



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/W1715/W/19/3233945

92 Common Road, Chandler's Ford SO53 1HB

- 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 Chanhvinh Le against the decision of Eastleigh Borough Council.
 - The application Ref F/18/83667, dated 20 July 2018, was refused by notice dated 5 April 2019.
 - The development proposed is for demolition of an existing single storey garage and the erection of a new dwelling along with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Chanhvinh Le against Eastleigh Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The appellant submitted an amended site plan with the appeal, showing new site drainage channels and including some additional clarification annotations. An updated Flood Risk Assessment (FRA) was also submitted covering the change in proposed drainage.
4. In considering whether to accept the amended details, I have had regard to the 'Wheatcroft Principles', including in relation to whether the changes materially alter the nature of an application and whether the amendments indicate that the development is in substance different from that for which the application was made. I am also mindful that accepting amendments at the appeal stage could potentially deprive parties of the opportunity to comment on the amendments and therefore prejudice their interests.
5. However, the amendments are not significant and do not materially alter the nature of the planning application to the point that it is so changed that it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Furthermore, the Council was given the opportunity to comment on the amendments in its appeal statement and interested parties were also able to comment on the amendments. Consequently, I am satisfied that accepting the amended site plan and updated FRA would not prejudice the interests of interested parties and have therefore determined the appeal on the basis of the amended details.

6. During the appeal, the Council provided an update on the status of the emerging Eastleigh Borough Local Plan 2016-2036 (eEBLP), confirming that it has been submitted to the Secretary of State for Examination. The appellant was offered the opportunity to comment on this. The evidence before me indicates that the relevant eEBLP draft submitted policies are all subject to objections and that further proposed modifications are likely during the Examination. On this basis, I give limited weight to the eEBLP draft policies.

Main Issues

7. The main issues are:

- whether the development would be suitably located in relation to flood risk, with particular regard to the sequential test;
- the effect of the proposed development on wildlife;
- the effect of the proposed development on the character and appearance of the surrounding area; and
- whether the living conditions of the occupants of 92 Common Road and of the proposed development would be acceptable, with particular regard to outdoor space.

Reasons

Flood risk

8. The western part of the appeal site is located in flood zone 1 while the eastern part is in flood zone 3. The appellant's latest Flood Risk Assessment (FRA, dated 27 June 2019) sets out that the development site is within flood zone 3 for both risk of flooding from river and sea and from surface water. The evidence before me indicates that the proposed dwelling – which Planning Practice Guidance (PPG) identifies as 'more vulnerable' development – would therefore be on land with a 1 in 100 or greater annual probability of flooding.
9. The National Planning Policy Framework (Framework) states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. It also sets out that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. Elaborating on this, the PPG indicates that a sequential test is necessary for development in flood zones 2 or 3 and where one has not already been done for a development of the type proposed on the site. The Framework and PPG are also clear that the sequential test should be applied before the exception test. The exception test is therefore only applied if the sequential test shows that it is not possible for development to be located in areas with a lower risk of flooding.
10. The proposed dwelling would be within flood zone 3 and my attention has not been drawn to any sequential test already done for a development of the type proposed on the site. Even though an FRA has been produced which sets out that the development would be safe for its lifetime without increasing flood risk elsewhere, a sequential test is also necessary in this instance. However, no sequential test has been provided.
11. The evidence before me indicates that the Council can demonstrate a sufficient housing land supply which does not rely on development outside of flood

- zone 2. Accordingly, and without a sequential test to indicate otherwise, it seems to me that there are other sites in areas with a lower risk of flooding that could be considered reasonably available and appropriate for the proposed development. In accordance with the Framework, the development should therefore not be permitted. Accordingly, and despite the Council's consideration of it, it is not necessary to apply the exception test, and its submission neither justifies the development nor offsets the failure to pass the sequential test.
12. It has been put to me that the site has never flooded and that the water level in the stream, which runs adjacent to the site at a depth of approximately 2 metres below site ground level, has never risen above approximately 0.5 metres. This is despite there being at least two significant 1 in 100 year flood events in the wider area since the appellant has lived at the site. The FRA also sets out how flood risk would be managed and the development made safe for its lifetime without increasing flood risk elsewhere. However, the site is identified as being at risk of flooding, and the Framework is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. With little evidence that it could not be provided in an area at lower risk of flooding, development within flood zone 3 is neither necessary nor justified.
13. The Environment Agency (EA) reviewed the planning application, and did not object. However, the PPG is clear that it is for local planning authorities to consider the extent to which sequential test considerations have been satisfied, and the EA have confirmed that they would not comment on it. Accordingly, their position on the FRA and the exception test, and the Council's acceptance of part of the appellant's exception test, do not indicate that the sequential test is not required and do not therefore lead me to a different conclusion.
14. My attention has been drawn to other recent nearby housing development within flood zones. However, as I do not have the full details, I am unable to draw a direct comparison between them and the appeal proposal. Consequently, I give those examples limited weight and it is also necessary to determine this appeal on its merits in any event. Whether the Council has previously taken a different approach to similar developments in similar areas at risk of flooding does also not indicate that the appeal proposal is acceptable.
15. For the above reasons, I conclude that the development would not be suitably located in relation to flood risk, with particular regard to the sequential test. Although the Council has not alleged a conflict with adopted or emerging development plan policies in its Decision Notice, its Officer Report alleges a conflict with Policy 45.ES of the Eastleigh Borough Local Plan Review (2001-2011) (EBLPR) and eEBLP draft Policy DM6. However, covering the disposal of surface water and sustainable drainage, the development does not conflict with these policies in relation to this matter. Be that as it may, it is inconsistent with the provisions in the Framework in relation to planning and flood risk, and this provides a clear reason for refusing the proposed development.

Wildlife

16. The stream running along one side of the site feeds into Monks Brook and on into the River Itchen. Designated as a Special Area of Conservation (SAC) and Site of Special Scientific Interest, the River Itchen feeds into the Solent and Southampton Water SAC and Special Protection Area (SPA).

17. EBLPR Policy 25.NC states that development which adversely affects a habitat or feature of importance for wild fauna and flora will not be permitted unless it can be demonstrated that the benefits outweigh the adverse impacts, the impacts are unavoidable and appropriate measures are taken to mitigate or compensate for the impact. Although I only give limited weight to the eEBLP, its draft Policies DM1 and DM11 also seek to, amongst other aspects, avoid unacceptable impacts on biodiversity and protect, conserve and enhance international nature conservation sites.
18. The land where the development would be predominantly consists of a garage, hard standing, short sward grassland and areas of garden plants and shrubs. Finding no protected species, the extended phase I ecology report (issue 2) identifies that the habitats comprising the majority of the site have limited ecological value due to their lack of species richness and structure. It therefore sets out that net loss of these habitats as a result of development would represent a low and not ecologically significant impact.
19. The site is separated from the stream by a closed panel wooden fence running along the eastern boundary. The site does not therefore provide habitat connected to the stream. The proposed site plan also shows that existing vegetation running along the bank of the stream would be unaffected by the development and that existing garden shrub planting near to the stream would be retained. A new dwelling and hardstanding area on the site would therefore not directly harm protected species nor lead to the loss of important wildlife habitat within the site and on the bank of the stream.
20. However, the proposed dwelling would be located relatively close to the stream bank, while the parking area would be adjacent to it. Accordingly, there is a risk that pollution from construction activities and post-development, such as from vehicles parked on the hard standing, would enter the stream and feed into Monks Brook and the designated sites of the River Itchen, Southampton Water and the Solent. Consequently, the development is likely, in combination with other plans and projects, to have a significant effect on designated sites.
21. To mitigate this and avoid the development having an adverse effect on designated sites, the updated proposed site plan includes new drainage channels in order to prevent pollution from entering the watercourse. The latest FRA indicates that these drainage channels would discharge into a soakaway via a sump pit to stop any run off entering the stream and harming water quality and flow. The ecology report also proposes various measures to prevent pollution, including with regards to construction works. These mitigation measures could be secured by condition.
22. 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 designated sites, including the River Itchen and Solent and Southampton Water. 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.
23. 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. The Council indicate that

as an interim mitigation measure to this, it is taking land out of agricultural use in order to avoid developments having an adverse effect on designated sites through eutrophication.

24. However, as I am dismissing the appeal for other reasons, I am not pursuing the pollution and eutrophication matters further, including through Appropriate Assessment, because they could not lead me to a different decision.

Character and appearance

25. The site is situated in a relatively built-up area. The surrounding area contains numerous properties with a range of designs and set in varying sized plots. Although much built form in the locality is detached, spacing between properties varies, with some buildings reasonably well spaced and others set on smaller plots and situated closer together, such as the dwellings to the east and the dwelling to the west of the site. Fronting and visible along Common Road, these form part of the character and appearance of the site's locality.
26. The development would reduce the garden area at the site, be located in relatively close proximity to 92 Common Road and create a reasonably narrow plot. However, areas for soft landscaping would be provided around the new dwelling and No 92, some existing vegetation would be retained and the development would not entirely conceal from the public realm the trees at the rear. The dwelling would also be detached, set-back from the highway to a similar extent to No 92, and the hardstanding parking area would be partially screened by proposed soft landscaping on the frontage of the site. Although not a large area, it seems to me that it would be sufficient for some shrubs or a hedge and would therefore provide a green frontage which would prevent the parking area from dominating. A shed would be provided at the rear of the new dwelling. Accordingly, the development would not significantly erode the amount of soft landscaping and trees visible in the locality nor result in a notably cramped plot that would be out of character with the locality.
27. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area. It would therefore accord with EBLPR Policy 59.BE. Amongst other aspects, this requires development to take full and proper account of the context including the character and appearance of the locality and be appropriate in relation to adjoining spaces. Although I only give limited weight to the eEBLP, its draft Policy DM1 appears to have broadly similar aims to EBLPR Policy 59.BE. For the above reasons, the proposal would therefore also accord with this draft policy.

Living conditions

28. EBLPR Policy 59.BE requires development to, amongst other aspects, be appropriate in terms of layout and incorporate an appropriate mix of dwelling-type and land-use. The Council's Quality Places Supplementary Planning Document (2011, QSPD) identifies outdoor space is an important component of good quality residential design and includes a minimum for private amenity space of at least 60% of the floor space of a house.
29. The occupants of the proposed dwelling would have a relatively small garden area. The proposed development would also reduce the amount of outside space available to the occupants of No 92, with an area to the rear and a narrower space to the side of the existing property. However, the evidence

before me indicates that the size and overall extent of outside space available to the occupants of both properties would, in relation to the gross internal floor space area of each, be sufficient and exceed the QSPD minimum. The size and location of the spaces, including to the side of the existing property, indicate that they would also provide acceptable outdoor space that would be sufficiently usable and private.

30. The garden of the proposed dwelling would be partially shaded by the new building and by existing trees. However, the appellant's shadow analysis indicates that over half of the garden area would receive at least two hours of sunlight on 21 March, meeting the Building Research Establishment good practice guidance. I also observed on my site visit that the trees, with their relatively limited canopy and spread, would not significantly dominate the garden while the new dwelling and the surrounding trees would not shade the garden all day. The garden would therefore provide a suitable outdoor environment for the occupants of the proposed dwelling. The space to the side of No 92 is rather narrow and enclosed by buildings on both sides. However, with the area to the rear of No 92 being larger and not as enclosed, the outdoor space available to the occupants of the existing property would also be of sufficient quality and receive an acceptable amount of sunlight.
31. For the above reasons, I conclude that the living conditions of the occupants of No 92 and of the proposed development would be acceptable, with particular regard to outdoor space. It would therefore accord with EBLPR Policy 59.BE and the QSPD. Although I only give limited weight to the eEBLP, the proposal would also accord with draft Policy DM1, which requires development to not have an unacceptable impact on the amenities of new and existing residents.

Other matters

32. My attention has been drawn to some errors in the Council's Officer Report and that the Planning Officer did not enter the appeal site. However, I have restricted my considerations to the planning merits of the appeal proposal, and the errors are not particularly significant and have not been material to the outcome of the appeal.
33. I recognise that no neighbours objected and that two wrote in to support or confirm they did not object. The supportive letter refers to the stream not flooding in the writer's experience and considers that the environmental issues are not sufficient to prevent the development. Be that as it may, this does not indicate that harmful development should be permitted. Due to flood risk and sequentially preferable sites being available, the development also cannot reasonably be described as making efficient use of land.

Conclusion

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

Tobias Gethin

INSPECTOR