



Appeal Decision

Site visit made on 28 January 2020

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/B1740/W/19/3239470

St Jude, Roman Road, Dibden Purlieu SO45 4QJ

- 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 P Sellwood against the decision of New Forest District Council.
 - The application Ref 19/10747, dated 6 June 2019, was refused by notice dated 25 July 2019.
 - The development proposed is erection of four detached dwellings, with associated garaging and parking, with vehicular access onto Roman Road.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Since the appeal application was determined, the Hythe and Dibden Neighbourhood Plan (the NP) has been made meaning that it has become part of the development plan for the area. I have considered it on this basis.
3. The Council has also referred to its Emerging Local Plan 2016-2036 Part 1 (the ELP), but not to any policies within it. Due to the advanced stage in preparation, this plan can be afforded significant weight. However, the Council indicates this plan "has no policies of particular relevance to this appeal". Consequently, I will only discuss it insofar as it relates to housing land supply.
4. At the appeal stage the appellant submitted a Preliminary Ecological Appraisal in response to one of the reasons for refusal. As the Council had the opportunity to respond to this in its Statement of Case I have taken this into account in making my decision.

Main Issues

5. The main issues are:
 - the effect on the character and appearance of the area, in relation to context, design and the effect on trees;
 - the effect on the living conditions of the occupiers of 1 and 2 Heatherdown and those who would live within the development, in terms of light, overbearing effect and privacy;
 - whether the proposal makes appropriate provision for ecology; and

- whether other material considerations, including the Council's housing land supply situation and other material considerations, outweigh any conflict with the development plan.

Reasons

Character and appearance

6. The appeal site lies on the northern side of Roman Road. It is a generally flat site, although there is a vegetated bank approximately 1 m high along the road frontage. To the east is a small cul-de-sac of dwellings forming Heatherdown. These properties are two storeys in height, and this involves development in depth with semi-detached properties, Nos 2 and 3, being located behind the frontage development and immediately to the side of the northeastern part of the appeal site.
7. Currently on the appeal site is a single dwelling, St Jude. This is a striking two-storey dwelling with a low-pitched turquoise pantile roof and turquoise metal framed windows and door set within white render walls. It lies on the western side of the site with an access to Roman Road in front of the building. The access drive passes to the east of the dwelling to outbuildings to the rear.
8. The appeal site is predominantly rectangular in shape but with a further rectangle in the northeastern corner adjacent to 2 Heatherdown. The site is subject to a Tree Preservation Order (the TPO)¹. Insofar as it relates to this site the TPO protects a group of 12 Pines along the frontage, a Spruce approximately level with the rear of St Jude on the eastern boundary and a recently pollarded Lime just outside the northeastern corner of the site.
9. There are a mixture of dwelling types and styles in the area. However, along Roman Road the dwellings are set back from the highway behind vegetation and boundary features including walls, fences and banks, meaning that they have little presence in the street. So far as Heatherdown provides views in depth down the cul-de-sac is contrary to this prevailing character.
10. The appeal proposal is for the retention of St Jude and the erection of four detached two-storey dwellings, and a separate single-storey garage block. Access would be through the bank to Roman Road towards the eastern side of this frontage. There would be a dwelling facing Roman Road a similar distance into the site as St Jude behind that new access and three dwellings behind that; a single dwelling facing the new access drive and two dwellings in the secondary rectangle at the rear. The garage block would be located behind St Jude in the northwestern corner of the main rectangle with St Jude being given a newly defined rear garden, and a parking area to the front of that property.
11. The Council's objections to the proposal can be considered in relation to how the development relates to the surrounding area, the design of the individual properties and the effect on trees, both protected and otherwise.
12. As noted above the prevailing pattern of development along Roman Road is of frontage development, although located sufficiently far back into the site so as not to result in a significant presence of buildings in the street scene. In this

¹ TPO Number 34/06

regard the appeal proposal seeks to follow this, since there would be only views into the site from the new access.

13. Having said that, the parking areas in front of both Plot 1 and St Jude would increase the presence of cars and other activity in front of the houses when compared with the understated arrangements at present and the lack of other parking areas that can be readily seen along the road. Further, Plot 1 would have a greater presence on the street due to the relatively steep roof pitch when compared to St Jude which is exacerbated by the span of the building form. This would emphasise the building mass and thus its presence in the street.
14. Plots 3 and 4 would be detached dwellings but with little space between each other and with the site boundaries. This would mean that they would appear cramped, although because they are located at the rear of the site this would have very little effect from Roman Road. Insofar as they could be seen from Heatherdown this would follow the pattern of development there, but in a harmful form, since the lack of space between the buildings would result in a cramped form of development which the semi-detached dwellings in Heatherdown do not share through their different building form.
15. As regards design I agree with the Council when it describes the properties as "standard anywhere housing", and not good examples at that. Firstly, the appears to be little or no cognisance of the design or relationship to St Jude, which I have already noted is striking. The higher roof pitches and deeper spans mean that the buildings would be more massive and detract from the setting of St Jude and they do not appear to display a well-considered response to the local distinctiveness St Jude provides.
16. Secondly, there appears to be a lack of a holistic design to the buildings. The front elevations have some interest through the use of tile hanging with patterned features. However, the side and rear elevations do not appear to have the same level of care in the design process meaning the buildings would not each appear as an integral whole. The first floor southern and northern side elevations of Plot 2 would be readily seen from the access drive over the fencing and landscaping, from Heatherdown and from Plots 3 and 4, but neither has any finesse to the design with the windows appearing as unrelated elements in otherwise large expanses of brickwork. Similar criticisms can be made of the rear elevations of Plots 3 and 4 and the side and, to a lesser extent, rear elevation of Plot 1. Consequently, the proposed buildings would represent poor design.
17. I note that a similar design aesthetic has been used to some extent on Heatherdown. But here the use of tile hanging around all the elevations of No 1 and an oriel window in the side elevation provides interest. There is also the effective use of tile hanging, small dormers and horizontal brick courses. In any event, Policy D1 of the recently made NP makes clear that all new development will be required to seek exemplary standards of design and architecture and demonstrate that local character and context has been fully recognised, that the design responds to it, and that what is valued locally is respected. Policy D3 of the NP also requires new development to demonstrate local distinctiveness has been recognised and development proposals respond to this appropriately. The making of the NP marks a change in the development plan position, and

the 2019 publication of the National Planning Policy Framework (the Framework) has also emphasised the importance of good design.

18. Turning to trees, the Council concerns relate to the effect of constructing the access on the health and longevity of trees and thus on the long term effect on the street scene. This would be not only from creating the access but the necessary sight lines to ensure highway safety. These sight lines are agreed between the main parties and were measured at the site visit.
19. To create the access a single Scots Pine (reference T5 in the Arboricultural Impact Assessment (the AIA) submitted with the application) would need to be removed. This is categorised as a Category C tree in line with the classification system set out in BS5837:2012² and this has not been disputed by the Council. The Council's concerns relate to the visual effect of the loss of the trees and to the effect on trees shown to be retained.
20. The AIA sets out Root Protection Areas (RPAs) for each tree and the annotated site layout plan shows these. However, the AIA does not consider whether the RPAs should be extended further into the site to take into account of any asymmetry in the rooting systems caused by the existing constraint of Roman Road.
21. Creating the sight lines would have a greater effect to the west due to the direction of travel of traffic and the geometry of the road. This would result in the partial loss of the bank, but this bank is between the nearest tree (T6, a Scots Pine, Category B) and the highway. The vegetation in this area has not been managed for some time and is consequently somewhat unkempt. Because of the location of the bank and the likely asymmetric rooting systems I consider that the rooting systems for T6 and other protected trees are unlikely to be affected by the creation of the sight lines.
22. However, given the level of intervention at this point to create the access and the likelihood that rooting areas will extend further into the site I consider that it is likely that the health and longevity of T6 and an unprotected Beech (T4, Category C) on the opposite side of the entrance would be adversely affected.
23. The loss of both T4 and T6 would involve an opening up of the gap at the access point. This would result a loss of the characteristic street feature, trees and understorey, and increase the harmful prominence of Plot 1. The effects along the street frontage itself could be mitigated to some extent by additional landscaping set behind and below any necessary sight lines, but this would not mitigate the increased harmful prominence of Plot 1. Even if the effects of development did not result in the loss of these two trees their health and overall longevity is likely to be harmed. This would still result in greater prominence to Plot 1 and the parking area in front than had the access not been located at this point.
24. The parking area in front of St Just would also be harmful, but of lesser effect as it is not proposed to physically alter the existing access and this would therefore ensure that the vegetation at this end of the frontage was maintained providing some mitigation.
25. I noted that there was a services pole, including a street-lamp, outside the appeal site which would interrupt the sight line. However, it seems to me that

² Trees in relation to design, demolition and construction - recommendations

this could be reasonably relocated so that the sight lines were secured and services continued to be provided. This could be secured by condition.

26. Taking together the various effects on the character and appearance of the area I conclude that the cramped nature of the layout at the rear of the site, the introduction of the parking area in front of St Just, and the effect of the creation of the sight lines on the street scene would be harmful to the character and appearance of the area, but for the reasons given would only be of limited weight. The lack of architectural coherence to the buildings represents poor design and the harmful prominence of Plot 1 and its parking area would both individually and cumulatively significantly and demonstrably harm the character and appearance of the area.
27. Therefore, as well as being contrary to Policies D1 and D3 of the NP as set out above, the proposal would be contrary to Policy CS2 of the New Forest District outside the National Park Core Strategy (the CS) which requires new development to be well designed and to contribute positively to local distinctiveness and sense of place, being appropriate and sympathetic to its setting in terms of, among other matters, scale, height and appearance. It would therefore be contrary to paragraph 127 of the Framework which states that planning decisions should ensure developments are visually attractive as a result of good architecture and layout. Paragraph 130 also states that permission should be refused for development of poor design. Paragraph 170 of the Framework makes clear planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of trees.

Living conditions

28. Although Plot 4 would be located slightly further forward than 2 Heatherdown this would not be significant, and due in part to the orientation, to the north of west, would not have a material effect on the amount of light received in the two windows nearest to Plot 4. I am also satisfied that there would be sufficient distance from Plot 4 to 2 Heatherdown so that there would not be an overbearing effect.
29. The Council is also concerned that there would be some overlooking from the first floor windows in the south elevation of Plot 2 towards 1 Heatherdown. However, I note that these windows would be to a bathroom and the staircase and I am satisfied that, subject to the completion of these windows with obscure glazing, the proposal would not result in a harmful loss of privacy. This would also protect the living conditions of the occupiers of Plot 1 and I am satisfied that relationships between the proposed dwellings would be acceptable.
30. Consequently, the proposal would not have an adverse effect on the living conditions of the occupiers of adjoining and proposed properties and would comply with Policy CS2 of the CS which requires development not to cause unacceptable effects by, among other matters, overlooking and shading. It would therefore comply with paragraph 127 of the Framework which states that planning decisions should ensure developments create places with a high standard of amenity for existing and future users.

Ecology

31. This issue deals with the ecology of the site. I will consider the effects on habitats sites³ later in this decision.
32. As noted above, the appellant submitted a Preliminary Ecological Appraisal at the appeal stage. This followed an Extended Phase 1 Habitat Survey and set out enhancement measures for wildlife as well as bee, bird and bat populations. It concluded that, if implemented, there would be a net gain to biodiversity which could be secured by planning condition.
33. In light of this, and in the absence of a response from the Council, I am satisfied that the proposal would have a beneficial effect on ecology. Consequently, it would comply with Policy CS3 of the CS which seeks to ensure development contributes to biodiversity.

Housing Land Supply and other benefits

34. The Council has confirmed that it is unable to demonstrate a five year supply of land for housing. As such, in line with paragraph 11 d) of the Framework planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
35. The Council points out that, subject to Main Modifications, the ELP is at an advanced stage and that the public consultation on those Main Modifications has recently completed, with adoption anticipated in Spring 2020. It maintains that it will be able demonstrate a five year supply of land for housing upon adoption. The ELP can be given significant weight at this time and this shows that the Council is working to deliver new housing in line with the Government's objective of significantly boosting the supply of homes.
36. For completeness, I take account of paragraph 177 of the Framework which indicates that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an Appropriate Assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. For the reasons set out below I have not reached such a conclusion and consequently paragraph 177 applies.
37. The appellant has not specifically set out the benefits as he sees them. The proposal would provide for the erection of four dwellings which would only make a limited contribution to the delivery of housing in the area. It would be located in an accessible location with a reasonable choice of non-car modes, to which I give moderate weight.

Other matters

38. The site lies in proximity of the New Forest Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site, the Solent and Isle of Wight Lagoons SAC, Solent Maritime SAC, Solent Water SPA and Ramsar sites, the River Avon SAC, SPA and Ramsar site and the Dorset Heathlands SAC, SPA and

³ As defined in the Glossary to the Framework.

Ramsar sites. I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended).

39. The proximity of the appeal site means that it cannot be excluded that the proposal would not have a likely significant effect on these sites either alone or in combination with other plans or projects. Therefore, if I was minded to allow this appeal I would need to undertake an Appropriate Assessment of the effects on the integrity of these sites taking account of any mitigation proposed. But, as I am going to dismiss this appeal, I do not need to consider this matter further.
40. However, this does mean that, following paragraph 177 of the Framework, that the presumption in favour of sustainable development does not apply.

Conclusion

41. While the so-called 'tilted balance' does not apply for the reasons set out above, even if it did, taken individually and cumulatively the harm of granting planning permission in respect of the deficiencies in design and the effect on the character and appearance of the area, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
42. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR