
Appeal Decision

Site visit made on 25 June 2019

by Steven Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2019

Appeal Ref: APP/A1720/W/18/3219405

113 Newtown Road, Warsash, Hampshire SO31 9GY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr F Milner against the decision of Fareham Borough Council.
 - The application Ref P/18/0671/OA, dated 12 July 2018, was refused by notice dated 6 September 2018.
 - The development proposed is a dwelling in rear garden of 113 & 115 Newtown Road, Warsash.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal seeks outline permission with all matters reserved except for access. In so far as the submitted plans and drawings show details of matters other than the access, I have treated those as being purely illustrative.

Main Issues

3. The main issues are the effect of the development on:
 - The character and appearance of the area
 - Highway safety
 - Living conditions of neighbours
 - The safeguarding of a protected oak tree and the amenities of future occupiers
 - The protected habitats of the Solent Coastal Special Protection Areas

Reasons

Character and Appearance

4. This is a residential area, although the Maritime College is opposite the site access. The proposal would be for a single dwelling to the rear of Nos 113 and 115 Newtown Road. The proposal would split the plots of 113 and 115, reducing their rear garden size by a substantial amount to allow space for the new dwelling, which would sit within a similar sized plot.

5. Several of the plots either side of Nos 113 and 115 are large and narrow, with extensive rear gardens. However, these properties appear to have longer gardens than many of the other plots in the area of the site, including some that front Newtown Road. As such, the size of the resultant plots for Nos 113 and 115, together with that of the proposed dwelling, would not appear cramped within the context of this residential area. Neither will the proposed plot sizes detract from the spacious of the area, as this characteristic varies significantly already. Furthermore, all the existing and proposed dwelling would still have rear garden spaces which are not insubstantial. It is stated that the proposed dwelling would provide approximately 11m depth, which the Council recommends as a minimum in its 'Design Guidance' Supplementary Planning Document.
6. The indicative layout plan does show the proposed dwelling built up towards the side boundaries of the plot, but this is not unusual in the area. For example, the dwelling is set behind a terraced row which therefore has dwellings extending between the side boundaries of their plot. Furthermore, the indicative plan does show a clear space between the side of the proposed house and the boundaries.
7. There would be parking spaces to the front of the proposed house, but these replace an existing garage and would not be prominent features. There are also several other examples of parking spaces to the front of dwellings in the area. As such, this would not be an incongruous arrangement for this location.
8. The Council has stated that the 'backland' position of the proposed house would be out of keeping with the area. However, the proposed dwelling would utilise an existing shared access, which already serves another dwelling to the rear of the site. In this circumstance, the position of the proposed dwelling is appropriate.
9. The new dwelling would result in the loss of some existing hedgerows, though these are not in a particularly prominent location where this would significantly detract from the landscaped characteristics of the street scene.
10. I am aware of previous application refusals for a house at this location, with issues such as the impact to the character and appearance of the area, although this was a long time ago and the policy framework would have changed. I have considered the proposal on the basis of current policy and its position within the existing street scene.
11. As such, the proposal would not result in an intrusive and cramped form of development and therefore accords with policies CS15 and CS17 of the adopted Fareham Borough Core Strategy. This policy seeks to, amongst other things, require development to be of a high-quality design including responding to local characteristics such as spaciousness. The proposal is also in general accordance with Fareham Borough Design Guidance Supplementary Planning Document (Excluding Welborne) (adopted December 2015).

Highway Issues

12. The proposed dwelling would be accessed via an existing private drive, which currently serves as access to neighbouring property No 111 and also to the detached garage of No 113. There is no proposal to significantly alter the access onto Newtown Road.

13. The existing access is narrow and would not allow for two vehicles to pass. The proposal does include a possible passing area adjacent to the three parking spaces for the proposed house. Even with the passing area provided, there may still be some cases where vehicles would be entering the private drive when others are seeking to exit onto Newtown Road. However, this proposal is for a single dwelling, which would not likely result in a significant increase in traffic on this lane. Incidences where vehicles may have to wait on Newtown Road for another vehicle to exit is not likely to be a regular scenario.
14. Newtown Road does not appear to have a high level of traffic and does include traffic calming measures. With this in mind, it has not been sufficiently demonstrated that if a vehicle had to wait on Newtown Road for a short time, or reverse out of the lane, that this would have a harmful effect to highway safety. Neither is there substantive evidence to indicate that the proposed dwelling would result in problems with access for emergency vehicles. In this circumstance, the proposed access arrangement would not result in significant adverse effects to highway safety or the flow of traffic along this route.
15. The proposal therefore accords with Policies CS5 of the Fareham Borough Core Strategy. This policy seeks to, amongst other things, safeguard the safety and operation of highway and transport networks.

Neighbour Living Conditions

16. The proposal for the additional dwelling would result in a likely increase of traffic along the private road, which runs adjacent to the side of the existing dwelling at No 113 Newtown Road. However, there is no substantive evidence as to the likely additional traffic as a result of the proposed dwelling using this lane to the side of No 113. The indicative layout shows three spaces, but this does not suggest a significant increase in traffic along this lane.
17. Furthermore, there are no windows in the ground floor side of No 113, which also indicates that any additional traffic movements on the lane would not result in significant noise and disturbance to occupiers inside the house. The noise of vehicles on the gravel passing the garden area would likely be audible but would likely be only for a brief time and also likely to be infrequent.
18. There is a window in the side of No 109 on the opposite side of the lane, but this is set off the boundary. In any case, a substantial increase in traffic movements on this lane has not been demonstrated as a likely occurrence. There should be no significant disturbance to occupiers of this neighbouring dwelling, or any other neighbours in the vicinity.
19. The proposal is in outline currently, with the final scale and design of the dwelling reserved matters. As such, it cannot be determined to any definite level at this stage as to the effect it would have on neighbour living conditions in regard to overlooking impact, for example.
20. Overall, the development of the proposed dwelling would not likely result in significant noise and disturbance to occupiers of neighbouring dwellings to the access lane or have any other significant impact to neighbour living conditions. The proposal is therefore in accordance with policy DSP2 of the Fareham Borough Local Plan Part 2: Development Sites & Policies, which seeks to safeguard neighbouring development from impacts such as noise.

Issue of existing Oak Tree

21. There is an oak tree in the rear corner of the site, in what would be the rear garden of the proposed house. It is a tall and mature tree, which is protected under Tree Preservation Order 277 (1993).
22. Whilst the tree is tall, the shadow it would cast would only affect the rear garden of the proposed house for a limited period of the day. On this basis I do not regard the reduction in light to the garden or proposed house to result in significant pressure to remove the tree, which is protected also. Furthermore, though the tree is large, there is no substantive evidence to suggest that future occupiers would find it overbearing to the extent they would seek to fell it. From the information submitted I regard the rear garden of the proposed house would be a suitable amenity space for future occupants with the tree remaining.
23. The proposal should not have an adverse effect on the future of the protected oak tree from pressure to be removed from future occupants, who would not have their living conditions significantly impinged by the tree. Therefore, the proposal is in accordance with policy CS17 of the Fareham Borough Core Strategy, which seeks to secure adequate amenities for future occupiers.

Habitat Impacts

24. The Solent coastline and the designated Solent Coastal Special Protection Areas (SPA) would be accessible from the site which is nearby. The SPAs have wintering birds and is a habitat of international importance. The Council and Natural England, through the Solent Recreation Mitigation Partnership (SRMP), has concluded that the likelihood of a significant effect of new development such as that proposed in this area, in combination with new housing around the Solent, cannot be ruled out.
25. I must undertake an Appropriate Assessment (AA) in absence of any mitigation proposed. This I have done on a proportionate basis drawing on information provided by the Council. The birds and habitat are susceptible to recreational disturbance associated with additional residents. For all these reasons, the development, in combination with other development coming forward, would have a significant effect on the designated site's conservation objectives, and adversely affect its integrity. Therefore, increased recreational visits associated with the new house (even a single dwelling such as proposed in this instance), would be likely to have a significant adverse effect, in combination with other schemes, on the protected sites, due to its close proximity to the SPA.
26. Therefore, in line with the biodiversity policies of the Framework and policies such as DSP15 of the Fareham Local Plan (LP) Part 2: Development Sites and Policies 2015 in particular, mitigation would be required to make the appeal development acceptable.
27. For the purposes of the Habitat Regulations, Natural England (NE) is the Statutory Nature Conservation Body. NE is within the partnership (SRMP) which have produced the strategy which includes collecting a funding contribution that is in line with the agreed strategic approach for the mitigation of impacts on European Sites as set out in the Solent Recreation Mitigation Strategy.
28. The appellant suggests they would accept a condition requiring the contribution. However, this would likely be a condition that would effectively

require a legal agreement, which would be a more secure and enforceable form of agreement. Planning Practice Guidance states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases. As such, use of a condition is not regarded as appropriate in this circumstance.

29. I am aware that Planning Inspectorate's Environmental Impact Assessment dated 7th March 2019 stated that the proposal would not likely result in a significant environmental impact. However, this was not an assessment that related to whether there would be an impact, in combination with other housing development around the Solent, to the SPAs. The assessment conducted with this decision related to the potential impact to the SPAs and found that there would likely be adverse impacts to these European sites with mitigation therefore required.
30. It may be that there was a lack of information at planning application stage about this issue, but the matter is included in the Council's report and Decision Notice, but has not adequately been addressed as no contribution has been made at this stage.
31. As such there is no implementable mechanism before me, to secure any mitigation. There are also no alternative solutions before me which would have a lesser effect, or avoid an adverse effect, on the integrity of the designated site. Consequently, a priority habitat or species would be affected by the proposal. Whilst the development would result in a new dwelling towards local housing supply, I would not regard this as a sufficiently imperative reason of public interest to override the harm to the designated site.
32. Taking account of the precautionary principle contained within the European Habitat Regulations, I can only conclude that the proposal would have a significant adverse effect on the SPA and would conflict with policies CS6, CS9 and CS15 of the Fareham Borough Core Strategy, and DSP15 of the Fareham Local Plan (LP) Part 2: Development Sites and Policies 2015.

Conclusion

33. Although I have found that the proposal would not harm the living conditions of neighbours or future occupiers, the character and appearance of the area, or highway safety, the harm that I have found to the nature conservation interests of the European protected sites is a significant and compelling reason to dismiss the appeal. The proposal would conflict with the development plan as a whole, and with the Framework. Therefore, the appeal should be dismissed.

Steven Rennie

INSPECTOR