
Appeal Decision

Site visit made on 11 August 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2020

Appeal Ref: APP/B1740/W/20/3249666

23 Mount Avenue, New Milton BH25 6NT

- 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 G Leicester against the decision of New Forest District Council.
 - The application Ref 19/11118, dated 30 August 2019, was refused by notice dated 12 February 2020.
 - The development proposed is demolish existing garage, sever land and erect a 4-bedroom detached house with parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 6 July 2020, since the refusal of the planning application and the submission of the current appeal, the Council adopted the *Local Plan 2016-2036 Part 1: Planning Strategy* (LP). The Council has confirmed that Policy CS2 of the *Core Strategy for the New Forest District Outside the National Park (2009)* (CS) has been superseded by LP Policy ENV3. This policy, which relates to design quality and local distinctiveness, is consistent with the approach of the replaced CS policy. Accordingly, I have determined the appeal having regard to the recently adopted LP policies.
3. The Council has drawn my attention to Policy NM4 of the emerging *New Milton Neighbourhood Plan* (NP), which was referenced in the Council's report to the Planning Committee, but not included in the reason for refusal. The Council has confirmed that the NP has been through the public consultation process and is currently awaiting a date for the referendum, which is anticipated to take place in 2021. Given the advanced stage of preparation reached, I afford significant weight to emerging Policy NM4, which supports the design quality objectives of Local Plan Policy ENV3 and requires development to protect trees that contribute to the character of the area.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area, having particular regard to the impact on a protected tree.

Reasons

5. The appeal site is occupied by a semi-detached two storey house with a large detached garage to the side which has a concrete hardstanding in front. This would be replaced by the proposed dwelling, which would be sited further back from the road boundary. Four frontage parking spaces would serve the new and existing dwellings. The site lies within a predominantly residential suburban area. The road has a wide, open and green character, where trees, hedging and shrubs are notable features of property frontages.
6. On the adjacent site, occupying a prominent position close to the street, and spreading over the appeal site, adjoining land and the road, there is a large Monterey pine tree. The tree is over 20m high and is covered by a Tree Preservation Order. Due to its height and the extensive spread and overall shape of its canopy, it is an attractive, imposing specimen which is highly visible within the street scene. As such it is of high public amenity value and makes a significant positive contribution to the townscape of the locality. The tree is recognised in the *New Milton Local Distinctiveness Supplementary Planning Document 2010* (NMLDSPD) as one of the "significant street trees and larger trees or groups" in an area characterised by "street trees" and "some very significant pines".
7. The importance of the tree was recognised by the Inspector dealing with the previous appeal in respect of planning application Ref 11/96990 to extend no.23 and replace the garage with a detached dwelling.¹ In dismissing the appeal, the Inspector found that, subject to appropriate protective construction methodology, there would be no adverse direct effect on the Monterey Pine, but that there would be likely to be requests to fell the tree or lop in a manner which could harm its appearance and amenity value or threaten its survival due to the proximity of the appeal scheme to the tree and resulting concerns about shading, overbearing presence and debris or branch fall.
8. I have had regard to the appellant's submitted Tree Protection Plan and Arboricultural Assessment and Method Statement² (AAMS) and observations during my visit. In the case of the current scheme, the appellant adjusted the RPA of the tree to take account of the possible restrictions to root growth due to the proximity of the road, so that it extends to 19m within the site, amounting to a notable portion of the front part of the site. Consequently, both main parties are agreed that the proposed dwelling would be within the RPA of the tree.
9. The north-east corner of the dwelling would be sited within the footprint of the existing garage, so that the house would not encroach any closer to the tree than the existing garage, and it is proposed to revert the majority of the garage footprint back to soft landscaping. However, the scheme would result in approximately one third of the footprint of the dwelling being sited within the tree RPA, as well as the frontage parking for the new dwelling, and this includes land within the RPA which at present contains no built development.
10. As a result, the appellant has detailed how the development could be carried out without causing harm to the tree. In particular, the house would be constructed using a pile/suspended floor foundation arrangement to minimise

¹ APP/B1740/A/12/2170631

² Arboricultural Assessment and Method Statement by Barrell Tree Consultancy dated 19 November 2019

excavation and allow rainwater to be returned to the soil beneath the floor slab, and the parking would comprise custom-designed no-dig specification surfacing in accordance with guidance in paragraph 8.6 of BS5837:2012³. Other measures include protective fencing, ground protection and pollution control, with implementation of the procedures ensured through a planning condition.

11. The appellant cites the previous appeal decision, whereby the Inspector found this approach to be appropriate, and also noted that careful removal of the existing garage could be beneficial. Whilst this is relevant to my determination, I must have regard to the current on-site situation. The tree appears to be healthy and in a good condition. As such, its size and root spread are likely to have increased since the date of the 2012 appeal decision. I have not been provided with details of the root protection area(RPA) at the time of the previous appeal, although I note that the Inspector stated that the development would entail construction "in or close to the root protection area of this tree".
12. In the case of the current appeal, the Council points out that the appeal scheme would result in a 25% greater amount of new permanent hard surfacing of existing unsurfaced ground within an RPA than is recommended by the BS5837 standards. This figure is not disputed by the appellant. The extent to which the new building would encroach into the RPA of the tree would be significant, and paragraph 5.3.1 of BS 5837:20122 states that "the default position should be that structures (see 3.10) are located outside the RPAs of trees to be retained. However, where there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the tree". There is no evidence before me to suggest that alternatives have been considered avoiding construction works within the tree's RPA, and I find no overriding justification for construction within the RPA.
13. Moreover, there is a difference of opinion between the Council and the appellant's arboricultural consultant regarding the appropriateness of pile and beam foundations. The Council consider this would not be an appropriate solution due to the large amount of encroachment into the tree's RPA and the potential damage to fine non-woody absorptive roots concentrated within the upper part of the soil, whose survival and functioning are essential for the tree's health. I do not disagree with this assessment, having regard to the tree's maturity and its already restricted available rooting area. Furthermore, the appellant has not provided sufficient details of the proposed foundation design, nor addressed the potential for service connections to run through the RPA to connect up with main utilities in the street. I also note that the existing garage and parking area are likely to have impacted on the tree roots and I have taken this into account in accordance with advice in the BS5837 standards.
14. Although some trees can recover from root disturbance, the RPA is the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability, and where the protection of the roots and soil structure is treated as a priority. The extent to which the works would encroach into the RPA of this mature tree would not be insignificant, and it is by no means certain that the tree would recover from any associated root

³ 2 BS 5837:2012 Trees in relation to design, demolition and construction - recommendations

damage. With the precautionary principle in mind, the proposal would therefore risk the long-term health and survival of the tree, which would be detrimental to the character and appearance of the area

15. The current appeal scheme dwelling would be sited slightly further away from the tree than that of the previous scheme, and would have study and bedroom windows closest to the tree rather than a front bay serving a living room and principal bedroom. Taking account of a likely increase in the size of the tree since the previous appeal decision, the small extent of the proposed repositioning of the new dwelling in relation to the tree, and the fact that the front elevation windows would be the sole windows to the rooms they serve, I am not persuaded that the current appeal scheme has overcome the previous inspector concerns in respect of the proximity of such a large tree to the new house.
16. The tree appears to be healthy and will continue to grow. As such, given its likely continuing future dominance over the appeal site, it has the potential to result in inconvenience or fear of danger to future occupants of the appeal scheme, as a result of shading, an overbearing presence, and debris or branch fall. As such, there is a strong possibility that future occupiers would want to undertake pruning or similar works to the tree, which have the potential to prejudice its long-term health and amenity value. Although the tree is protected and lies outside the appeal site, the Council would struggle to refuse subsequent tree work applications for felling or lopping the tree on safety grounds due to its proximity to the new dwelling. Therefore, the potential for future damage to the tree arising directly from the appeal proposal would conflict with the Council's confirmed intention to protect this tree, and would present a credible threat of causing harm to the visual amenities of the area.
17. The appellant has drawn my attention to changes to the development plan since the previous appeal decision, so that saved Policy DW-E8 of the New Forest District Local Plan First Alteration, which was relevant to the previous appeal, has since been superseded. Notwithstanding this, I find that the current and emerging development plan policies referred to by both main parties provide sufficient policy justification for the dismissal of the appeal.
18. For the above reasons, I therefore conclude that the proposal would harm the character and appearance of the area, with particular regard to the protected tree. As such, the development would be contrary to LP Policy ENV13, NP emerging Policy NM4 and the NMLDSPD, which amongst other things, seek to ensure that new developments contribute positively to local distinctiveness, are sympathetic to the environment and their context in relationship to adjoining landscape features, and protect trees that contribute to the character of the area. The proposal would also conflict with the objectives of chapters 12 and 15 of the *National Planning Policy Framework 2019* (the Framework) of achieving well-designed places and conserving and enhancing the natural environment.

Other Matters

19. It has been brought to my attention by the main parties that a scheme of mitigation is required to mitigate against potential harm to the New Forest and Solent Coast European designated nature conservation sites, arising from increased recreational usage associated with new residential development. The Council has carried out its own previous Appropriate Assessment, concluding that the adverse impacts would be avoided if appropriate mitigation is secured

in accordance with the Council's mitigation strategy prior to the grant of permission. This requires a financial contribution for every net new dwelling to mitigate the increased recreation pressure resulting from the development. The appellant suggests that this can be secured through a planning condition, but the Council requires a completed Section 106 Agreement or Unilateral Undertaking prior to permission being granted.

20. There is also a requirement for new residential development to achieve 'nutrient neutrality' to avoid the potential harmful impacts on the water quality of the Solent European designated sites arising from high levels of nitrogen and phosphorus input causing eutrophication. The Council has confirmed that there is currently no agreed Nitrate Mitigation solution, and has suggested that this matter can be dealt with by means of a Grampian condition, which has also been agreed by the appellant.
21. If I were mindful to allow the appeal, as the competent authority, I would need to undertake an Appropriate Assessment of the implications of the appeal scheme for the European designated sites. As matters stand, there are no detailed mitigation proposals in place as part of this appeal to directly address the likely significant effects upon the European designated sites, and the full details and implications of any such proposals remain unknown. The appeal scheme, in the absence of any satisfactory mitigation and the necessary mechanism for achieving it, would have an adverse effect upon the integrity of the European designated sites.
22. However, since I find the proposed development to be unacceptable in respect of the impact on the character and appearance of the area, the outcome of any such Appropriate Assessment would have no bearing on the aforementioned harm I have already identified, and, in turn, on the overall outcome of this appeal. Therefore, there is no need for me to consider the implications for the European designated sites any further as part of my decision.
23. The appellant has referred to the requirement to trigger paragraph 11 d) of the Framework, and the presumption in favour of sustainable development, having regard to the Council's five-year housing land supply and Housing Delivery Test (HDT) results. Since the refusal of permission and the submission of this appeal, the Council has confirmed that, following adoption of the LP on 6 July 2020, it is able to demonstrate a five-year housing land supply based on the LP for the period 2020/21 – 2024/25. This has not been disputed by the appellant.
24. The most recent HDT results for New Forest District Council show that the number of dwellings delivered over the last three years is below the total number of homes required (43%). The implementation arrangements, which are set out in Annex 1 of the Framework, explain what constitutes delivery substantially below the housing requirement. For the HDT results published in November 2019⁴, footnote 7 of the Framework applies where delivery was below 45% of the housing required over the previous 3 years.
25. A such, in accordance with paragraph 11d) of the Framework, planning permission should be granted unless: i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusal; or ii) any adverse impacts of doing so would

⁴ Which were published in February 2020

significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

26. In the case of the appeal scheme, exemption i) applies, since the development requires an appropriate assessment because of its potential impact on habitats sites. As such, in accordance with paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply.
27. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest.
28. In terms of its component dimensions, there would be a small social benefit in providing an additional dwelling. Economic advantages would also arise from the construction and occupation of the new house. However, protecting and enhancing the natural and built environment is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area would be more significant in its scale. As a result, the environmental role of sustainable development would not be achieved. Accordingly, even if the tilted balance were not to be disapplied by the habitat conflict with the Framework, such that adequate mitigation were to be provided, I still find that, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits.
29. The appeal proposal is in conflict with the development plan taken as a whole and material considerations do not indicate a decision otherwise than in accordance with its terms.

Conclusion

30. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR