



Appeal Decision

Site visit made on 7 August 2019

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2019

Appeal Ref: APP/B1740/W/19/3229367

16 Avenue Road, New Milton, BH25 5JP

- 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 Johnson against the decision of New Forest District Council.
 - The application Ref 19/10287, dated the 5 March 2019, was refused by notice dated the 7 May 2019.
 - The development proposed is single storey bungalow with associated parking in garden area at R/O 16 Avenue Road, New Milton, BH25 5JP.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the character and appearance of the area; and
 - the effect of the proposed development on the living conditions of the occupiers of neighbouring properties in respect of noise and general disturbance.

Reasons

Character and appearance

3. The appeal site comprises 16 Avenue Road (No.16), a detached single storey bungalow with rooms in the roof and gardens to the front and rear. The surrounding area comprises a mixture of bungalows and two storey houses, which vary in terms of their layout, design, style and age.
4. Policy CS2 of the New Forest District (Outside the National Park) Core Strategy (CS) requires new development to respond positively to local distinctiveness. This is expanded further within the New Milton Local Distinctiveness Supplementary Planning Document (SPD). In relation to rear gardens, the SPD says that they can, collectively or combined, form a strong part of the local distinctiveness of individual areas through their greenery, tranquillity and biodiversity. The SPD continues by saying that even a single new development, within an undeveloped area of rear gardens, can destroy the integrity and value of the whole area.

5. The SPD diagram for 'Character Area 2 – Great Woar' identifies the rear garden to the appeal site as forming part of a 'larger garden spaces or groups of tranquil garden space'. This notation also extends over the rear garden of 18 Avenue Road, to the west, as well as a number of the rear gardens to the north, which form part of the properties fronting Fernhill Road and Leigh Road.
6. Within this context, the appeal proposal would introduce a large new building into the rear garden of No.16. Whilst it would be single storey, its eaves would extend above the existing boundary fencing. Combined with its large hipped and gabled roof, the proposed building would be prominent and highly visible from surrounding properties. The appeal proposal would introduce a significant mass of building where there is currently no similar development and would be out of keeping with the prevailing pattern of development.
7. As I observed on my site visit, this group of gardens, that the appeal site forms part of, does not contain any backland development. This contrasts with some parts of the surrounding area which have experienced a significant amount of backland development. Whilst the latter have, therefore, been more intensively developed, the group of gardens that include the appeal site have retained a sense of openness and greenery, which is a positive feature of the area. These gardens also provide a green backdrop in various vantage points on Avenue Road and surrounding roads. Whilst only glimpsed views are possible, these views are nevertheless an important feature of the character and appearance of the area.
8. The appellant acknowledges that there is no backland development within this group of gardens, but argues that this form of development is prevalent elsewhere and in a number of cases has been supported by the Council. The latter may be so, but that does not provide a justification for the appeal proposal. Furthermore, whilst I have been provided with examples of backland development permitted elsewhere, none of these are directly comparable to the appeal proposal. A number involved sites with a street frontage and other cases pre-date the policies of the CS and SPD. None appear to have involved locations where there was, as in this appeal, a large group of gardens, identified in the SPD, that remained undeveloped.
9. Whilst the appellant has questioned the consistency of the Council's approach to backland development, Policy CS2 of the CS does not contain an embargo on such development. Also, whilst reference has been made to the site being brownfield land, Annex 2 of the National Planning Policy Framework (Framework) excludes residential gardens from the definition of previously developed land.
10. The appellant has questioned whether the appeal site falls within the SPD definition of 'larger garden spaces' or 'groups of tranquil garden space'. In my view, the SPD must be read as a whole in that it says that all undeveloped rear gardens can, through their combined greenery, tranquillity and biodiversity, make an important contribution to local distinctiveness. Even so, I am satisfied that the appeal site forms part of a 'group' that collectively provide a 'tranquil island' of greenery and biodiversity.
11. The appellant refers to the Inspectors findings in an appeal decision from February 2013 in relation to 11 Fernhill Road (ref. APP/B1740/A/12/2183570). However, this related to the approval of a new dwelling that was effectively an extension of a larger permitted development that was nearing completion at

the time. Moreover, the Inspector found that the appeal site was not identified as a 'green island' within the SPD. The appeal decision from April 2017, where an Inspector dismissed a scheme for backland development at 4 Kennard Road (ref. APP/B1740/W/16/3163866), is more comparable in that the Inspector found that the rear garden in that case formed part of a 'tranquil island' of gardens identified in the SPD. The Inspector concluded that the proposed development would harm this locally distinctive feature and as a result would conflict with Policy CS2 of the CS.

12. The appellant has referred to a fall-back option that would involve erecting a large outbuilding in the rear garden under permitted development rights. There is no plan of this fall-back option or any lawful development certificate to confirm that such a building could be built under permitted development rights. Even so, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. I can only determine the proposal that is before me, which is for a new dwelling. Moreover, for any weight to be given to a fall-back option there must be a more than theoretical possibility that this development would be carried out. There is no such evidence before me.
13. The appellant contends that the backland development that has taken place elsewhere has enhanced the character of the area, but provide no evidence to support that statement. The appellant has also questioned the weight that should be attached to the SPD. The SPD supports, expands on and is consistent with the provisions of Policy CS2 of the CS and is, therefore, an important material consideration that should be accorded significant weight. This finding is supported by the fact that the policy approach adopted in the CS and SPD is consistent with paragraph 70 of the Framework. The latter says that plans should consider setting out policies to resist inappropriate development of residential gardens, giving the example of "*where development would cause harm to the local area.*"
14. For the above reasons, I find that the appeal proposal would cause unacceptable harm to the character and appearance of the area. It would result in the loss of an important tranquil garden area that, collectively with other rear gardens, makes a positive contribution to local distinctiveness. Accordingly, the proposed development would be contrary to Policy CS2 of the CS, the SPD and paragraphs 70, 122 d) and 127 c) of the Framework.
15. Whilst reference has been made to the Submission Version of the Local Plan Review (November 2018) (Emerging Plan), the parties appear to agree that the relevant policies from this plan simply reiterate those in the development plan. In view of this and given my findings on this main issue, I have not considered these policies further.

Living conditions - neighbours

16. The submitted plans indicate that the new parking spaces and turning area, to serve the proposed dwelling, would be sited beyond the existing rear garage, thus encroaching further into the rear garden of No.16. As a consequence, the comings and goings generated by the proposed parking/turning area would be much more pronounced and visible to the occupiers of adjoining properties. Additional noise and disturbance would result from vehicles entering and leaving the parking area, manoeuvring and from doors closing, all occurring in

a location where no such activities currently take place and where, as I observed on my site visit, there was very little background noise.

17. The appellant accepts that the proposed development could give rise to some noise and disturbance, but argues that this would not result in significant harm to justify refusal. For the reasons given above, I do not agree. The appellant also argues that the proposal represents a standard relationship in that it would be similar to the layout of other backland sites. The latter is not, in my view, evidence that the relationship proposed in this appeal would be acceptable. Moreover, the appeal proposal would introduce noise and disturbance into a location where neighbouring occupiers would reasonably be entitled to expect to be able to enjoy the relative peace and tranquillity of their rear gardens.
18. I therefore find that the proposed parking and turning areas would result in significant harm to the living conditions of the occupiers of neighbouring properties contrary to Policy CS2 of the CS and paragraph 127 f) of the Framework. These seek to ensure that new development does not cause unacceptable harm to the living conditions of neighbouring occupiers.

Other Matters

19. The Council acknowledge that they are unable to identify a 5-year supply of housing land and that the relevant housing policies of the CS are out of date. In these circumstances, paragraph 11 d) ii of the Framework requires planning permission to be granted unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*
20. The appeal proposal would boost housing supply in a sustainable location. However, the proposal is only for one new dwelling and therefore its contribution to future housing provision, including that set out within the Emerging Plan, would be very small. In addition, the proposal is not seeking to address a specific local need or provide affordable housing. The adverse impact to the character and appearance of the area, to local distinctiveness and to neighbouring occupiers living conditions, would, on the other hand, be significant. In my view, the harm I have identified would significantly and demonstrably outweigh the moderate benefits of the appeal scheme, when assessed against the policies in the Framework taken as a whole. Consequently, the presumption in favour of sustainable development envisaged in the Framework does not apply in this instance. The Framework is not a material consideration in this instance that indicates a decision other than in accordance with the development plan.
21. The appellant has referred to appeal decisions in Salisbury and Windsor to support the approach taken to developments where there is no 5-year supply of housing. However, I have considered the appeal proposal on its individual merits having regard to the particular circumstances of the case and the specific development plan policies that apply. Even so, I do not know the full planning circumstances of these cases. For these reasons, they do not affect the findings I have reached above.
22. The appeal site would be in close proximity to the New Forest and Solent Coast European nature conservation sites. The Council has undertaken an Appropriate Assessment and put forward a planning condition to secure mitigation measures. The appellant has raised no objection to such a

condition. As there are substantive reasons to dismiss this appeal, I have no reason to consider the suitability of the detail and implementation of these mitigation measures any further within the context of an Appropriate Assessment.

Conclusions

23. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires all proposals for development to be determined in accordance with the development plan unless material considerations indicate otherwise. There are no material considerations of sufficient weight or importance arising from this appeal that determine that the decision should be taken other than in accordance with the development plan.
24. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR