
Appeal Decision

Site visit made on 24 September 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal Ref: APP/B1740/W/19/3228641

Merlin, Lymington Road, Milford-On-Sea SO41 0QR

- 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 Trustees of Brooke, DSWT and HFT against the decision of New Forest District Council.
 - The application Ref 18/11022, dated 25 July 2018, was refused by notice dated 14 November 2018.
 - The development proposed is demolition of existing residential property and the redevelopment of land to provide 4 residential units, associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site is within the influence of the New Forest European Sites and the Solent Coastal European Sites (the SPAs), which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). Although not an issue raised by the Council in its reasons for refusal, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPAs. It is therefore necessary to consider this matter as a main issue.

Main Issues

3. The main issues are therefore:
 - a) the effect of the proposed development on the integrity of the SPAs;
 - b) the effect of the proposed development on the character and appearance of the area; and,
 - c) the effect of the proposed development on the living conditions of the occupants of Ilex Cottage, with regard to privacy and outlook.

Reasons

New Forest European Sites and the Solent Coastal European Sites

4. The Court of Justice of the European Union has ruled¹ that, when considering the effect that a development proposal may have on a European Site, the

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

decision maker must consider any proposed mitigation through an Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me in determining this appeal.

5. The Habitats Regulations require that permission for development may only be granted after it has been ascertained that it will not affect the integrity of the European sites. The New Forest and Solent Coastal European Sites are designated as such because they provide habitat for ground-nesting birds and feeding grounds for internationally protected populations of overwintering waders and wildfowl. Both SPAs are also attractive sites for public recreation. In the light of the evidence before me, when considered alone or cumulatively with other schemes, I cannot rule out that the proposal would have significant effects on the features of interest of the SPAs, due to the resultant increase in recreational use.
6. In my AA, I may consider any conditions or other restrictions which could secure mitigation of this harm. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the Council's Mitigation Strategy For European Sites Supplementary Planning Document (the SPD). This strategy requires all development within the Plan Area to make a financial contribution to the projects set out in the SPD, or to provide mitigation to at least an equivalent effect. Financial contributions are allocated to detailed and costed infrastructure and non-infrastructure projects, dependent on their scale and location. The infrastructure requirements relate to new areas of open space; enhancements to existing public open space; and improvements to recreational walking routes. The non-infrastructure projects comprise increased ranger services to assist visitor and access management measures.
7. The Council has concluded that the necessary mitigation can be delivered through the imposition of a negatively worded planning condition. The condition would require mitigation proposals to be submitted to, and approved by the Council, after planning permission has been granted. The suggested condition requires that mitigation should be provided in accordance with either the SPD, or with unspecified measures to an equivalent effect. The alternative mitigation may involve undefined land within the appellant's control, to be allocated as a Suitable Alternative Natural Green Space (SANG). I do not therefore have certainty, at the decision-making stage, that appropriate and timely mitigation will be securely delivered. As the competent authority, I am therefore unable to conclude through my AA that the proposal will not affect the integrity of the European sites.
8. Although the suggested condition would not require the appellant to enter into a Section 106 Agreement, the Council acknowledges that this is the most likely route to discharging it for small-scale developments. Unless the appellant controls other land that is suitable for SANG, it seems to be the only realistic route. The Planning Practice Guidance (PPG) advises that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases. Such a condition should only be used in exceptional circumstances, in the case of complex and strategically important development, where there is clear evidence that the delivery would otherwise be at serious risk. I note that Inspectors have taken differing views on this

issue in the past. However, I find that the suggested condition does not accord with current advice set out in the PPG.

9. Consequently, I must conclude that, following AA, the proposal would cause harm to the SPAs without clear and certain mitigation. Therefore, the scheme would conflict with Policy CS3 of the New Forest District Council Core Strategy (adopted 2009) (the Core Strategy), which seeks to protect and, where possible, enhance sites of recognised importance for nature conservation. The proposal would also conflict with Policy DM3 of the New Forest District Council Local Plan Part 2: Sites and Development Management (2014). This Policy seeks to ensure that proposals will not have adverse effects on the integrity of the SPAs, and that appropriate mitigation is secured prior to approval of the development.

Character and appearance

10. The appeal site lies within the built-up area of Milford-on-Sea, to the north of the buildings that front the High Street. The site currently accommodates a large flat-roofed 2-storey house, which is located towards the higher, northern part of the site. The large garden of the dwelling has become overgrown and there are a number of trees along the southern part of the site, which conceal the house from most viewpoints. As a result, the site provides a verdant backdrop on the rising land behind the frontage development in the High Street. Further up the slope, beyond the northern boundary of the site, there are large houses in spacious gardens. The proposed development lies outside the Conservation Area, which encompasses the High Street frontage.
11. The proposal, in summary, involves the replacement of the existing dwelling with a terrace of three houses; the construction of a detached house on the southern part of the site; and a parking area between the two.
12. The terrace would be of a similar width to the existing dwelling and would occupy a comparable footprint. The provision of pitched roofs means it would be higher, and it would also be a little further forward on the site. It would, however, be in keeping with the general pattern of development to the rear of the frontage buildings, which comprises 2-storey buildings set towards the north of their plots. The terrace would be further forward than the flats at South Court, to the east, but there is not a rigid building line here, as Ilex Cottage and Little Magnays, to the west, are further forward. The terrace would therefore occupy a position, and would be of a scale, that would be appropriate to its surroundings.
13. The contrast in plot sizes between the proposed terrace and the more spacious housing to the north would not be evident, as there would be no visual relationship between them. The terrace would be much more closely associated with the existing flats and houses to the east and west, and with the denser development of the High Street to the south. Consequently, the density of the proposed development would be sympathetic to its townscape setting.
14. The proposed detached house would be located lower down the slope, on the southern part of the site, and would therefore be largely hidden behind the frontage development. Some tree removal would be necessary to accommodate this house, and substantial clearance of overgrown vegetation would be required to create the parking area for the overall development. However, most of the trees along the southern boundary would be retained. As

a result, the car-parking area, although quite expansive, would be largely hidden from any public viewpoints. Furthermore, there would be scope within the development for replacement landscaping to soften its appearance.

15. The retention of most of the trees means that the site would still provide a green backdrop to the High Street frontage. A suitable landscaping scheme could be secured by a planning condition, to mitigate the impact of those trees that must be removed to facilitate the development, and to offset any longer-term pressure to remove further trees. Nevertheless, the removal of some trees and vegetation, combined with the increased height of the terrace, means that the proposed development would be more visible than the existing house.
16. The retained trees would still serve to filter any views of the proposed development, so that it would not be visually prominent from the High Street. However, the upper parts of the terrace are likely to be seen. This would not result in harm to the character and appearance of the area, however, as the building is designed to reflect the materials and features of the High Street frontage. The south-facing tile-hung gables would echo the repeated gables that are characteristic of the buildings in the High Street. Similarly, the clay tiled roofs and brick chimney stacks would be in keeping with the prevalent character of the surroundings.
17. For the reasons given above, I conclude that the proposals would not be harmful to the appearance and character of the area. The development would therefore comply with Policy CS2 of the Core Strategy, which seeks to ensure that new development is well designed to respect the character, identity, and context of the area's towns, villages and countryside.

Living conditions

18. Ilex Cottage is a long, narrow bungalow that lies close to the western boundary of the appeal site. It has a conservatory on its southern end, which looks out over a garden that is enclosed by a two-metre close-boarded fence. The proposed detached house, on the southern part of the appeal site, would be orientated at right angles to Ilex Cottage and would be at a lower level. As a result of the difference in levels, the eaves height of the proposed house would be more than a metre lower than the eaves level of Ilex Cottage. Furthermore, the roof would be hipped, which would reduce its bulk. Consequently, the proposed house would not have a harmful impact on outlook for occupants of the conservatory.
19. The garden of Ilex Cottage is at a lower level than the conservatory. The corner of the proposed house would be about 6 metres from the nearest corner of the garden. However, the side elevation of the proposed house would be relatively narrow, and the roof would slope away, so that the full height of the building would be more distant. As a result, the proposed dwelling would not be a visually dominant feature. Occupants of the garden would therefore retain an acceptable level of outlook.
20. Due to the difference in levels, the ground floor windows in the proposed house would be below the height of the boundary fence of Ilex Cottage. Therefore, overlooking of the garden and conservatory could only take place from the proposed first floor windows in the north and west elevations. Two of these windows serve bathrooms, so they could be obscure glazed. The nearest bedroom window would have an oriel window, with an obscure glazed west

facing pane, so that it would not be possible to look out of the room towards Ilex Cottage. The other bedroom window would be distant from the boundary, and at such an acute angle, that no overlooking would arise. Consequently, the proposals would not result in a harmful loss of privacy to the occupants of Ilex Cottage. Furthermore, the difference in levels and the orientation of the respective buildings means that there will not be a significant perception of overlooking either.

21. I therefore conclude that the proposals would not have a harmful effect on the living conditions of the occupants of Ilex Cottage through loss of outlook or privacy. The development would therefore accord with Policy CS2 of the Core Strategy, which seeks to ensure that new development does not cause unacceptable effects by reason of visual intrusion, overlooking, or other adverse impacts on local character and amenities.

Other Matters

22. I have considered representations regarding the impact on the living conditions of the occupants of South Court. The proposed terrace of houses would be a little closer to the eastern boundary and would project further forward of the front elevation of South Court than the existing house. The addition of a pitched roof would also mean that the proposed building would be higher. However, I saw that the orientation was such that there would be no significant loss of light and that the impact on outlook from the windows, balconies and gardens would be limited.
23. I have also considered representations regarding the suitability of the means of access. Neither access is perfect in terms of visibility, gradient and pedestrian segregation. However, both accesses already serve existing developments, so the increase in usage as a result of the proposals would not be significant.

Planning Balance

24. The Council does not contest that it cannot currently demonstrate a five-year supply of land for housing. However, Paragraph 177 of the Framework makes it clear that the presumption in favour of development does not apply where a proposal is likely to have a significant effect on a SPA, unless an AA has concluded that the proposal will not adversely affect its integrity.
25. The dwellings would, nevertheless, contribute to reducing the housing shortfall in the District in a location where services are easily accessible by sustainable transport modes. I have also found that the development would not harm the character and appearance of the area or the living conditions of neighbouring properties. Paragraph 68 of the National Planning Policy Framework advises that great weight should be given to the benefits of using suitable sites within existing settlements for homes. However, these benefits do not outweigh the harm that I have identified to the SPAs, which have international importance.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR