



Appeal Decision

Site visit made on 30 October 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Appeal Ref: APP/B1740/W/19/3234913

114 Rosebery Avenue, Hythe SO45 3GX

- 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 and Mrs Kotarja against the decision of New Forest District Council.
 - The application Ref 19/10377, dated 25 March 2019, was refused by notice dated 6 June 2019.
 - The development proposed is extension and alterations to provide new attached dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The refusal reasons on the decision notice and the officer report do not refer to any neighbourhood development plan policies. The Council's statement of case refers to the Hythe and Dibden Neighbourhood Development Plan 2018 – 2026 (NDP), in particular Aim 1 and Policy D1, which require new development to seek exemplary standards of design and respond to local character and context. The Council advised that, at the time of writing the statement of case, the Examiner's report had been received. Subsequently, the Council has confirmed that the NDP Referendum took place on 29 October 2019 and 85% of voters confirmed support for the making of the NDP. Accordingly, the Council intend to formally adopt ('make') the NDP at the Council meeting on 9 December 2019. I therefore attach full weight to the relevant NDP policies in my decision.
3. The refusal reasons on the decision notice and the officer report do not refer to any policies of the emerging New Forest District Local Plan 2016 - 2036 Part 1: Planning Strategy (LP). The Council's statement of case confirms that the LP Examination ended in mid-July 2019, and that the LP Inspector found the emerging LP to be sound, subject to modifications. The Council has confirmed that emerging LP draft Policy 13, which relates to design quality and local distinctiveness, reiterates the relevant policy of the adopted development plan, albeit in an amended form. The Council has also advised that the Local Plan Inspector's letter, dated 9 October 2019, confirms that no modifications are required to emerging Policy 13. Given the advanced stage of the LP review, the Council considers this policy can be given considerable weight in the determination of the appeal. I have dealt with the appeal accordingly.

Main Issues

4. The main issues are:

- The effect of the proposal on the living conditions of the occupiers of 116 Rosebery Avenue, in respect of outlook and overshadowing for occupiers of that property; and
- The impact of the proposed development on the character and appearance of the area.

Reasons

Living conditions

5. The proposed new dwelling would be sited to the east/southeast of the end-of-terrace house at 116 Rosebery Avenue. As a corner property, it has gardens to its front and side, but these are visible in views from the street. The sole private garden to that property is to the rear of the house directly opposite the side wall of the new dwelling. Principal habitable room windows on the rear elevation of No.116 would also directly face the side wall of the new house. The outlook from the rear elevation windows and rear garden would be dominated by the proposed full two storey side wall of the new dwelling, which, according to the marked dimensions on the planning application drawing kota sht 4, would extend for a length exceeding the width of the garden, and would be sited within about 1.75m of the garden of No.116 and about 7.15m of its rear wall.
6. The side wall and roof of the new dwelling would have an overwhelming and visually over-dominant impact on the rear of No.116, harming the outlook from the principal rear elevation windows, including the ground floor kitchen window, and from the rear garden. In addition, the position of the new dwelling to the east/southeast of No.116, would result in a significant amount of overshadowing of the rear private garden area. These harmful impacts would be exacerbated by the small size of the rear garden of No.116.
7. Both parties have referred to the fall-back position arising from extant planning permission, Ref 16/11023, for two storey side and rear extensions to No.114 which would extend to the same width as the appeal proposal at full two storey height, and with a side gable end. I have no evidence before me to indicate how likely it is that this development would take place should the appeal be dismissed. Given its similarities with the appeal proposal in terms of position on the site and two storey height, I have treated the extant permission scheme as a material planning consideration, and I have given it appropriate weight having regard to the differences between the two schemes.
8. I find that the proposed development would have a markedly greater impact on the living conditions of the occupiers of No.116 than the extant permission scheme. The appeal scheme would include an additional length of two storey building to its front part, in close proximity to No.116, and more mass at the front and rear of the roof due to the gable ends. Hence, although the roof of the appeal proposal would slope away from the side boundary, there would nonetheless be a significantly greater perceived bulk of building directly facing the rear of No.116. The result would be a more oppressive and overbearing impact on the rear garden and rear elevation windows of No.116, together with

a greater amount of overshadowing of its garden area than would occur as a result of the extant permission.

9. The current occupiers of No.116 have not objected to the scheme. However, there may be a number of reasons why no objection has been raised. Also, whilst the views of the current occupants of No.116 are relevant, my assessment of the appeal scheme is concerned with the long term quality of the housing stock. I must consider the merits of the appeal proposal against the broader objectives of the relevant development plan policies in accordance with Section 38 (6) of the 2004 Act which requires the appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
10. For the above reasons, I therefore conclude that the proposed development would materially harm the living conditions of the occupiers of 116 Rosebery Avenue in respect of outlook and overshadowing. As such, the proposal scheme would not accord with Policy CS2 of the New Forest District outside the National Park Core Strategy 2009 (CS) and emerging LP draft Policy 13, in so far as these policies seek to ensure that new development does not cause unacceptable effects by reason of visual intrusion, overbearing impact, shading, or other adverse impact on residential amenity. This is generally consistent with the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (paragraph 127).

Character and appearance

11. The appeal site is located within a modern suburban housing development comprising a mix of detached, semi-detached and terraced houses and flats. The appeal property is a semi-detached, two-storey house, whose pitched roof ridge runs parallel to the road and perpendicular to that of the adjoining house at No.112.
12. The appeal scheme comprises alterations and side, front and rear extensions to the existing house to provide a deeper but less wide dwelling at No.114, and an additional dwelling to its northwest side. Each property would have independent access and frontage parking, facilitated by the creation of an additional vehicular access from Rosebery Avenue.
13. The additional dwelling and the altered existing house would be finished in brick under a tiled pitched roof and the roof ridge of the new house would run at right angles to the road and would feature a front-facing gable, similar to that of No. 112 at the other end of the resulting terrace.
14. Terraced housing features strongly within the surrounding area, including in Burnett Close and Knightwood Road to the north and northeast of the site. The form of the proposed terrace, with two projecting two storey front gables, would be similar to that created by the recent addition of a new house to the side of 2 Burnett Close adjacent to the appeal site. Whilst the proposed new dwelling would be narrower than the existing dwelling, it would not be demonstrably narrower than many other terraced houses within the site vicinity, including No.116 as viewed from Knightwood Road, and No.112.
15. The infilling of the space to the side of the appeal property, whilst impacting on views from the street scene, would not be unduly harmful to the character and

appearance of the area, having regard to the aforementioned terraced housing within the immediate locality, and the space that would still remain to the side of No.112 and to both sides of No.116, owing to their corner locations. The hiping of the new roof away from the boundary with No.116, and the lower ground level of the appeal site in relation to that property, would also contribute towards the maintenance of a spacious gap between the buildings at upper floor level. Accordingly, the proposal would not appear unduly cramped within the street scene, having regard to the prevailing pattern of development.

16. In making this judgement, I have had regard to the aforementioned extant planning permission. I do not consider the appeal proposal to result in a materially more cramped form of development in terms of its impact on the street scene, than the extant permission. I also find that the appeal scheme would provide a more symmetrical design for the extended building as a whole, taking into account the adjacent property at No. 112. The proposed front building line would match that of No.112, and, whilst slightly forward of that of No.116, this would not have a detrimental impact on the street scene having regard to the juxtaposition of No.116 in relation to the appeal site, so that it is perceived to have its front building line onto Knightwood Road. Both the new and the host property would have generous rear garden depths of over 13 metres. The traditional pitched roof design of the proposed houses and their materials would be in keeping with the neighbouring property at No.112 and the established building form and materials within the surrounding area.
17. Having regard to the above, I therefore conclude that the proposal would not harm the character and appearance of the area. As such, it would accord with CS Policy CS2, emerging LP draft Policy 13 and Policy D1 of the NDP, in so far as these policies seek to ensure that new development is well designed to respect the character, identity and context of the area's towns, and be appropriate and sympathetic to its setting in terms of scale, height, density, layout, appearance, materials, and its relationship to adjoining buildings.

Other Matters

18. It has been brought to my attention by the main parties that a scheme of mitigation is required to mitigate against potential harm to the New Forest and Solent Coast European designated nature conservation sites, arising from increased recreational usage associated with new residential development. The Council has carried out its own previous Appropriate Assessment, concluding that the adverse impacts would be avoided if planning permission were to be conditional upon the approval of proposals for the mitigation of that impact in accordance with the Council's Mitigation Strategy or equivalent. The Council has suggested that this matter can be satisfactorily dealt with by means of a suitably worded planning condition, with which the appellant has agreed.
19. Since the determination of the planning application, a further relevant issue has arisen in relation to the requirement for new residential development to achieve 'nutrient neutrality' to avoid the potential harmful impacts on water quality of the Solent European designated sites. The Council has confirmed that, at the present time, an Appropriate Assessment is being prepared in consultation with Natural England, but that there is currently no agreed Appropriate Assessment as required by Regulation 63 of the Habitat Regulations. In the absence of a Nitrate Mitigation solution, the Council has

suggested that this matter can be dealt with by means of a Grampian condition, which has also been agreed by the appellant.

20. If I were mindful to allow the appeal, as the competent authority, I would need to undertake an Appropriate Assessment of the implications of the appeal scheme for the European designated sites. As matters stand, there are no detailed mitigation proposals in place as part of this appeal to directly address the likely significant effects upon the European designated sites, and the full details and implications of any such proposals remain unknown. The appeal scheme, in the absence of any satisfactory mitigation and the necessary mechanism for achieving it, would have an adverse effect upon the integrity of the European designated sites. However, since I find the proposed development to be unacceptable in respect of the living conditions of neighbouring occupants, the outcome of any such Appropriate Assessment would have no bearing on the aforementioned harm I have already identified, and, in turn, on the overall outcome of this appeal. Therefore, there is no need for me to consider the implications for the European designated sites any further as part of my decision.
21. The Council accepts that it is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 11 of the Framework therefore applies, which states that relevant policies for the supply of housing should not be considered up to date where a five year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, including habitats sites, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.
22. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest.
23. In terms of its component dimensions, there would be a small social benefit in providing an additional dwelling. Economic advantages would also arise from the construction and occupation of the new house. However, a good standard of residential amenity is also a key aspect of sustainable development. The harm I have identified to the living conditions of the occupiers of 116 Rosebery Avenue would be more significant in its scale. As a result, the social role of sustainable development would not be achieved. Accordingly, even if the tilted balance were not to be disappplied by the habitat conflict with the Framework such that adequate mitigation were to be provided, I still find that, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits.

The appeal proposal is in conflict with the development plan taken as a whole and material considerations do not indicate a decision otherwise than in accordance with its terms.

Conclusion

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

S Leonard

INSPECTOR