
Appeal Decision

Site visit made on 25 June 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2019

Appeal Ref: APP/A1720/W/18/3216776

**Rear of 39-41 Home Rule Road, Locks Heath, Fareham, Hampshire
SO31 6LH**

- 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 Derek Ward against the decision of Fareham Borough Council.
 - The application Ref P/18/0869/OA, dated 28 July 2018, was refused by notice dated 27 September 2018.
 - The development proposed is described as "Outline application with all matters reserved (except access and layout) for the provision of 1no. dwelling to rear of 39 & 41 Home Rule Road with access from Chancel Road".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Derek Ward against Fareham Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal seeks outline permission with all matters reserved except for access and layout. In so far as the submitted plans and drawings show details of matters other than the access and layout, I have treated those as being purely illustrative.
4. The address of the site is taken from the appeal form and Council Notice of Decision, as this is a clear and accurate address for the site.

Main Issues

5. The main issues are:
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on the living conditions of neighbours to the site;
 - The effect of the development on the protected habitats of the European Sites in the area.

Reasons

Character and Appearance

6. The site of the proposed house is to the rear of the long gardens of 39-41 Home Rule Road. The end of these gardens currently abuts Chancel Road. These are residential streets, with Chancel Road having houses along the southern side of this road, but the houses to the northern side are more sporadic, with the rear gardens of Home Rule Road in-between.
7. The proposal would introduce a new dwelling where there are currently just the ends of long gardens and a fence boundary. Whilst this would alter the character of this small section of Chancel Road, this is otherwise a residential street mostly lined with houses. Indeed, the site is adjacent to No 14 Chancel Road, which would be different in some ways to that proposed, but it is a dwelling arranged perpendicular to the road in a similar layout to that shown on the submitted plans for the new dwelling.
8. There is some landscaping in the existing rear gardens that make up the site, and a grass verge adjacent to the road. Some of the verge could remain, as the proposal seeks to provide vehicular access in approximately the same location as existing. There would be some trees and other vegetation that would have to be removed, but these are not protected, based on the information I have before me. Furthermore, they do not appear to be of particularly high value in their contribution to the street scene character.
9. The proposed house would also have an area of garden against the boundary with Chancel Road, which could provide some level of landscaping over time and have a similar visual contribution to that of the existing rear gardens adjacent to Chancel Road.
10. There would not be much space for landscaping to the side of the proposed house along Chancel Road, but this is a relatively small area, with sufficient remaining space in the plot to provide various forms of landscaping. Details of landscaping have not been fully submitted as this is a reserved matter. However, I do not regard the proposed dwelling as having an adverse effect to the verdant character of the street based on the evidence at this stage.
11. I recognise that some of the plots nearest the site are generally larger than that proposed, but in the wider area there is a variety of plot sizes, many comparable to the plot which the proposed house would sit within. Therefore, the plot would not appear incongruous or cramped within the wider character of the area.
12. For these reasons, the proposed dwelling would not appear overly prominent or have a harmful impact to the character and appearance of this area, thereby being in accordance with Policy CS17 (High Quality Design) of the adopted Fareham Borough Core Strategy which seeks to require development to respond positively to the character of the area, amongst other things.

Living Conditions

13. The proposed dwelling would be positioned in what is partially the rear garden of No 41 Home Rule Road. This would result in the rear garden of No 41 being

approximately 11.5m minimum in length, which is significantly less than existing. However, this would still be a sufficiently spacious rear garden to serve the occupants.

14. There would be a view of the side of the proposed house from the rear of No 41 and its rear garden. However, the house as indicated is not especially large and the building would not extend across the entire rear boundary of No 41. There would remain views beyond and would therefore have no significant detrimental effect to the outlook for occupants. Furthermore, the remaining length of garden is such that the new dwelling would not appear imposing for occupants when viewed from the house.
15. Details of the design and scale of the dwelling are also reserved matters and so it is not possible to determine the exact extent of any impacts to neighbours' living conditions. At this stage there is no reason to find that a house cannot be developed at this site without significant adverse impacts to the living conditions of the neighbours at No 41 or any other neighbours to the site.
16. Therefore, the proposed development, from the information before me, would not be harmful to the living condition of neighbours to the site or be an unneighbourly addition to the area, and would be in accordance with Policy DSP3 of Local Plan Part 2: Development Sites, which seeks to protect the amenities of neighbours from unacceptable effects such as diminished outlook.

Habitat Impacts

17. The site is within 3km of the Solent Maritime Special Area of Conservation (SAC) Solent and Southampton Water Special Protection Area (SPA) and the Solent and Dorset Coast potential Special Protection Area (pSPA). As such, it is necessary for me to consider any significant effects that the development may have on these designated sites, which are protected by the European Habitats Directive and, in turn, through domestic legislation in the Habitat Regulations.
18. In the light of a recent judgement of the European Court of Justice, it is necessary that I firstly consider through a screening exercise whether the development would, alone or in combination with others, have a significant effect on the designated sites; and if so, secondly to undertake an 'appropriate assessment' (AA).

Screening Exercise

19. The Solent coast is internationally important in providing mudflats, shingle and saltmarshes which are essential feeding and roosting habitats for overwintering birds. The area attracts waders and a large population of other important bird species.
20. The Solent also attracts substantial numbers of recreational visits every year which has the potential, particularly through dog walking, to disturb the birdlife. Particular threats posed by such disturbance include birds being displaced as well as increasing competition for access to undisturbed food-rich areas. Migrating birds rely on these habitats to build up energy reserves to undertake their return journeys and to breed. A consequence of them not being able to do so could be a reduction in their overall population.
21. Additional pressures in this regard will arise as a result of new house building. Accordingly, I consider that occupation of the proposed development would be

likely to increase recreational pressures on the SPA/SAC and, either alone or in combination with other development in the area, would have a significant effect on them. It is therefore necessary for an AA to be undertaken.

Appropriate Assessment

22. Having concluded that AA is necessary, it is permissible for me to have regard to any proposed avoidance or mitigation measures. Accordingly, I have had regard to 'Bird Aware' Solent's Recreational Mitigation Strategy (SRMP).
23. The SRMP has been prepared by a partnership of local authorities and conservation bodies including Natural England (NE) and has been the subject of public consultation. It seeks to provide a strategic mechanism to secure mitigation, in perpetuity, for the additional disturbance to birds as a result of house building around the Solent
24. Specific measures include: a team of rangers, communications, marketing and education initiatives, initiatives to facilitate and encourage responsible dog walking, codes of conduct, site-specific visitor management and bird refuge projects, new/enhanced strategic green space, a delivery officer and monitoring to help adjust to mitigation measures as necessary. Non-infrastructure costs are met through developer contributions.
25. For the purposes of the Habitat Regulations, NE is the Statutory Nature Conservation Body (SNCB). As part of the AA, NE has now been consulted. They have stated they have no objection to the proposal provided that the applicant is complying with the SRMP as agreed by the Solent Recreation Mitigation Partnership.
26. The appellant has paid a sum of money direct to the Council and is the sum required by the Strategy based on the scale of the proposal. However, as the competent authority determining an appeal, there is no legal agreement signed by both parties that the monies transferred would be spent as required by the Strategy to provide suitable mitigation.
27. Whilst I am not suggesting that the Council may not use the contribution in the manner intended by the appellant, in line with the adopted strategy, I am the competent authority in the determination of this appeal. Whether or not the amount that is said to have been paid is sufficient, I have no substantive evidence that there is an adequately binding agreement that provides categorical reassurance that the appellant's contributions will ensure that significant adverse effects to biodiversity are avoided.
28. I note that the required contribution is for a relatively small sum of money and that the development by itself may not cause significant adverse effects. However, the Strategy indicates that all development in combination with other proposals will still identify significant adverse effects without mitigation. Following a precautionary approach, I am therefore not satisfied that significant adverse effects to the European nature conservation sites would not arise from the development.

Deterioration of the water environment

29. NE has produced advice on achieving nutrient neutrality for new development in the Solent region. This advice states that the nutrient inputs are currently caused mostly by waste water from existing housing and agricultural sources

and that the resulting eutrophication is impacting on the Solent's protected habitats and bird species. There is uncertainty at the present time as to whether new residential development will further deteriorate the SPAs and one way to address the uncertainty is for new development to achieve nutrient neutrality. NE states that it is appreciated that it may be difficult for smaller developments to achieve nutrient neutrality and that it is working together with a number of Councils to progress mitigation strategies that cover the Council's areas and include more strategic options.

30. However, whilst I sympathise with the that this is an issue raised I do not have details of a mitigation strategies for nutrient neutrality that is in place. I also have no comment as to alternative mitigation that is specific to this site.
31. The evidence before me indicates that there is the potential for the additional waste water associated with the proposal to adversely affect the integrity of the SPAs and that presently there is uncertainty in relation to how this could be mitigated. Accordingly, I cannot therefore be certain that the proposal would not adversely affect the integrity of the SPAs in this way.

Conclusion on European Sites

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 European Sites and would conflict with the National Planning Policy Framework on this matter.

Final Conclusion

33. Although I have found that the proposal would not result in harm to the character and appearance of the area or to the living conditions of neighbours, the harm that I have found in respect of European Sites at the Solent is significant and is a compelling reason to dismiss the appeal. For the reasons given above, I conclude that the proposal should be dismissed.

S. Rennie
INSPECTOR