

Appeal Decision

Site visit made on 10 December 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/C1760/W/19/3234168

Land adjacent The Ridges, Crampmoor Lane, Crampmoor S051 9AJ

- 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 Leo Hookway against the decision of Test Valley Borough Council.
 - The application Ref 19/00759/FULLS, dated 25 March 2019, was refused by notice dated 23 May 2019.
 - The development proposed is described as proposed two bedroom dwelling.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Leo Hookway against Test Valley Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - whether the development would provide adequate living conditions for occupiers of the proposed development, with particular regard to shading and outlook;
 - the effect of the development on the character and appearance of the surrounding area, with particular regard to trees;
 - the effect of the development on species of importance to biodiversity conservation interests; and
 - the effect of the development on designated nature conservation sites.

Reasons

Living conditions

4. Previously part of the garden for the dwelling to the north, there are a number of trees – several of which are preserved – on and near the appeal site. The largest trees have sizeable canopies which spread over a significant proportion of the site. Several tree branches also hang relatively close to the ground. A dwelling, known as The Ridges, is located to the west, on the other side of the vehicular access track.

5. The appellant's arboricultural reports consider shading of the dwelling, the tree-related plans include shadow patterns, and a daylight assessment – based on the trees in full leaf – was submitted with the appeal. These indicate that the dwelling has been designed so that its habitable rooms would all receive sufficient levels of daylight. In coming to this view, I have taken account of the Council's view that the appellant's arboricultural measurements under-size the extent of the trees, including in particular the height and crown/branch spread of the two Oak trees closest to the proposed dwelling. However, because the majority of windows would face away from the trees, the larger tree sizes recorded by the Council would not significantly change the light levels inside the proposed dwelling.
6. However, a significant part of the garden of the proposed development would be directly beneath tree canopy, and I have little substantive evidence that the garden would, despite its relatively large size, receive acceptable levels of natural light and sunlight. On the basis of the proximity, size and spread of the existing trees, much of the garden would experience significant shading throughout much of the day. Considering the average crown spreads and heights provided by the appellant, the Council's measurements and my own site visit observations, it seems to me that parts of the garden would receive limited daylight and only small areas would receive some direct sunlight when the trees are in leaf.
7. Due to the significant presence of the trees, including their large overhanging canopies and the relatively low height of some branches, the garden would also be dominated and feel relatively enclosed. Consequently, it is likely that the garden would have limited outlook as well as being unacceptably shaded.
8. It has been put to me that the occupiers of the dwelling would be aware that the garden would be shaded by trees and would not enjoy as much natural daylight as a dwelling less inhibited by trees, and that it is up to purchasers of the dwelling to decide whether the shading would be excessive. It is asserted that the Council have also not produced any substantive evidence which verifies their view that the site would be excessively shaded. Be that as it may, these matters do not lead me to a different conclusion nor indicate that the garden of the proposed development would be of sufficient quality in relation to shading and outlook.
9. The Council raise concerns about the relationship between the proposed dwelling and The Ridges with regards to overlooking. It is suggested that a 2 metre high boundary fence would be required to ensure sufficient privacy for the occupiers of The Ridges, but that such a fence would unacceptably reduce internal light levels and outlook in the new dwelling. However, the location of the proposed dwelling and The Ridges, and the layout of that property, means that there would not be significant overlooking between the two, with the proposed western windows facing towards The Ridges' parking and front garden area. This indicates that a high boundary fence would not be necessary and an alternative – ensuring sufficient privacy and avoiding unacceptably reducing internal light levels and outlook for the proposed dwelling – could be secured by condition. Such boundary treatment would also avoid unacceptable overlooking of The Ridges from the garden of the proposed development.
10. For the above reasons, I find that the appeal proposal would not provide adequate living conditions for occupiers of the proposed development, with

particular regard to shading and outlook. It would therefore conflict with Policy LHW4 of the Test Valley Borough Revised Local Plan (2016) (TVBLP) which requires, amongst other aspects, development to provide for the amenity of its occupants and not to reduce the levels of daylight and sunlight reaching new properties or private open space to below acceptable levels.

Character and appearance

11. The trees on and near the site are significant features, prominent in the locality and wider landscape and are visible in the surrounding area, including from Crampmoor Lane and the public footpath to the east. They contribute positively to the verdant character and appearance of the area and provide a clear boundary between the built-up residential area and the countryside. None of the seven trees covered in the appellant's arboricultural reports are identified as being in poor condition or having a short life expectancy.
12. Branches overhang a significant amount of the site, with much of the proposed parking area and garden being within the crown spread of the trees. These areas would therefore be subject to, amongst other aspects, leaf fall and tree debris, and the evidence before me indicates that branches in Tree 3 have failed in the past. The trees would also shade and dominate a significant part of the garden, while the tree branches relatively close to the ground are likely to reduce the amount of useable garden space. Consequently, it appears inevitable that future occupiers of the proposed development would seek to have some of the trees felled and/or significantly pruned at some future point.
13. The appellant intends to reside in the self-build dwelling as a long term home for him and his family, is aware of the preserved trees and the need to respect them, and likes trees and the wildlife they support. Future occupiers would be aware of the trees before purchasing the site. It has been put to me that vehicles could also be temporarily covered and pigeons etc could be controlled. However, these matters do not lead me to a different conclusion.
14. Given I have found that the trees would result in inadequate living conditions for occupiers of the proposed development, it seems to me that the Council would struggle to justify refusing requests from the occupiers to prune and/or fell the preserved trees. Felling and/or significant pruning would reduce substantially the trees' positive contribution to the locality and would result in significant harm to the character and appearance of the surrounding area.
15. The proposed development, including the dwelling and the parking area, would be in close proximity to all seven trees, including the preserved oak trees. Albeit marginally, the footprint of the proposed dwelling would avoid root protection areas (RPAs). The parking area would be within RPAs, and extend near to and slightly beyond the maximum recommended incursion for Trees 7 and 5 respectively. However, its proposed construction with a cellular confinement system would prevent significant ground compaction and allow water to drain into the ground and reach tree roots. The patio areas would be partly within RPAs, while any ground work, soil retaining structures or batters – required due to the site's topography – could also be within the RPAs. However, there is nothing to suggest that any encroachment of these elements would be so significant so as to harm the large trees. Temporary ground protection and protective fencing, as shown on drawing TP-P-001 Rev 05, and sensitive construction methods and routing of services and suitable methods and positioning of drainage could also be used to avoid harm to the trees. The tree-

related plans and the arboricultural reports also confirm that no trees would be removed to enable the development.

16. Accordingly, there are sufficient technical solutions available to avoid preserved trees being directly harmed through the construction of the development and its siting, and full details could be secured by pre-commencement conditions. Be that as it may, this would not ensure that the long term preservation of the trees would not be threatened by the proposal.
17. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area, with particular regard to trees. I therefore find that it conflicts with TVBLP Policies E1 and E2. Amongst other aspects, these require development to respect and integrate with the character of the area and not harm its appearance, be located to ensure that future retention of important landscape features is not likely to be prejudiced, and not result in loss of important local features such as trees.

Species of biodiversity importance

18. The site consists of rough grassland, trees and some areas of scrub, with several mature trees also nearby. The appellant's ecological appraisal report includes a desk study and a field survey, which includes a phase 1 habitat survey. The report states that the field survey is used to highlight habitat that is suitable for significant or protected species and to identify where further work to show presence or absence is required.
19. TVBLP Policy E5 sets out, amongst other aspects, that development likely to result in the loss, deterioration or harm to habitats or species of importance to biodiversity conservation interests, either directly or indirectly, will not be permitted except under certain circumstances. The Planning Practice Guidance indicates that an ecological survey may be appropriate where, for example, protected species may be present. Government Circular 06/2005 (Biodiversity and Geological Conservation), referenced within the provisions in the National Planning Policy Framework relating to habitats and biodiversity, sets out amongst other aspects that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the development, is established before planning permission is granted. I am also mindful of the protection afforded to habitats and species by the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017. The Natural Environment and Rural Communities Act 2006 also requires that public authorities must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.
20. Identifying that the site provides suitable foraging and hibernating habitat for widespread reptile species, the ecological appraisal report states that the development will impact suitable reptile habitat. It sets out that surveys are therefore needed between March/April and September to establish whether reptiles are present and that this will inform the need for mitigation. Such mitigation includes translocation and the report indicates that the location and extent of any translocation area will be informed by the survey results.
21. The ponds to the east of the site are identified as being unsuitable for great crested newts because they are at a fish farm. The Rapid Risk Assessment, carried out as part of the ecological appraisal, showed that the impacts on

great crested newts would be unlikely to cause an offence. However, the report identifies that the site contains suitable terrestrial habitat for amphibians, including great crested newts, and there are three other ponds within 500 metres. The site is therefore within the distance which great crested newts can travel, and despite there being residential properties on three sides, the agricultural field to the east means that the site is not entirely disconnected from other potentially suitable habitat for great crested newts in the area. There is little substantive evidence before me that the three ponds – to the north, south-east and south-west – are unsuitable for great crested newts, and the County Council's senior ecologist has indicated that the species has been recorded within 300 metres of the site. Accordingly, it seems to me that the development could affect great crested newts and a survey to identify their on-site presence or absence is therefore necessary to ascertain this and any mitigation required.

22. I note the recent approval of a landscaping condition relating to re-turfing of the appeal site under another planning application. However, I do not have the full details regarding that scheme and there is little evidence before me which indicates that the appeal site contains no important species. As the site no longer forms part of the plot to the north and is under separate ownership, the approved landscaping is also unlikely to be carried out on the appeal site.
23. The ecological report identifies that the trees on the boundary are of high ecological value and provide good quality foraging habitat and potential flight-lines for commuting bats. Although considered to provide low potential for bat roosting, two of the mature oak trees include features that could be used by roosting bats, and the report sets out the need for detailed bat surveys if any of these trees are to be felled or be subject to tree surgery. Although the development does not propose any felling or pruning of the trees, my findings above indicate that the appeal proposal would create future pressure to fell and/or prune the trees. On this basis and with no survey data indicating otherwise, the development could also indirectly affect bats.
24. For the above reasons, I conclude that the development is likely to harm species of importance to biodiversity conservation interests. In the absence of substantive evidence which indicates that the appeal proposal meets the exceptions listed in TVBLP Policy E5, I find that it therefore conflicts with it. As the above surveys are necessary before any required mitigation can be identified, it would also not be reasonable to leave these matters to be dealt with via planning condition after the grant of planning permission.

Conservation sites

25. TVBLP Policy E5 sets out, amongst other things, that development that is likely to result in a significant effect on an international or European nature conservation designation will need to satisfy the requirements of the Conservation of Species and Habitats Regulations.
26. The site is located within the buffer zone of the New Forest Special Protection Area (SPA). Development for residential accommodation within this area has the potential to increase recreational pressure on the SPA, resulting in disturbance to the designated site and its species and which could affect their status and distribution. In combination with other plans and projects for new residential development in the area, the appeal proposal would therefore be likely to have a significant effect on the designated site.

27. The Council's Officer Report sets out that, in-line with the Council's adopted 'New Forest SPA Mitigation - Interim Framework', a funding contribution for every new dwelling is sought to mitigate the increased recreation pressure resulting from the development. After the planning application was refused, the appellant and Council entered into a Habitats Mitigation Contribution Agreement to secure the required financial contribution to mitigate the recreational disturbance effects of the development on the New Forest SPA.
28. After the Council's refusal of the planning application and following advice from Natural England, the Council has also been addressing the effects of new overnight accommodation on the water quality of the Solent and Southampton Water designated sites. The advice from Natural England indicates that high levels of nitrogen and phosphorus input to the water environment in the Solent is causing eutrophication. All types of development that would result in a net increase in population served by a wastewater system would create additional levels of nitrogen and phosphorus. On this basis, the development is also likely to have a significant effect on the above designated sites due to its contribution, in-combination with other plans and projects, to increasing eutrophication at the sites.
29. However, I am dismissing the appeal for other reasons. Accordingly, I am not pursuing the recreational disturbance and eutrophication matters further, including through Appropriate Assessment, because they could not lead me to a different decision.

Planning Balance

30. The Council have not contested the principle of residential development on the site, the plot to the north was recently granted planning permission for a new dwelling and the appeal site previously formed part of that plot. Providing a new dwelling, the development would increase the availability and choice of homes within the settlement boundary and near to the services and facilities of Romsey. Be that as it may, these matters do not indicate that the appeal proposal is acceptable nor provide justification for development that conflicts with the development plan. Due to the harm I have identified, the development also cannot reasonably be described as making efficient use of land.

Conclusion

31. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR