
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: 22nd October 2019

Appeal Ref: APP/B1740/W/19/3233082

Land at 5a Harford Close, Pennington, Lymington, Hampshire SO41 8EX

- 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 Wendy Fry against the decision of New Forest District Council.
 - The application Ref 19/10514, dated 16 April 2019, was refused by notice dated 1 July 2019.
 - The development proposed is a 2 bedroom bungalow.
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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 the effect of the proposed development on:
 - a) the integrity of the SPAs; and,
 - b) the character and appearance of the area;

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 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 the 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

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

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 and, in the case of The Solent SPA, through increased levels of nitrogen and phosphorous in the water environment.

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 increased recreational use, in the form of the Council's Mitigation Strategy for European Sites Supplementary Planning Document (the MSES SPD). This strategy requires all development within the Plan Area to make a financial contribution to the projects set out in the MSES 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 for recreational impacts 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 MSES 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). This does not give certainty, at the decision-making stage, that appropriate and timely mitigation for the recreational impacts will be securely delivered.
8. Furthermore, although the suggested condition would not expressly 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 appears to be the only realistic option. 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 delivery would otherwise be at serious risk. I therefore find that the suggested condition does not accord with current advice set out in the PPG.
9. I appreciate that the Inspector determining the previous appeal on this site² concluded that such a condition was acceptable. However, that decision was made prior to the ruling of The Court of Justice of the European Union. In the light of this ruling, the condition would not provide the necessary certainty,

² Appeal Decision APP/B1740/W/16/3160212

prior to the grant of planning permission, that appropriate mitigation can be secured.

10. With respect to increased levels of nitrogen and phosphorous in the water environment, the evidence before me is that there is uncertainty whether new housing development can be accommodated in the area without having a detrimental impact on the designated sites within the Solent. In order to avoid harmful impacts, Natural England has advised that development should achieve nitrate neutrality. On large sites, this may be achieved by providing open spaces, but on small sites it is likely that off-site mitigation will be required.
11. The Council has suggested a condition that would prevent occupation of the dwelling, until a mitigation package addressing the additional nutrient input arising from the development, has been approved and implemented. However, there is nothing before me which indicates that the development could achieve nitrate neutrality through on-site measures. The evidence also indicates that there is currently no agreed strategy for mitigating the wastewater implications of additional housing in the Council's area. Consequently, I cannot be certain that a condition would mitigate the wastewater effects of the development.
12. 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. 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

13. Harford Close is a spacious cul-de-sac of bungalows with open plan front gardens. The dwellings display a uniformity of design and the Close has a typical suburban layout. The appeal site lies at the head of the cul-de-sac, but it is hidden from view by a high evergreen boundary hedge. This hedge also extends along the eastern boundary of the site, adjacent to a footpath that links Harford Close and Milford Road. The site also has a frontage to Milford Road, which is a busy highway. The prevailing character on this side of the site is quite different, as houses back onto the road, and have high hedges and fences adjacent to the highway verge. The appeal site has a fence and trees along this boundary. Therefore, with the host dwelling lying to the west, the appeal site is largely enclosed on all sides.
14. Planning permission was granted, under the previous appeal, for a two-bedroom bungalow on a slightly smaller site than is now proposed. This permission is still extant, and it allows for a flat-roofed bungalow, located close to the northern boundary of the site. The existing permission is a material consideration in my determination of this appeal. The current appeal site extends a little further westward into the plot of No 5a. A larger flat-roofed bungalow is now proposed, still close to the northern boundary and with access off Milford Road. Unlike the existing permission, it is not proposed to dig the

- bungalow into the site, so the flat roof would be higher than that of the approved dwelling.
15. The proposed bungalow would not follow the prevailing design characteristics of the dwellings in Harford Close. However, the retention of the evergreen hedge around the northern and eastern boundaries of the site would ensure that it was not readily seen in association with these dwellings. I share the previous Inspector's views, that it is highly unlikely that future owners of the proposed dwelling would remove the hedge, as this would result in a significant loss of their privacy. Whilst it is possible that the higher roof now proposed may protrude above the hedge line, only a narrow strip would be visible, and this would be viewed against the backdrop of the much higher trees on the other side of the plot. Overall, the proposed dwelling would have little impact on the character and appearance of Harford Close.
 16. I am mindful of the guidance contained within the Lymington Local Distinctiveness Supplementary Planning Document (2011) (the LLD SPD), which aims to maintain consistency of design and materials within housing groups. The design of the proposed bungalow would differ significantly from the group of houses that includes Harford Close. The dwelling, and its attendant access and parking, would cover a large proportion of the plot, and the building would be close to three of its boundaries. This would not be typical of the housing group. However, the highly enclosed nature of the plot means that the dwelling would only be readily visible through the access point on Milford Road. From here, it would not be seen in the context of other dwellings in Harford Close. Consequently, there would be no harm to the prevalent character and appearance of the housing group.
 17. Paragraph 130 of the National Planning Policy Framework (the Framework) says that planning permission should be refused for development of poor design, taking into account any local design standards in SPDs. The retention of the boundary trees to Milford Road would comply with the guidance in the LLD SPD. Although the design of the bungalow would be different to the existing dwellings in the area, it would not be fundamentally different to the dwelling that already has permission. As it would be largely enclosed on all sides, and not viewed in association with other dwellings in the housing group, it would not conflict with the general aims of the LLD SPD.
 18. For these reasons I conclude that the proposed development would not harm the character and appearance of the area. It would therefore comply with Policy CS2 of the Core Strategy, which requires development to be well designed to respect the character, identity, and context of the area's towns, villages and countryside. It would also accord with the overall aims of the LLD SPD, to protect the identity of individual housing groups, and the advice in Section 12 of the Framework on achieving well-designed places.

Planning Balance

19. The Council 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.

20. The dwelling 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. Paragraph 68 of the 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

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

Nick Davies

INSPECTOR