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## Appeal Decisions

Site visit made on 17 September 2019

**by J Bowyer BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2<sup>nd</sup> October 2019**

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### **Appeal A Ref: APP/M1710/W/19/3232768**

#### **Land East of 19 Avenue Close, Liphook GU30 7QE**

- 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 Maytree Investment Properties Ltd against the decision of East Hampshire District Council.
  - The application Ref 58070, dated 22 November 2018, was refused by notice dated 18 February 2019.
  - The development proposed is two semi-detached dwellings.
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### **Appeal B Ref: APP/M1710/W/19/3232769**

#### **Land East of 19 Avenue Close, Liphook GU30 7QE**

- 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 Maytree Investment Properties Ltd against the decision of East Hampshire District Council.
  - The application Ref 58070/001, dated 27 March 2019, was refused by notice dated 23 May 2019.
  - The development proposed is erection of one new two-bedroom dwelling and one new three-bedroom dwelling together with associated works.
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## **Decisions**

### **Appeal A Ref: APP/M1710/W/19/3232768**

1. The appeal is dismissed.

### **Appeal B Ref: APP/M1710/W/19/3232769**

2. The appeal is dismissed.

## **Applications for Costs**

3. In respect of Appeal A and Appeal B, applications for costs were made by Maytree Investment Properties Ltd against East Hampshire District Council. These applications are the subject of separate Decisions.

## **Procedural Matters**

4. As set out above there are two appeals on this site. They differ only in the detail of the design and layout of the proposed development. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

5. The address given on the application form for Appeal A referred to the site as 20 Avenue Close. The Council amended this to refer to Land East of 19 Avenue Close which more accurately describes the location of the site and is used by the appellant on the appeal form. I have therefore used this address in the banner heading above.
6. The description of development of Appeal A in the banner heading above is taken from the Council's decision notice. Although part E of the appeal form states that the description of development had not changed from that given on the application form, a different wording corresponding with the Council's decision notice was entered. From the evidence before me, it is clear that the development initially proposed was amended from two detached dwellings to a semi-detached pair, and to omit a single garage and that this was subject to consultation. The decision notice reflects the amendments made. It also lists the plans which were considered by the Council in reaching the decision, and I have had regard to these plans in the determination of the appeal.

### **Main Issues**

7. The main issues in both Appeal A and Appeal B are:
  - (i) the effect of the proposed development on the character and appearance of the area;
  - (ii) the effect of the proposed development on the living conditions of the occupiers of 14, 15 and 19 Avenue Close with particular regard to outlook, light and privacy; and
  - (iii) whether or not the proposed development would provide acceptable living conditions for occupiers of the proposed dwellings with regard to amenity space provision and outlook.
8. In respect of Appeal A only there is an additional main issue of the effect of the proposed development on highway safety.

### **Reasons**

#### *Character and Appearance*

9. Avenue Close is a mainly residential cul-de-sac of mixed character, although Liphook Infant and Junior Schools are also located to the west of the road. Dwellings on Avenue Close are varied with a range of two-storey detached, semi-detached and terraced houses and bungalows of differing designs, although frequently these are arranged in small groups of dwellings of like styles. In many cases, dwellings are set on rectangular plots. However, a small spur of the road branches off to run behind 3 to 6 Avenue Close which results in greater variety in plot shapes, depths and sizes. In the main, dwellings face the road and are set back behind front gardens and frontage parking although Nos 19, 20, 28 and 29 Avenue Close are exceptions to this and are positioned perpendicular to the road.
10. The degree of spacing between dwellings varies, but to the east side of Avenue Close gaps afford views through to rear gardens of varying scales and to the rear of dwellings located on The Grove and Headley Road beyond. Similarly, there are views from Headley Road between the detached dwellings characteristic of this street towards the rear of dwellings on Avenue Close.

11. The appeals relate to an irregular plot of land positioned behind the pair of bungalows at Nos 19 and 20 Avenue Close and to the rear of Nos 13 to 18 Avenue Close which front the spur from the main section of Avenue Close. Access is provided by a rough surfaced track to the north of Nos 19 and 20 which also serves these dwellings. To the south of the site is a parcel of land approached by an access between Nos 20 and 25 Avenue Close and which at the time of my visit accommodated a number of parked vehicles and a single storey building.
12. Both appeal developments propose construction of a pair of semi-detached dwellings. Appeal A proposes two three-bedroom dwellings, while Appeal B proposes one two-bedroom and one three-bedroom dwelling and differs in terms the layout including a slight repositioning of the development towards the south east. With the exception of changes to fenestration detailing, the developments would be of like scale and appearance.
13. While dwellings on Avenue Close commonly front the highway, this is not universal with examples of different layouts at Nos 19 and 20 and Nos 28 and 29 Avenue Close. Further departures from this pattern in the wider area include dwellings located behind 69B Headley Road to the north east of the site. Overall, the area is mixed in character and there is no strong impression of a consistent layout or prevailing pattern indicating that new development should necessarily front the highway to be sympathetic.
14. Given the spacing provided between dwellings in the area, and that Nos 19 and 20 are bungalows, there would be views of the proposed two-storey dwellings from the surrounding area. However, the branch from Avenue Close means that dwellings set behind and facing towards the rear of neighbouring properties is already a feature of Avenue Close with further examples in the wider vicinity including to the rear of No 69B Headley Road. Additionally, views between buildings of neighbouring dwellings is already an attribute of the area and the visibility of the development to the rear of existing dwellings would not therefore be exceptional. While the appeal site is currently undeveloped, it already benefits from an access which is apparent from Avenue Close and a similar access serves the adjacent site to the south. As a consequence, the proposal would not result in an atypical or uncharacteristic arrangement so as to be incompatible with the surrounding area.
15. I acknowledge that the dwellings would have relatively small plots with rear gardens of limited depth. However, while dwellings on Headley Road to the east and on Avenue Close to the south are set on generally deeper plots, there is much greater variety on Avenue Close to the north. The proposed gardens would be comparable in size and depth to those at Nos 15 to 18 Avenue Close immediately to the north of the site. The Council are concerned that together with these neighbours, the proposal would result in somewhat higher densities in this part of Avenue Close. However, I see no reason why this would result in harm. Rather, this arrangement would accord with the pattern of groups of dwellings of similar character which is typical on Avenue Close.
16. Comfortable spacing is provided around the dwellings to the boundaries of the site including to both flanks, and while of limited depth, usable gardens would be provided to the rear of each dwelling. Some planting is suggested to the rear boundary of No 19 and further detail of landscaping proposals for the site could be sought by condition. On the basis of the layout and separation shown

to the boundaries, I have no reason to believe that it would not be possible to accommodate suitable planting in order to provide an appropriate and green setting for the dwellings. Given the above factors, the development would not appear obtrusive in the area or unduly cramped on the site.

17. The dwellings would differ from most others in the vicinity in their detailed design and roof form. However, the proposed facing brick and tile hanging would reflect materials that are common in the area and the dwellings would not be out of place in the context of the varied sizes, designs and types of dwellings present. Overall, I find that the proposals would enhance the visual interest and diversity of the area.
18. For the collective reasons outlined above, I conclude that the development proposed by both Appeal A and Appeal B would be sympathetic to its setting and that there would be no harm caused to the character or appearance of the area. In this regard, the proposals would accord with Policies CP20 and CP29 of the East Hampshire District Local Plan: Joint Core Strategy 2014 (JCS). Broadly, these aim to ensure that new development respects and makes a positive contribution to local character and appearance and that it incorporates appropriate planting to enhance its landscape setting.

#### *Living Conditions of Neighbouring Occupiers*

19. Turning to the living conditions of neighbouring occupiers, given the relationship of the development proposed by both Appeal A and Appeal B with neighbouring residents to the south and the separation distances involved, there would be no material impact on the living conditions of occupiers by reason of overlooking or loss of light or outlook. However, there would be greater potential for impact to the occupiers of Nos 14, 15 and 19 Avenue Close.
20. Under both Appeal A and Appeal B, the principal outlook from the rear windows of No 14 would be towards the rear gardens of the proposed dwellings and outlook from No 15 would continue to be towards the garden to No 19. The dwellings would not extend the full depth of the rear boundary to the garden of No 14 and open views would be maintained to the front and rear of the dwellings avoiding an undue sense of enclosure or dominance, while views from the garden of No 15 would be oblique, limiting the development's prominence. While Nos 14 and 15 have relatively short gardens, given the scale of the proposed dwellings and their juxtaposition to these neighbours and the separation from the boundary, I am satisfied that there would be no significant loss of outlook or light which would result in unacceptable harm to the living conditions of the occupiers of these neighbouring properties.
21. The sole window proposed to the north flank of the development subject of Appeal A would be a small window serving a shower room which could be conditioned to be obscure glazed, and no windows are proposed to the north flank under Appeal B. Outlook from windows to the front elevations of the proposed dwellings towards Nos 14 and 15 would be oblique and would not afford direct views to the windows or into the gardens of these properties so as to result in material loss of privacy for occupiers.
22. With regard to No 19, the proposed dwellings would be set relatively close to the rear boundary of this property under both Appeals. However, as a consequence of the depth of this neighbouring garden there would be no

unacceptable overshadowing or loss of light to the windows of the dwelling, and the substantial size of the garden further means that the development would not give rise to a harmful degree of enclosure. Any overshadowing to the garden would be minimal and would be in the context that large parts of the existing garden would be unaffected from a light point of view. I note concerns regarding use of the access passing this dwelling, however given the set back of the dwelling from the access and the low volume of traffic which would be expected to be generated from two dwellings, there would not be undue noise or disturbance to these occupiers.

23. The proposed fence and planting to the rear boundary of No 19 would prevent overlooking from the ground floor windows of the proposed dwellings. This coupled with the depth of the garden to this neighbouring property would prevent any unacceptable overlooking of its windows. However, four first floor windows are proposed to the front elevations which would face No 19. Under Appeal A, these include two large bedroom windows which would provide high level and uninterrupted views down onto the neighbouring garden at very close proximity. This would significantly reduce the privacy for users of this neighbouring garden and from this point, and owing to the scale and massing of the development, the proposal would appear dominant and overbearing.
24. Under Appeal B, only one window would serve a bedroom, with three serving bathrooms and the plans indicate that all would be obscure glazed. However, the triple-pane window to the bedroom and three double-pane bathroom windows would provide a large expanse of glazing and despite being obscured their presence and scale would nonetheless lead to an unacceptable perception of overlooking to the garden of No 19, and the development would remain visually overbearing.
25. A degree of mutual overlooking between properties may be expected in a suburban area such as this and there is already some overlooking to the garden of No 19 by neighbours to the north. However, this is not at such close quarters and does not in any event justify further development which would result in additional overlooking, whether actual or perceived, at such close proximity and the resulting loss of privacy and harm to the living conditions of the occupiers of No 19. In this respect, I consider that there would be an unacceptable perceived loss of privacy and from this point of view, and owing to the scale and massing of the development, the proposal would appear dominant and overbearing.
26. For the above reasons, I therefore conclude that the dwellings proposed by both Appeal A and Appeal B would result in an unacceptable loss of privacy (perceived or otherwise) and outlook for the occupiers of No 19 Avenue Close. In this regard, and notwithstanding my findings in relation to the living conditions of future occupiers of the development and the occupiers of Nos 14 and 15 Avenue Close, the development would conflict with Policies CP27 and CP29 of the JCS. These require, amongst other things, that development creates places where people want to live and does not have an unacceptable impact on occupiers of neighbouring properties through loss of privacy. These aims are consistent with the requirement of the National Planning Policy Framework (the Framework) for developments to secure a high standard of amenity for existing users.

### *Living Conditions of Future Occupiers*

27. Under both Appeal A and Appeal B, the gardens to serve the proposed dwellings would be of relatively limited depth. However, I have not been directed to any guidelines or requirements for specific garden depths or areas. Given the size of the gardens and their shape which would be comparable to those of Nos 15 to 18 Avenue Close immediately to the north, I am satisfied that they would be adequate to accommodate activities such as sitting out, children's play and drying washing. Furthermore, while there may be some views from surrounding properties, none would be direct or in such close proximity as to cause any unacceptable overlooking affecting the use or enjoyment of this space.
28. The Council are concerned that the obscure glazing proposed to the first-floor level front windows under Appeal B would harm the living conditions of future occupiers. However, three of these would serve bathrooms where obscure glazing would generally be anticipated. The fourth would serve a dual aspect bedroom with a second window in the flank elevation offering an alternative view. The use of obscure glazing would not therefore result in loss of outlook which would be harmful to the living conditions of future occupiers.
29. For the reasons outlined above, I conclude that the proposal would not conflict with paragraph 127 of the Framework which requires a high standard of amenity for existing and future users, and it would accord with Policy CP29 of the JCS.

### *Highway Safety*

30. In respect of Appeal A only, the access past Nos 19 and 20 as shown on the plans originally submitted with the application would not have been of sufficient width to allow two vehicles to comfortably pass. While the anticipated number of vehicle movements along the access may be relatively low, it is of significant length and there remains a risk that two vehicles could attempt to use the access simultaneously. The resulting prospect of vehicles reversing from the access to the highway of Avenue Close could increase the potential for conflict to the detriment of the safety of other road users and pedestrians, including children and parents related to Liphook Infant and Junior Schools opposite the site.
31. I note that amended plans were submitted to show a passing bay adjacent to No 20. This would avoid the need for vehicles to reverse onto the highway and related potential for conflict with other highway users. The passing bay would be on land outside of the red line boundary of the Appeal A site and although the appellant stated this was in their ownership, I note that this had not been indicated through inclusion within a blue line on the location plan at the time of the application. Nevertheless, the passing bay is within the red line boundary of the Appeal B scheme. The Council have raised no concern over the access arrangements proposed under Appeal B and there is no reason to doubt that this could be achieved. Were the Appeal A proposal acceptable in all other respects, I am therefore satisfied that provision of suitable access could be secured by the imposition of a Grampian style condition.

32. Accordingly, I conclude that the proposal would comply with Policy CP31 of the JCS which includes a requirement that highway designs meet the needs of vehicular traffic while placing a high priority on meeting the needs of pedestrians and cyclists.

### **Other Matters**

33. The location of the site provides for access to services and facilities locally including public transport, and the proposal would make use of this site within the Liphook settlement boundary where new residential development would generally be supported. The additional dwellings would make a positive contribution to housing supply locally, although compliance of the development with Building Regulations standards for insulation is a neutral factor. However, none of the above are considerations which outweigh the harm that I have identified to the living conditions of the occupiers of No 19 Avenue Close and the resulting conflict with the development plan.
34. The Council refer to previous refusals on the site as demonstrating concerns relating to overdevelopment and impact on neighbouring occupiers. However, I do not have full details of these to draw any comparisons, and, in any case, have determined the appeals on their own individual planning merits.
35. The appeal site lies within the 400m to 5km buffer zone of the Wealden Heaths Phase II Special Protection Area (SPA). I note that the Council's reports on the planning applications advise that there would not be a concern in relation to potential impacts of the development on the SPA and refer to a Habitats Regulations Screening Assessment undertaken in relation to Appeal B. However, for both appeals I am mindful of the judgement of the Court of Justice of the European Union which held that the decision maker must consider mitigation measures intended to avoid or reduce the harmful effects on a protected site within the framework of an Appropriate Assessment (AA), rather than at the screening stage. It would typically be necessary for me to seek additional information from the parties to enable me to undertake the AA. However, as I am dismissing the appeal for other reasons it has not been necessary for me to consider this matter further.
36. None of the other matters raised alter or outweigh my overall conclusion on the main issues for both Appeal A and Appeal B.

### **Conclusion – Appeal A and Appeal B**

37. While I have found no harm in relation to the character or appearance of the area, to the living conditions of future occupiers or to matters of highway safety, the development proposed in both Appeal A and Appeal B would cause unacceptable harm to the living conditions of the occupiers of No 19 Avenue Close. This is a matter of overriding concern and I therefore conclude that both Appeal A and Appeal B should be dismissed.

*J Bowyer*

INSPECTOR