

Appeal Decision

Site visit made on 21 October 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Appeal Ref: APP/B1740/W/20/3256603

**Land to rear of Barnes Corner and Grey Chequers, Manor Road,
Milford on Sea SO41 0RG**

- 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 Lister of Solent Projects New Homes Ltd against the decision of New Forest District Council.
 - The application Ref 20/10319, dated 21 February 2020, was refused by notice dated 22 July 2020.
 - The development proposed is 4 No dwellings, Altered access, Hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted a signed unilateral undertaking (UU) made under S106 of the Town and Country Planning Act 1990 on the 2 November 2020. The UU provides for contributions to mitigate the effects of the proposal on the New Forest Special Area of Conservation, New Forest Special Protection Area and New Forest Ramsar site (hereafter collectively referred to as the protected sites). I shall return to this matter later in my decision.

Main Issues

3. The main issues are:
 - the effects of the proposal on the character and appearance of the area and on protected trees;
 - the effects of the proposal on the biodiversity of the site;
 - the effects of the proposal on the protected sites.

Reasons

Character, appearance and effects on trees

4. Both Grey Chequers and Barnes Corner are large, detached dwellings that sit within spacious, verdant plots and are broadly orientated on a north-south alignment to front onto Manor Road. Both have shallow front gardens interspersed with trees that make an important contribution to the street scene.
5. The gardens to the rear of both dwellings are predominately flat and expansive. Despite some separation by low wooden fencing and some trees largely

- concentrated on the outermost eastern and western boundaries, it has open, green characteristics and is bound to the rear by a no-through part of Barnes Lane which provides access to a small number of houses.
6. The dwellings accessed via the no-through driveway are all large detached dwellings, again also orientated on a north-south alignment to front onto the driveway. They are of a broadly similar scale and mass to one another, but are varied in terms of their form, design, appearance and construction materials. Each dwelling has a degree of outlook over the adjoining gardens forming the appeal site, particularly from first floor level.
 7. The wider character of the area along Manor Road and Barnes Lane is also of large detached dwellings, suitably spaced and fronting onto the road, interspersed with trees. Other pockets of development to the south-east of the nearby recreation ground are very different and far higher density, but the site is far removed from that. Despite there being a variety of architectural styles and construction materials, and noting that it is not within a Conservation Area, National Park or other landscape-based designation, the defining characteristic of the area immediately surrounding the appeal site is of large individual dwellings in spacious, verdant plots.
 8. The proposal seeks to introduce four dwellings, separated into two pairs, facing towards each other at broadly ninety degree angles to Grey Chequers, Barnes Corner and the dwellings to the south of the adjoining driveway. Each of the four dwellings would be smaller than those found in the immediate surroundings. Notwithstanding the absence of density calculations to emphasise the point, the dwellings would be sited far closer together than dwellings in the surroundings and the ancillary garage buildings would be clustered rather haphazardly in an area in the middle, undermining any ability to clearly define the frontages of each respective plot.
 9. Owing to the scale, mass, siting and layout of the proposal, it would be at odds with the prevailing character of the area. The spacious and verdant character would be undermined by a cramped form of housing, with the garages adding to the congested quality of the scheme. Whilst taken individually, the proposed houses and construction materials could be considered to be in context, as a scheme of such a high number of dwellings in a relatively small space, the overtly similar house types and limited material palette would dominate the otherwise pleasantly varied form of housing found in the surrounding area, with detrimental effects on local distinctiveness.
 10. Whilst the length of the driveway and turning area would not be a particularly noticeable feature from wider viewpoints, its length and the extent of hardstanding would result from seeking too intense a form of development from the site. Similarly, whilst the alternative east-west alignment could be considered an acceptable solution, combined with the number of dwellings, the resulting effect would be of a harsh intrusion to the area.
 11. In terms of the effects on trees, there is a protected Norway Maple tree between Grey Chequers and Barnes Corner which has an established presence in the street scene. Despite the inconsistency in the submitted plans and tree report, there is no reason for this tree to be removed and conditions could ensure its retention and protection during construction works.

12. The protected Ash tree on the outermost eastern boundary also has a positive effect on the character of the area and the proposal would introduce gardens underneath its crown spread. Due to the siting of the two dwellings, both with a large degree of garden area that would be shaded by the canopy of the tree or subjected to leaf-drop, I am of the view that there would be future pressure to undertake pruning works in order to maximise the light and usability of the gardens. The effects of pruning or removing the tree would be detrimental to the area's verdant qualities and further indicate that the scheme would have an incompatibly concentrated density.
13. For the above reasons, the proposal would harm the character and appearance of the area and a protected tree, contrary to Policies STR1, ENV3 and ENV4 of the New Forest District Council Local Plan 2016-2036 Part 1: Planning Strategy (LPP1) (adopted July 2020). These Policies, amongst other things, seek to deliver high quality design that maintains local distinctiveness, create buildings, streets and spaces which are sympathetic to the environment and their context in terms of layout, scale, height, appearance and density, and retain existing landscape features such as trees and hedgerows.
14. For similar reasons, the proposal would also conflict with supplementary guidance in the Milford-on-Sea Village Design Statement (2002) which emphasises the rural character of Barnes Lane with large houses and many trees and also seeks to avoid new buildings being sited too close to trees.

Biodiversity effects

15. The appeal application was submitted with a Phase One Biodiversity Survey which eradicated the presence of most species, protected or otherwise. It also highlighted measures that could be implemented to secure biodiversity enhancements. However, an aspect that it left unresolved was the presence of reptiles. Suitable habitat for reptiles (e.g. Grass Snakes and Slow Worms) was identified in the compost heap and rough grassland at Barnes Corner. Both species have previously been identified within the wider area.
16. In view of the above, the proposal was identified as resulting in a loss of suitable reptile habitat. Despite the claim that an updated survey would be submitted, it does not appear that any further survey work was undertaken to ascertain or eliminate the presence of reptiles. At the time of my site visit, the compost heap did not appear to be present and I was advised that it had been removed. Whether its dismantling had been undertaken in a manner conducive to identifying the presence or otherwise of reptiles was unclear.
17. I am of the view that the presence, or otherwise, of protected species and the extent that they may be affected by a proposed development needs to be clearly established and cannot be left to planning conditions in ordinary circumstances. Whilst subsequent events may have since altered the habitat potential of the site, some doubt remains about whether this has removed all suitable habitat. Therefore, on the basis of the limited evidence before me, the proposal would have a harmful effect on biodiversity and consequently conflicts with, in particular, Policy DM2 of the LPP2¹ and STR1 of the LPP1. Collectively, these Policies, amongst other things, seek to avoid or mitigate the impacts of development on species or habitats of nature conservation value.

¹ New Forest District Council Local Development Framework, Local Plan Part 2: Sites and Development Management (adopted 2014)

Effect on protected sites

18. The appeal site is within influence of the New Forest Special Area of Conservation, New Forest Special Protection Area and New Forest Ramsar site (the protected sites).
19. It cannot be ruled out that residential development in this location, both individually and cumulatively with other schemes, would have significant effects on the features of interest of the protected sites due to increased recreational use. The parties do not dispute that this can be mitigated through contributions to infrastructure delivered through either the UU or Community Infrastructure Levy (CIL) and by Access Management and Monitoring (AMM) contributions. The AMM measures are required to be addressed by way of legal agreement and the appellant has submitted an UU to seek to secure both forms of contribution, with the effect of altering the CIL liability where relevant.
20. In addition, there is a degree of uncertainty about the effects of planned residential growth on the protected sites from changes to air quality in the area, through the addition of Nitrogen Oxide, Nitrogen Deposition and Ammonia. Initial work has not reached a conclusion as to whether changes to air quality on the protected sites will be significant. The parties agree that a contribution should be secured towards air quality monitoring, and, if necessary (based on future monitoring outcomes) managing or mitigating air quality effects. The air quality monitoring measures are also required to be addressed by way of legal agreement and the appellant has included this particular contribution within the submitted UU as well.
21. Lastly, the site is within the catchment of a wastewater treatment plant that discharges into the Solent, much of which form the Solent Coastal European Sites². The addition of new overnight accommodation would, in combination with other developments, have an adverse effect due to the impacts of additional nitrate loading on the Solent catchment unless nitrate neutrality can be achieved, or adequate and effective mitigation is in place prior to any new dwelling being occupied. Though there are presently no immediately available nitrate mitigation solutions, the Council and appellant have agreed a Grampian-style condition to set a nitrate budget and secure mitigation in the event that the appeal were allowed. Such mitigation would need to be taken into consideration in the undertaking of any Appropriate Assessment (AA).
22. However, as the appeal is failing on the other main issues, the circumstances that could have led to the granting of planning permission are not present. Therefore, it is not necessary for me to ascertain the appropriateness of the relevant mitigation measures within an AA or take these matters further.

Other Matters

Five year housing land supply

23. The appellant claims that the Council have provided little evidence to substantiate its alleged supply of 6.11 years' worth of housing land against the required five year supply (5YHLS). However, the Council's LPP1 was only adopted on 6th July 2020, after the publication of the 'Housing Delivery Test:

² The Solent and Southampton Water Special Protection Area and Ramsar site, the Solent & Isle of Wight Lagoons Special Area of Conservation and the Solent Maritime Special Area of Conservation

2019 measurement³ (February 2020). The LPP1 is therefore considered to be a 'recently adopted' plan under the terms of the National Planning Policy Framework (the Framework) (paragraph 74 and footnote 38).

24. Given that the LPP1 forms the planning strategy for the area, and includes housing delivery and allocations, the volume of evidence that supported its preparation, examination and adoption is adequate for me to conclude that there is currently a sufficient 5YHLS in the district. Consequently, the 'tilted balance' set out in paragraph 11(d) of the Framework is not engaged. Notwithstanding this, I am mindful that the dwellings have been designed to be at the more affordable end of the market for family homes and that the Council has an annual housing target, despite the current 5YHLS position.
25. I note the many areas of agreement between the appellant and Council in terms of the effects on the living conditions of neighbours and future occupiers and effects on highway safety. The absence of other harms is a neutral factor in the overall planning balance.

Planning balance and conclusion

26. The proposal would result in harm to the character and appearance of the area, including a protected tree, and would have a harmful effect on biodiversity. For these reasons, it conflicts with the development plan, read as a whole.
27. The benefits of the proposal include the delivery of four houses in an area considered to be suitable for new residential development and where local facilities are accessible by a range of travel modes. The scheme would also deliver economic benefits, throughout the construction phase and through the dependency of future residents on a range of local shops and services.
28. Whilst the valid contribution that would be made by the dwellings and longer-term limited economic benefits attract modest weight, they do not outweigh the identified harm and associated development plan conflict.
29. For the above reasons, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

³ Ministry of Housing, Communities and Local Government: Housing Delivery Test: 2019 measurement