions of neighbours with particular regard to the privacy and outlook of garden space. The development would therefore comply with Policy CS2 of the CS which amongst other things requires that new development shall not cause unacceptable effects by reason of visual intrusion or overlooking, and supporting guidance in the Housing Design, Density and Character Supplementary Planning Document 2006.

Other Matters

36. Both parties agree that there is a need to contribute towards mitigation of potential adverse impacts on the integrity of habitats sites. Given my findings on the main issues however, this is not a matter I need to address further.
37. The appellant additionally points out that the site is well located with regard to existing services, and draws attention to paragraph 68 of the Framework, part (c) of which states that great weight should be given to the benefits of using suitable sites within existing settlements for homes. However, in neither regard however do these considerations alter or outweigh the degree of harm that would be caused by the proposed development.
38. The Council accepts, and the appellant emphasises, that it does not have a demonstrable 5-year supply of deliverable housing sites (5YHLS). Indeed the fact that a considerable shortfall exists is agreed, and I acknowledge that this has also been a point raised in other recent appeals. In the absence of a 5YHLS the policies most important for determining the application are out-of-date. Under paragraph 11 of the Framework planning permission should therefore 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. Despite the scale of shortfall, I consider that in this case the harm that would be caused to the character and appearance of the area, including protected trees, and to highways safety, would, in combination, significantly and demonstrably outweigh the modest social, environmental and economic benefits that 5 additional dwellingings would provide. As such paragraph 11 does not support the granting of planning permission in this instance.

Conclusion

39. Whilst I have found that the development would not have an unacceptable effect with regard to on-site biodiversity, green infrastructure, and the outlook from and privacy of neighbouring garden space, it would nonetheless cause unacceptable harm to the character and appearance of the area, including protected trees, and to highways safety. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR