



Appeal Decision

Site visit made on 6 August 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref: APP/W1715/W/18/3217502

The Brambles, Stubbs Drove, Hedge End SO30 0FU

- 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 Gill against the decision of Eastleigh Borough Council.
 - The application Ref H/18/83824, dated 13 August 2018, was refused by notice dated 17 September 2018.
 - The development proposed is to convert double garage to an annexe with side extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development set out above is taken from the application form with the addition of the wording "with side extension" as this more accurately reflects the proposal and was included on the decision notice. The side extension is clear from the plans and therefore no party has been affected by this added clarification.
3. The submitted plans show that the existing building is a detached double garage. However, at my site visit I noted that the building had been converted to habitable accommodation. The front garage door had been replaced by areas of solid render with two bay windows and a side, timber clad entrance porch had been added. The pitch of the roof also appeared shallower, with a related lower ridge, than the submitted plans, although this may be a drafting error. As some of these elements differ from the proposed plans and I have no documented background to the works that have taken place, I intend to consider the appeal based on the submitted plans and the details of the proposal before me.
4. Since the Council refused the proposal, Natural England (NE) has published advice on achieving nutrient neutrality for new development in the Solent region¹. This document has been drawn to my attention and NE is currently advising that there is uncertainty as to whether the waste water arising from new housing in the Solent area will have an adverse effect on protected wildlife sites, in this case, on the River Itchen Special Area of Conservation, the Solent and Southampton Water Special Protection Area and Ramsar site, and the Solent Maritime Special Area of Conservation (the habitats sites) in the area.

¹ Natural England – Version 2 June 2019 - Advice on Achieving Nutrient Neutrality for New Development in the Solent Region for Local Planning Authorities.

5. Both main parties and NE have been given the opportunity during the appeal process to comment on these matters and the applicability of the advice to the proposal, and therefore would not be prejudiced by my consideration of them. I have a duty as the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to consider whether the proposal would be likely to have a significant effect on the integrity of the designated habitats sites in the area.

Main Issues

6. The main issues are:

- the effect of the development on the habitats sites, and
- whether the development would form annexe accommodation to the main dwelling or form a separate independent dwelling and, if the latter were to be the case, whether this would be acceptable.

Reasons

Habitats sites

7. NE advise that the water environment within the Solent region is one of the most important for wildlife in the United Kingdom and the Solent water is of international importance for wildlife. NE indicate that there are high levels of nitrogen and phosphorus input to this water environment with sound evidence that these nutrients are currently caused mostly by waste water from existing housing and agricultural sources and the resulting dense mats of green algae are impacting on the Solent's protected habitats and bird species.
8. There is uncertainty at the present time as to whether new residential development will further deteriorate the protected sites and NE indicate that one way to address this uncertainty is for new development to achieve nutrient neutrality. NE is working with other bodies to progress mitigation strategies that cover the areas, and this may include strategic options and/or a financial contribution.
9. NE appreciates that achieving nutrient neutrality may be difficult for smaller developments and I appreciate that this matter has arisen during the processing of the application. Nevertheless, because of the Habitats Regulations this needs to be examined based on the information before me.
10. It is NE's view, set out in the general advice, that there is a likely significant effect on the internationally designated sites (Special Protection Areas, Special Areas of Conservation, potential Special Protection Areas) due to the increase in waste water from the new developments coming forward.
11. In relation to the nutrient loading from waste water from the site, the evidence indicates that it would lie within the catchment of waste water treatment works (WWTW) that discharge into the River Itchen, or the River Itchen estuary or the Solent. As a result, the effluent flow and quality from the WWTW has the potential to affect individually or in-combination the habitats sites.
12. I have noted the appellant's argument that the proposal is not new development. It is explained that three people live in the main house and the proposal would enable those three people to be shared between the two buildings, so there would be no increase in waste water. However, while this is

- noted, any permission would run with the land and in the future the number of occupants could increase because of the overall size of the accommodation, without the need for any further permission.
13. In this case, the proposal is for additional accommodation that includes all the facilities for day to day living including a bedroom and bathroom. Even if I was to accept that the accommodation would be an annexe, it would still in the longer term, in all likelihood, allow an increase in overnight sleeping accommodation in addition to that within the dwelling. While there could be a close family association and interdependence with the main dwelling, because the annexe would have all the facilities of a dwelling and be detached from the main building, the effect, in my view, would be to produce waste water over and above that of the main dwelling and in broad proportion to that of a one bedroom unit of accommodation. This would add to the nutrient burden entering the waste water system and in turn have an individual or in combination effect on the habitats sites in the area. It is NE's advice to be as precautionary as possible when addressing uncertainty and calculating nutrient budgets.
 14. Taking into account all of the above, there would be a likely increase in waste water associated with the proposed detached annexe and that this has the potential to adversely affect the integrity of the identified habitats sites. There is presently uncertainty as to how this could be mitigated and I have not been presented with robust evidence that the scheme could be nutrient neutral.
 15. The reason for refusal also raises a further habitats issue. The evidence indicates that the site is located within the zone of recreational influence for the Solent and Southampton Water Special Protection Area. The Solent Recreation Mitigation Strategy (SRMS) advises that the Solent coast, particularly its mudflats, shingle and salt marshes, provide essential winter feeding and roosting grounds for birds that spend winter in the area. The wide range of recreational activities which take place on the coast can result in disturbance to the birds, albeit often unintentional, and this can ultimately adversely affect the bird populations.
 16. The SRMS aims to prevent bird disturbance from recreational activities in a strategic way. A contribution is required for every net additional dwelling within the 5.6km zone unless it is demonstrated that bespoke provision to fully mitigate the recreational impacts from the development can be secured.
 17. The SRMS explains that a dwelling includes net new dwellings created through sub-division of existing dwellings, second homes, dwellings to be used as holiday accommodation, self-contained student accommodation, and new dwellings created through approvals under the General Permitted Development Order. While annexes are not specifically identified in the SRMS, as explained above, in this case the accommodation would be detached and have all the facilities of a small dwelling. I have not been presented with robust evidence that the detached annexe, because of the potential for additional residents in the longer term, would not lead to some increased recreational pressure on the SPA. Such recreational pressure would, based on the evidence and in combination with other sites, in all likelihood, lead to an adverse impact on the integrity of the habitats sites.
 18. An appropriate means to secure the mitigation of the potential recreational pressure associated with the development has not been provided. Accordingly,

in respect of this matter, I cannot be certain that the proposal would not significantly and adversely affect the integrity of the habitats sites.

19. In terms of the approach set out in the Habitats Regulations, while the information is that the proposal would accommodate a relative of the occupiers of the main house, I have not been provided with evidence that this is the only solution available to meet the housing needs in this case. Furthermore, taking into account the merits of the case, I do not consider that there are imperative reasons of overriding public interest to justify permitting the development.
20. I have noted the comments of the appellant that the addition of the side extension is not likely to adversely affect the integrity of European nature conservation sites, that large developments have been permitted in the surrounding countryside and, if this were to be the case, then it is questioned whether anything can now be built. I do not have detailed information regarding the circumstances of these other permissions, however as explained above, I am required to have regard to all the evidence before me and make an assessment under the Habitats Regulations.
21. In the light of the above analysis, I conclude that the proposal would be likely to adversely impact on the integrity of the habitats sites and therefore conflict with Policy DM9 of the Eastleigh Borough Local Plan 2011-2029 (the Local Plan), and Policy DM11 of the emerging Eastleigh Borough Local Plan 2016-2036 (the emerging Local Plan) which sets out, amongst other things, that development which is likely to adversely affect the integrity of an international or European nature conservation site will not be permitted. I attach moderate weight to Policy DM11 of the emerging Local Plan because of its stage in the Local Plan process and its consistency with the policies in the National Planning Policy Framework (the Framework).

Annexe or separate dwelling

22. The garage would be extended and converted to provide living accommodation. The space would provide all the day-to-day facilities and accommodation of a dwelling. However, the appellant is clear that the intention is that the accommodation would be used as an annexe to the main house and would be willing to accept a planning condition in any approval to that effect.
23. The case of *Uttlesford DC v SSE & White* [1992] considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling – instead it would be a matter of fact and degree. In that case, the accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annexe with the occupant sharing her living activity in company with the family in the main dwelling. It was found that there was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.
24. I consider that similar circumstances apply in the present case. The outbuilding would be in reasonable proximity to the main dwelling, could share the intervening garden space and the parking area for both buildings would be adjoining and could be shared. The outbuilding as extended would still be appreciably smaller than the main house. In these circumstances, while it would not be good planning in respect of living conditions or the functioning of the site for the outbuilding to operate as an independent unit of

accommodation, the outbuilding is such that it could operate satisfactorily as an annexe in conjunction with the main dwelling.

25. Consequently, I am satisfied that providing the use was controlled by a planning condition to ensure that it would be occupied as an annexe to the main dwelling, then it need not form a separate unit of accommodation. Were that situation to change in the future, as a matter of fact and degree, then that would be a matter to consider at that time.
26. I have taken into account the advice in the Council's Supplementary Advice "Annexes for Dependent Relatives". In this case, the proposal would involve the appropriate conversion of an existing suitable outbuilding within the curtilage of the principal dwelling and the scheme would comply satisfactorily with the approach advocated.
27. Accordingly, I conclude that subject to an appropriate planning condition in any approval the garage as extended could function satisfactorily as an annexe and need not form a separate independent dwelling. As a consequence, there would be no undue conflict with saved policies 28.ES, 59.BE and 104.T of the Eastleigh Borough Local Plan 2001-2011, Policies DM1 and DM24 of the Local Plan, Policies DM1 and DM14 of the emerging Local Plan and the Framework, which seek amongst other things, to take full account of the context of the site including the character, appearance and land uses of the locality.

Other Matters

28. I have taken into account that Hedge End Town Council raise no objection to the proposal and that there would be benefits in an extended family living together in the relationship envisaged in the proposal. However, these matters do not outweigh my findings on the first main issue set out above.

Conclusion

29. I have found that the use of the extended building could be controlled by a suitably worded planning condition to ensure that it was occupied as an annexe and therefore this would address this issue. However, the proposal would be likely to adversely impact on the integrity of the habitats sites. This is a matter of considerable importance to which I attach substantial weight. This would be contrary to the adopted and emerging Local Plans and is not outweighed by other matters.
30. For the reasons explained above, and taking all other matters into account, the scheme would not accord with the development plan when considered as a whole and the evidence does not indicate a decision other than in accordance with the development plan would be justified. Accordingly, taking all other matters into account, I conclude the appeal should be dismissed.

David Wyborn

INSPECTOR