The Planning Inspectorate

Appeal Decision

Site visit made on 21 January 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th February 2020.

Appeal Ref: APP/B1740/W/19/3238838
Fernlea, Ashley Lane, New Milton, Hampshire BH25 5AH

- 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 Daniel Roberts against the decision of New Forest District Council.
- The application Ref 19/10235, dated 19 February 2019, was refused by notice dated 20 May 2019.
- The development proposed is plot severance to rear of site to form single storey detached dwelling and associated parking, single garage to Fernlea with access.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on the character and appearance of the area, the effect on highway safety and the effect on European Nature Conservation sites (European sites).

Reasons

Character and appearance

3. The part of Ashley around the appeal site, outside those areas of planned suburban development, has a varied character and appearance. The wide mix of dwelling types and scales within the vicinity of the site give an appearance of piecemeal development and organic growth. Ashley Lane as it passes the site has a spacious feel, partly due to gaps in the built form, but primarily from the positioning of dwellings on the opposite side to the site and a sense of leaving the settlement as mature vegetation increases and the road falls to give a connection to the countryside beyond.

4. Within the townscape, more historic former rural dwellings can be seen amongst later development. The New Milton Local Distinctiveness Supplementary Planning Document (2010) ('SPD') indicates that these 'Forest cottages', along with remnants of rural lanes are what make Ashley distinctive. It goes on to indicate that the Forest cottages should be retained where at all possible and that alternations should not detract from their character. The SPD also states that the inter- and post-war streets of detached, semi-detached houses and bungalows have a rhythm and consistency of features and details that act as a reassuringly 'normal' backdrop to the remaining forest cottages.

5. Fernlea is one such Forest cottage. Although extended like its similar neighbour Cedar Cottage, it has a simple form fronting the road in a wide shallow plot. Viewed from Ashley Lane, it is seen against a backdrop of suburban estate development at Floriston Gardens. However, from my observations, it is not the visual backdrop or presence of more modern houses behind the Forest cottages that contributes to the character. Rather, it is the general presence of this 'normal' suburban development around Ashley that allows the remaining Forest cottages to stand out as a distinctive part of the townscape.

6. I understand from the Council's evidence[1] that the width and depth of the plots is part of the character of Forest cottages. The proposal would reduce the plot width significantly, but would still retain some space to the side of Fernlea. The dwelling may be taller than the adjoining bungalows around the entrance to Floriston Gardens, but in general terms it would be similar in scale to them. Therefore, whilst it would be sited close to the front of its plot, Fernlea and Cedar Cottage would remain as a distinctive, more historic, part of the townscape.

7. Although there would be a reduction in the gap in the townscape, this is not a street with a strong rhythm such that gaps are particularly important beyond their contribution to the character of the Forest Cottages. As much of the spaciousness is associated with the dwellings on the opposite side of the road and sufficient gap to Fernlea would remain, the dwelling would not appear cramped.

8. I, therefore, find that the proposal would not harm the character and appearance of the area. There would be no conflict with the SPD or those aims of Policy CS2 of the New Forest District outside the National Park Core Strategy (2009) ('CS') that seek to ensure that new development respects the character, identity and context of the town, and contributes positively to local distinctiveness and sense of place. Nor would there be any conflict with Policy NM4 of the emerging New Milton Neighbourhood Plan 2016-2036, which broadly shares these aims.

Highway safety

9. The Council's third reason for refusal raises concern over a lack of on-site turning. Whilst the access would be to a classified road, the Local Highway Authority have confirmed that they have no objection on this basis. Given that neither the existing access nor access to Cedar Cottage provide turning facilities, I have no reason to disagree with the Highway Authority's assessment.

10. The appellant has indicated a willingness to meet the visibility splay requirements and confirms that entrance gates are not required. Therefore, I conclude that those highway concerns can be adequately dealt with by planning conditions and pedestrian safety, including for those accessing nearby bus stops would be adequately safeguarded.

11. One of the parking spaces for the existing dwelling is proposed to be provided within a garage. Garages can often be used for storage space rather than vehicle parking so I understand the Council's concern that a car port would

[1] Planning officer's report

better secure adequate parking provision in the long term. However, whilst parking on Ashley Lane could be problematic, the Local Highway Authority has confirmed that a sufficient number of spaces has been proposed. I have no compelling evidence to suggest that a garage is manifestly inappropriate as part of this provision.

European sites

12. The Council has indicated that significant impacts on the integrity of various European sites[2] are likely to arise through greater recreational usage of those sites from increases in numbers of dwellings in the District. Appropriate assessment under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') is, therefore, required. This I have conducted on a proportionate basis with regard to the evidence supplied by the Council.

13. The Habitats Regulations Assessment of the Local Plan identified that potentially harmful impacts could arise, in simple terms, from an increased number of residents visiting those parts of the New Forest, the coast, the Avon Valley and the Dorset Heaths which are designated for their nature conservation importance[3].

14. The Council has produced a mitigation strategy to deal with the recreational impacts. This includes new areas of open space, enhancements to existing open space and the enhancement of recreational walking routes alongside increased ranger services and access management measures.

15. The Council has confirmed that Natural England has issued a standard response[4] indicating that, provided mitigation is secured in accordance with the Council's mitigation strategy, then an appropriate assessment can conclude that the proposal should not result in a likely significant effect.

16. Following on from this, the Council has proposed a condition to secure the appropriate mitigation. However, whilst it may be envisaged that such mitigation will be in accordance with the Council's strategy, the condition would leave room for an alternative. The proposed mitigation is not, therefore, certain and may not have been considered by Natural England as Statutory Nature Conservation Body. As competent authority under the Habitats Regulations, I must have certainty over the mitigation proposed and its efficacy before deciding to grant permission.

17. Furthermore, it is not clear how a developer could comply with the condition without entering into some form of planning obligation. Planning Practice Guidance advises that negatively worded conditions requiring the submission of planning obligations would only be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of development would otherwise be at serious risk. I understand that the Council consider a condition to be a pragmatic and effective way of allowing small sites co come forward and that collectively they contribute to the strategic housing needs of the District. However, this proposal is not, by itself, strategically important or complex. Moreover, without knowing the detail of

[2] New Forest European Site comprising the New Forest SAC/SPA/RAMSAR site; Solent Coastal European Site comprising Southampton Water SPA/RAMSAR site, Solent & Isle of Wight Lagoons SAC, Solent Maritime SAC.
[3] 'An Appropriate Assessment of the implications of a plan or project on European sites in view of those site's conservation objectives' (Council's appeal statement, appendix 1).
[4] Ibid. - Appendix C

any proposed obligation, as competent authority, I cannot be certain that appropriate mitigation would be secured.

18. In addition to recreational pressures, the Council has also advised that there is now evidence of high levels of nitrogen and phosphorus in the water environment, with evidence of eutrophication at some European sites in the Solent catchment. Wastewater from housing is one source of nutrient inputs into the water environment and Natural England has advised that there is currently uncertainty as to whether new housing growth will further deteriorate the designated sites[5]. Until this time, adopting a precautionary approach, Natural England recommend that new development achieves 'nutrient neutrality'.

19. A number of mitigation measures have been suggested by Natural England, but they accept that it would be challenging for smaller developments to comply[6]. Accordingly, more strategic options are being devised, but details are not yet available. As with the recreational impacts, the Council has suggested a condition that mitigation is agreed prior to any development commencing. However, in the absence of any detailed mitigation proposals, I cannot be certain that suitable mitigation can be achieved.

20. Therefore, as competent authority, and following appropriate assessment, I cannot conclude with any certainty that the development, in combination with other development, would not lead to significant adverse effects on the integrity of the European sites. As such, the proposal conflicts with Policy DM3 of the New Forest District outside the National Park Local Plan Part 2: Sites and Development Management which seeks to ensure that development, in combination with other development, avoids adverse effects on the integrity of European Sites.

Other matters

21. I note that there is uncertainty over whether the Council can currently demonstrate sufficient supply of deliverable housing land. However, regardless of that situation, the Framework indicates that the presumption in favour of sustainable development outlined at paragraph 11 does not apply if it has not been possible to conclude that the project will not adversely affect the integrity of a European site.

Conclusion

22. I have found that no harm would arise in respect of the first two main issues. However, as set out at paragraph 175 of the Framework, if significant harm to biodiversity cannot be avoided then permission should be refused. My findings in respect of European sites are therefore decisive in this case.

23. For these reasons, I conclude that the appeal should be dismissed.

M Bale

INSPECTOR

[5] Natural England (June 2019) Advice on achieving nutrient neutrality for new development in the Solent region (Council Appeal Statement – Appendix 7)
[6] Ibid