
Appeal Decision

Site visit made on 18 May 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/D1780/W/20/3245339
16 Wimpson Lane, Southampton SO16 4QF

- 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 L Dunham against the decision of Southampton City Council.
 - The application Ref 19/01083/FUL, dated 14 June 2019, was refused by notice dated 14 August 2019.
 - The development proposed is for 2 No. dwellings with associated parking to the rear of 16 Wimpson Lane.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - The character and appearance of the area;
 - The living conditions of nearby residents with particular regard to the privacy of rear gardens, and;
 - Habitat Sites with reference to the Solent and Southampton Special Protection Area and Ramsar site and Solent Maritime Special Area of Conservation (referred to collectively as the Solent SPA's) and the New Forest Special Area of Conservation, Special Protection Area and Ramsar site (referred to collectively as the New Forest Habitat Sites).

Reasons

Character and appearance

3. Wimpson Lane is comprised mostly of residential development along its eastern side facing onto a large park and playing fields. There is some variety in the height and form of the dwellings. Nevertheless, the generally regular rhythm of the plots, consistent set back of the principal elevations facing towards the road and long rear gardens combine to result in a distinctive settlement pattern. In particular, the rear gardens contribute towards a sense of spaciousness between the broadly linear built form along Wimpson Lane and that in Quantock Road to the east. Overall, there is a pleasant sub-urban character to the area.
4. When I visited the site, there were two mobile homes situated upon the land, a motorhome, some building equipment and materials as well as some grassed

and paved areas, domestic outbuildings and paraphernalia. The evidence indicates that the appeal site currently comprises garden land to the rear of 16 Wimpson Lane and extends to include areas that originally may have been part of the rear gardens of 12-14 Wimpson Lane¹. There is nothing before me in the planning history to suggest that the land has permission to be used other than as a domestic garden and the presence of some of the objects referred to may have been associated with building works that were underway at 16 Wimpson Lane itself. Despite their presence somewhat detracting from the attractiveness of the site, the general absence of significant built form means that it, nevertheless, retains a sense of spaciousness. Therefore, it forms part of and contributes positively towards the established settlement pattern.

5. The proposal would sub-divide the appeal site and introduce two detached dwellings. The combination of their physical form and presence set deep into the site well behind the established building line would encroach into this area, thereby reducing the sense of spaciousness. Furthermore, the resulting plot shape and garden sizes would be notably different and smaller by comparison to those in the immediate vicinity.
6. In addition, as the dwellings would not have a road frontage, the layout would adversely dilute the distinction between public principal elevations and private rear garden areas, evident in the surrounding established pattern of development. This would be to the detriment of the perimeter block characteristics intrinsic to the area, the importance of which is stressed in the Residential Design Guide Supplementary Planning Document, September 2006 (RDG) which states that new development should contribute to or create perimeter block forms as the character of each street is defined by the blocks of development that frames it².
7. Moreover, glimpses of the development would be possible via the access drive and would be seen in private views from a number of surrounding properties. Taking these factors together, the resulting development would be harmful to the character and appearance of the area. Therefore, it would fail to comply with paragraph 3.7.7 of the RDG which states that the environment created by new development should make a positive contribution to enhancing the character of the street. A key objective of the RDG is to positively enhance local character³. This is consistent with paragraph 127 c) of the National Planning Policy Framework (the Framework) which stipulates that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.
8. In coming to my view, I have had regard to a previous appeal decision at the site⁴. Although I do not have full details of the development considered by the Inspector, unlike the scheme before me, that proposal was for one single storey dwelling and the appellant points out the appeal site is now considerably larger. Notwithstanding these differences, I concur with and give weight to the Inspector's findings in relation to the characteristic pattern of development in the surrounding area. Furthermore, the Inspector found that piecemeal development that would dominate the rear gardens of nearby properties would

¹ Paragraph 1.3 of the Appellant's Statement

² Part 3 RDG, paragraphs 3.7.1 & 3.7.2

³ Part 2 RDG, paragraph 2.1.3

⁴ Reference APP/D1780/A/14/2228796

be harmful. In determining the appeal proposal on its own merits, I find that it would have similar harmful impacts in this regard.

9. Accordingly, I find that the proposal would be harmful to the character and appearance of the area and therefore, contrary to policy CS13 of the Local Development Framework, Core Strategy Development Plan Document, January 2010 (CS) and saved policies SDP7 and SDP9 of the City of Southampton Local Plan Review, March 2006 (LPR). These policies, amongst other matters, require new development to respond positively and integrate with its local context and not cause harm to it.

Living conditions of nearby residents

10. The two proposed dwellings would each have two plain glazed first floor windows serving a bedroom that would face in opposite directions. Due to their height and alignment this would allow direct views of the rear gardens serving 12 and 16 Wimpson Lane as well as the rear gardens of properties to the east in Quantock Road. When this is combined with the modest separation distance between the proposed dwellings and the gardens this would diminish the level of privacy enjoyed by adjacent occupiers' when using their rear gardens to an unreasonable degree.
11. I acknowledge that the proposal would maintain the recommended minimum separation distance between habitable rooms in the RDG⁵. However, this advice relates to the separation of built form and paragraph 2.2.1 indicates that new housing development should ensure that privacy is maintained for existing occupants not just inside their homes but also in relation to private gardens.
12. The appellant asserts that trees could be planted across the rear and front boundaries to reduce the loss of privacy. However, an effective planted screen would need to achieve a considerable height to prevent views from the first-floor windows. It is not shown that the limited depth of the proposed rear gardens or the verge adjacent to the turning area and visitors' spaces would be adequate to support such a screen without having other knock-on effects for the use of the space or for the living conditions of future occupants. In any event, it would take a significant time for such planting to become established. As such, I am not assured that this would fully address my concerns.
13. My attention is drawn to the ability of the proposal to fulfil the recommended minimum garden depths and areas set out in the RDG. Nevertheless, this does not outweigh the harm to living conditions that I have identified. I also acknowledge that there have been no representations received in objection to the proposal from adjoining neighbours. Be that as it may, this does not, of itself, weigh in support of the proposal, neither does it avoid the need for me to exercise my own judgement on the merits of the proposal using the evidence before me and my own observations.
14. Paragraph 127 f) of the Framework states that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. For the reasons outlined, the proposal would fall short of achieving this.
15. Accordingly, I find that the proposal would, due to the reduction in privacy to adjacent rear gardens, result in unacceptable living conditions for nearby

⁵ Part 2 RDG, paragraph 2.2.4

residents. Therefore, it would be contrary to saved policies SDP1 and SDP9 of the LPR which seek to prevent development that, amongst other things, would unacceptably affect local amenity.

Habitat Sites

16. The appeal site is located within 5.6km of the Solent SPA's. It is also within 10km of the New Forest habitats⁶. These are habitats recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance. In the case of the Solent SPA's this is primarily in relation to waders and wildfowl and for the New Forest habitats this refers to rare and vulnerable species of birds. Recent caselaw⁷ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an appropriate assessment rather than at screening stage.
17. In the absence of mitigation measures and using a precautionary approach, given the proximity to the habitat sites it is reasonable to suppose that future residents of the development would potentially visit them for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat in relation to the Solent SPA's and the New Forest habitats. Notwithstanding that the future number of residents generated by the appeal proposal would be relatively low, I am required to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the protected habitats referred to and I have not seen evidence to demonstrate otherwise.
18. Insofar as is relevant to the impact on the Solent SPA's the Council, in conjunction with Natural England have adopted a Solent Recreation Mitigation Strategy, March 2018 (SRMS). This sets out the Council's strategic approach to mitigating the adverse effects of new housing development through avoidance measures including the provision of alternative recreational space as well as the provision of rangers, communication, codes of conduct and various other visitor management projects. The mitigation measures in the SRMS are funded by contributions from new development within the identified area of harm secured by a legal agreement, with the proportionate rates set out in the strategy. The Council indicates that for 2 two bedroom houses this would equate to a £1000 contribution⁸.
19. On the evidence before me, it appears that the need for such a contribution arises from the development and is supported by policy CS22 of the CS which seeks to ensure that development does not adversely affect the integrity of international designations, and that necessary mitigation measures are provided. As such, it satisfies the 3 statutory tests for planning obligations in Regulation 122(2) of the CIL Regulations 2010 (as amended) and reiterated in paragraph 56 of the Framework.
20. Although the Appellant has signalled a willingness to enter into a legal agreement and has provided a draft wording, I do not have a completed

⁶ Appendix 1 Council's Delegated Report, Habitat Regulation Assessment

⁷ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁸ Paragraph 2.2.3 Council's Appeal Statement

signed, dated legal agreement before me that would secure the mitigation to prevent such harm occurring.

21. Furthermore, based on the evidence provided, at present there is no equivalent scheme for strategic mitigation to address the impact on the New Forest habitats. The Council indicates that it has undertaken to ring fence 5% of Community Infrastructure Levy (CIL) contributions to fund footpath improvement works within suitable semi-natural sites within Southampton in order to provide alternative dog walking areas for new residents and that it would do so in relation to the CIL contribution arising from the proposal⁹.
22. However, based on the limited information presented I have some concerns with the adequacy of this approach. Firstly, there is little to demonstrate that the Council would be obliged to spend 5% of the CIL in this manner. Neither is there any indication of the nature of the footpath improvement works proposed by way of mitigation. Moreover, CIL is normally payable upon the commencement of development. As such, it is not shown that the timing of any mitigation works would align appropriately with the occupation of the dwellings proposed. It follows that I am not assured that this would provide adequate mitigation for the likely harm to the New Forest habitats.
23. However, I have not returned to the main parties in order to request further information and assurance regarding the mitigation measures, nor sought the views of the Statutory Nature Conservation body as part of an appropriate assessment as this would not change the outcome of my decision overall, given that I have other substantive concerns regarding the appeal proposal set out in my reasoning above.
24. In the light of a negative assessment, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest that would justify the development. I have nothing before me that would rule out alternative solutions being available but am aware that none have been put forward for my consideration. Nevertheless, the provision of two additional dwellings would not amount to an imperative reason of overriding public interest. In these circumstances the Habitats Regulations indicate that permission must not be granted.
25. Therefore, I find that the proposed development would result in harm to designated European sites as it would fail to secure appropriate mitigation. It would therefore, conflict with policy CS22 of the CS which, amongst other matters, seeks to protect the integrity of designated European Sites. Additionally, the proposal would be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats and Species Regulations 2017.

Planning Balance and Conclusion

26. The proposal would add two dwellings to the overall housing supply in a reasonably accessible location. There would be economic and social benefits arising from the construction of the dwellings as well as economic benefit derived from the future occupants for the wider area. However, given the

⁹ Habitat Regulation Assessment, Appendix 1 to Council's Delegated Report

relatively modest scale of the proposal, the extent of such benefits would be limited and therefore, this attracts a proportionate amount of weight.

27. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁰. The benefits that the proposal would bring do not outweigh the significant weight given to the conflict with the development plan policies outlined. Accordingly, they do not justify my determining the development other than in accordance with the adopted development plan and Framework.
28. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹⁰ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.