
Appeal Decision

Hearing Held on 21 August 2019

Site visit made on 21 August 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal Ref: APP/M1710/W/18/3215345

Churchers College, Ramshill, Petersfield, Hampshire GU31 4AS

- 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 Churchers College against the decision of East Hampshire District Council.
 - The application Ref SDNP/18/01456/FUL, dated 14 March 2018, was refused by notice dated 26 September 2018.
 - The development proposed is extension of existing tennis and netball court footprint with associated ground level changes and retaining wall.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Churchers College against East Hampshire District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The South Downs National Park Local Plan (the Local Plan) has been adopted since the appeal was submitted and this Plan replaces the East Hampshire District Local Plan: Joint Core Strategy (the Core Strategy) that was in place at the time the Council determined the planning application and issued its decision notice. Policy CP29 from the Core Strategy referred to by the Council in its reason for refusal has been superseded by those policies contained within the Local Plan. Both main parties have commented on the relevance of the new Plan policies as part of their jointly agreed Statement of Common Ground. It was agreed by the main parties at the hearing that Policy SD5 was the most applicable Local Plan policy relating to this appeal.
4. A revised version of the National Planning Policy Framework (the Framework) has also been published since the planning application was determined by the Council. Paragraph 127 of the Framework has been referred to by the Council in its reason for refusal. Both main parties agreed at the hearing that the revisions to the Framework have not altered the wording of paragraph 127 subsequent to the Council issuing its decision notice.

5. Various measurements relating to heights of land levels and fences, along with distances between the playing courts and No 9 Churchfield Road (No 9), have been cited within both the Appellant's and Council's cases. However, there were discrepancies between parties in respect of this information. A jointly agreed Statement of Common Ground has been provided. The main parties advised at the hearing that they had met and agreed measurements between them, and this has informed those measurements cited within the Statement of Common Ground. I am satisfied that the measurements put forward within the Statement of Common Ground are correct and can be relied upon. I have therefore considered this appeal having regard to those measurements set out within the Statement of Common Ground (along with a correction to one of the measurements cited that was highlighted to be incorrect at the hearing).

Main Issue

6. The main issue in this case is the effect of the proposed development upon the living conditions of the adjoining occupiers at No 9 Churchfield Road, with particular regard to the development's visual dominance and overbearing impacts.

Reasons

7. No 9 shares a boundary with the appeal site and has a number of side windows and a first-floor roof terrace that have outlook over the Churchers College playing fields in close proximity to the common boundary with the playing fields. Along the side boundary of No 9 is a wall topped by a fence that is just marginally higher than the cill height relating to the ground floor kitchen window at the flank elevation. There is also a wire mesh fence running adjacent to the wall within the playing field that is taller than the side boundary of No 9. Having visited No 9 there is clear view from the kitchen's side window toward the playing fields and the existing mesh fence does not obscure visibility of the Churchers College grounds.
8. The land immediately south of the existing playing courts falls away and No 9 is also positioned at a lower land level to that of the existing courts. The existing courts can be seen in oblique view from the flank elevation kitchen window of No 9. Whilst this is a tall feature in the outlook from the kitchen, one needs to be in reasonably close proximity to the window to observe the existing courts.
9. The proposed enlargement of the courts would extend the existing courts southward. As the land within the playing field to the south of the existing courts slopes away from the courts to a significantly lower level to that of the existing courts, the proposal involves raising the land level by 1.73m (at the south raised ground level mid-point) to create the finished ground level of the playing courts. It is also proposed to erect a 3m high chain link fence around the south and eastern boundaries of the courts at the raised ground level. By extending the playing courts 14.5m south of the current courts location this would bring the southern boundary of the courts roughly in line with the direct outlook from the flank kitchen window of No 9. The raising of the land level and erection of a 3m high fence would, in combination, create a development of significant height that would be clearly visible in the direct outlook from the kitchen of No 9.

10. Although the land level of No 9 has not been formally established, I could see at my site visit that No 9 would have a significantly lower siting to that of the finished ground level of the extended playing courts. Whilst, the proposed courts would be 15.05m from the flank elevation of No 9, the proposal would be clearly visible in close proximity in the outlook from the kitchen.
11. Furthermore, as No 9 would be positioned at a lower land level, this would make the visual impression of the height of the proposed development more pronounced when observed from the kitchen. Therefore, due to the proposal's overall height and proximity to No 9, along with upward angle in which the new courts would be seen and experienced in the outlook from the kitchen, the proposal would be extremely dominant in the outlook from the kitchen.
12. The kitchen is a habitable room in which the occupiers are likely to spend a reasonable amount of their time. The proposed development would have an overbearing effect on the occupiers, and this would significantly reduce the enjoyment of their living environment and their home. The proposal is therefore harmful for this reason. Whilst the appellant contends that there is no 'right to a view', the matter as I see it is not one of a scenic view but is one of physical development and its impact upon outlook and neighbourliness.
13. I have also considered the proposal in respect of the outlook from first floor windows and roof terrace of No 9. It is evident that the proposal would be clearly visible from these habitable living spaces. However, the angle of observation would be downward toward the proposed extended playing courts. As such, the impression of being dominated by the proposed development would be less. I do not consider the proposal would have a significant harmful impact upon the occupiers in regard to outlook from these living spaces.
14. The appellant has provided visualisations that illustrate potential new landscaping (trees) that could be planted between the eastern side of the courts and the boundary of No 9. I am mindful of the advice provided within the Framework in relation to the option of imposing planning conditions that would otherwise make an unacceptable development acceptable.
15. Having discussed this option at the hearing I consider some form of landscape planting could be put in place that would reduce the visibility of the proposed playing courts in the outlook of No 9. However, given the height of the proposed development, this would necessitate the creation a significant landscape feature to obscure the visibility of the courts. This would take place in closer proximity to No 9 than that of the proposed court development. I consider the landscaping would be an oppressive feature in the outlook from the kitchen and would also have a dominating and overbearing effect upon the living conditions of the occupiers of No 9. Consequently, I do not consider this would overcome my above concerns and would not make the proposed development acceptable.
16. The appellant has referred me to the East Hampshire Supplementary Planning Document (SPD): Residential Extensions and Householder Development that sets out a requirement for a minimum of a 12m separation distance between the flank wall of a two-storey side extension and rear elevation of a neighbouring property. However, it must be noted that that guidance has been

produced to assist the consideration of planning applications pertaining specifically to residential development, which is not the case here.

17. That said, the appellant draws my attention to the open nature of the proposed mesh fence that would border the playing courts and points out that this would be less tall and bulky than that of a solid two-storey flank dwelling wall. The suggestion put to me is that if a solid brick wall is acceptable in a residential location, then the proposed open mesh fence should be acceptable in the context of the proposal before me. Further to this, the appellant has provided a photograph of a situation in which the scenario of the minimum separation between flank and three-storey side wall has taken place with a separation of 10.5m, less than that advocated by the SPD. However, that scenario, as I understand it, relates to residential development and not to sport recreation facilities. Furthermore, there does not appear to have been land level considerations pertaining to that development and I have not been advised otherwise.
18. Even if the separation distance advocated by the SPD were to be applied, consideration must nevertheless be given to the particular circumstances of the proposal, which in this case hosts land level considerations that consequently impact upon the neighbourliness of the proposed development. Although a chain link fence would not be of solid form, the resulting ground level height of the playing courts and its enclosing fencing would be experienced as a dominant feature in the outlook of No 9, particularly as that property would be positioned at a lower ground level to that of the proposed extended playing courts. This proposal, therefore, can and should be considered on its own merits taking into consideration the specific circumstances relating to this site and the surrounding area.
19. The appellant has also directed me to paragraph 182 of the Framework. This paragraph indicates that, amongst other matters, existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. However, this does not provide a carte blanche approach to development at the College that would negate the application of the planning process and the requirement to consider proposed developments within the present circumstances of the site and in relation to current development plan policies.
20. For these reasons, I conclude that the proposed development would be harmful to the living conditions of the adjoining occupiers at No 9 Churchfield Road, particularly in regard to the development's visual dominance and overbearing impacts. The proposal would, therefore, conflict with Policy SD5 of the Local Plan and paragraph 127 of the Framework that seek, amongst other matters, development to avoid having a harmful impact upon any surrounding uses and amenities and to achieve a high standard of amenity for existing and future users.

Other Matters

21. I acknowledge that the ground level relating to the northern end of the courts would be lowered, but this does not overcome my concerns in regard to the impacts upon the living conditions of the occupiers of No 9 or justify the proposed development.

22. Interested parties raise additional objections to the proposal that including potential noise, lighting and drainage, amongst other matters. I consider these matters could be satisfactorily controlled by the imposition of appropriately worded planning conditions. However, those conditions would not overcome my concerns in respect of the main issue.
23. The appellant has also raised concerns with regard to the Council's handling of the planning application and the time it took to reach its decision. However, those are matters separate to that of the planning considerations relating to this appeal.

Conclusion

24. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ian Ellis, Southern Planning Practice
David Robins, Churchers College

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Wiltshire, East Hampshire District Council
Katherine Pang, East Hampshire District Council

INTERESTED PARTIES:

John Gummerson, Local Resident
Howard Smith, Local Resident
Ted Finnerun, Local Resident
James Lewis, Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Plans 3775/10 Revision B, 3775/11 and 3775/12 Revision A at A1 size
2. Copy of Council letter confirming date, time and place of hearing, along with list of recipients
3. Council submitted an additional suggested condition relating to surface water drainage.
4. Appellant's updated cost application
5. Council's updated cost rebuttal
6. Appellant's verbal comments to the Council's updated cost rebuttal