
Appeal Decision

Site visit made on 1 December 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Appeal Ref: APP/A1720/W/20/3258247

The Old Forge, 251 Bridge Road, Lower Swanwick, Fareham SO31 7FN

- 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 The Executors of E.D. Jowett against the decision of Fareham Borough Council.
 - The application Ref P/20/0298/FP, dated 2 April 2020, was refused by notice dated 3 June 2020.
 - The development proposed is demolition of existing garage/workshop (formerly known as The Old Forge), and construction of 3 bedroom detached dwelling with associated parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the appeal scheme on the character and appearance of the Swanwick Shore Conservation Area (SSCA);
 - The effect of the appeal scheme on the living conditions of the occupiers of 251a and 251b Bridge Road, with particular reference to outlook and natural light impacts;
 - Whether there is sufficient information to assess the potential impact of the appeal scheme on protected species, with particular reference to bats; and
 - The effect of the appeal scheme on the integrity of European Protected Sites (EPS).

Reasons

Character and appearance of the SSCA

3. The appeal site is located within the SSCA. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that, with respect to development affecting buildings or other land in a conservation area, "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area." In addition, Paragraph 193 of the *National Planning Policy Framework 2019* (the Framework) sets out that when considering the impact of a proposed development on the

- significance of a designated heritage asset, great weight should be given to the asset's conservation.
4. The appeal site is occupied by a detached, single storey, pitched roof, brick garage/workshop/store building. It is sited to the rear of the garden of a 2-storey residential property at 251 Bridge Road, with vehicular access from the street running adjacent to the side of that property. To the rear of the building, the site is given over to hard-surfacing.
 5. There are residential properties to both sides, front and rear, of the site, including 2-storey dwellings close to both side boundaries. The appeal scheme would replace the existing building with a parking area, and construct a new 2-storey, pitched roof dwelling further back into the site, and closer to the neighbouring buildings to the sides and rear.
 6. The *Swanwick Shore Conservation Area Appraisal and Management Strategy* (2010) (SSCAAMS) confirms that the SSCA occupies a roughly rectangular area of land between Bridge Street and the River Hamble, and that it comprises a group of buildings, public hard and river frontage that form the village settlement at Lower Swanwick, whose character derives largely from its riverside setting. The SSCAAMS confirms that the original settlement pattern has remained largely unchanged since the late 19th Century, aside from a number of infill houses on Swanwick Shore Road, and that the buildings are predominantly residential, modest in scale and of traditional material, and that there is considerable space between the buildings and behind the frontages.
 7. The SSCAAMS states that, whilst there is a tightly arranged group of historic buildings at the northern end of the conservation area, the Bridge Road frontage is formed by late 19th Century houses with long rear gardens, and that elsewhere dwellings are more spaciouly arranged in large plots retaining a sense of openness. The SSCAAMS also advises that the appeal site formerly accommodated a smithy which was a historic source of employment. Both parties are agreed that the current building is of no significant architectural or historic merit, and the Council has raised no objection to its removal. On the basis of my site inspection, I concur with this view.
 8. The appeal site specifically lies within the Bridge Road area of the SSCA, within the part defined as being east of the public house car park, fronting Bridge Road. This comprises a row of 5 detached houses (nos.251 – 259), built in brick at around the turn of the century, and with surviving long rectangular rear gardens, which retain a sense of space and an open character behind the built frontage, contributing to the character of the conservation area.
 9. The neighbouring semi-detached dwellings at nos. 251a and 251b have been built within one of the aforementioned rear gardens. When considered within the context of surrounding development, a degree of openness has been maintained around them, so that the spacious character of this part of the conservation area has not been harmed. Part of this surrounding open space derives from the rear part of the appeal site.
 10. The appeal scheme would introduce a 2-storey, pitched roof, family-sized dwelling into this space, which would be sited in close proximity to the semi-detached houses and the detached 2-storey dwelling at Maple Lee on the other side of the site. Due to the proposed height, scale and massing of the building, and its close proximity to both neighbouring 2-storey buildings, the

proposal would result in an unduly tight and constricted layout of built development, which would be harmful to the more open layout of development characteristic of this part of the SSCA. This harm would not be justified by the removal of the existing site building, which could take place without the appeal proposal. Nor would the harm be mitigated by the smaller footprint of the proposed building compared to the existing, or the set-back position of the appeal site behind no.251.

11. For the above reasons, I conclude that the proposal would fail to preserve or enhance the character or appearance of the SSCA. It would harm its significance as a heritage asset. In terms of the advice in paragraph 196 of the Framework, the harm to the conservation area would be “less than substantial”. Less than substantial harm does not equate to less than substantial planning objection, and the Framework sets out the need to address the “less than substantial harm” against the public benefits of the scheme.
12. The appeal proposal would be located in an accessible urban area where access to community facilities and services and public transport connections is likely to be greatest. It would bring economic and social benefits, including construction jobs, increased local spend and a sustainably located home which would boost the supply of housing, providing a 3-bedroom family sized dwelling. As one additional dwelling would result, though, these matters attract modest weight as public benefits. They are outweighed by the harm the proposal would cause to the character and appearance of the SSCA.
13. As such, the appeal scheme would not accord with Policy CS17 of the *Fareham Local Development Framework Core Strategy* (2011) (Core Strategy), Policy DSP5 of the *Local Plan Part 2: Development Sites and Policies* (2015) (Local Plan) and the SSCAAMS. These policies, amongst other things, aim to ensure that development proposals are of a high quality design, which responds positively to the key characteristics of the area, including heritage assets and spaciousness, and preserves or enhances conservation area character, setting and appearance, taking account of the relevant CAAMS.
14. For similar reasons, the proposal would also be contrary to Policies of the Framework which seek to conserve and enhance the historic environment as set out in Chapter 16.

Living conditions

15. The new building would be positioned directly opposite the principal front entrance to no.251a, and within close proximity to the front wall of that property. The 2-storey flank wall of the new building, being sited near to the narrow pedestrian walkway to the principal front entrance doors of nos. 251a and 251b, would create an overbearing, domineering and enclosing impact on the route to the front doors of these properties, and on the outlook from the entrance doors.
16. Having regard to the position of the new building to the south-east of these properties, this oppressive impact would be compounded by an associated loss of natural light to the glazing panels within their front entrances, in particular that of no.251a, which comprise the sole glazed element to the front wall of the houses, providing natural light to the hallways.

17. The existence of boundary walling and fencing and the neighbouring porch design does not mitigate the harm I have identified. Furthermore, I am not persuaded by the appellant's case that the Council has not raised a similar concern in respect of the impact of the development upon the living conditions of the occupiers of Maple Lee. I find that the position and orientation of the new building in relation to the side fenestration of that property is not directly comparable with that in relation to nos. 251a and 251b.
18. For the above reasons, I therefore conclude that the proposed development would materially harm the living conditions of the occupiers of 251a and 251b Bridge Road, with particular reference to outlook and natural light impacts. As such, the development would not accord with Local Plan Policy DSP3, which aims to ensure that development proposals do not have an unacceptable adverse impact on neighbouring living conditions by way of loss of sunlight, daylight and/or outlook.
19. This is generally consistent with paragraph 127 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Protected species

20. The Council's third reason for refusal relates to the failure to provide sufficient evidence to demonstrate that the proposal would not have an adverse impact upon bats, having regard to their status as European Protected Species under the Habitats Regulations. I find this reason for refusal to be appropriate, having regard to the lack of protected species survey from the appellant with either the planning application or appeal submission documents. I consider that there is a reasonable likelihood that this building could provide bat access points and roosting accommodation, given its design, and its location within the vicinity of woodland which could provide potential foraging habitat. Given the proposal to demolish the building, any bats present would be affected by the development.
21. *Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System* (Circular 06/05) states that it is essential that the presence or otherwise of protected species and the extent that they may be affected by proposed development should be established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Therefore, in the absence of a protected species survey, which would inform any necessary protected species mitigation and/or compensation requirements, I do not concur with the appellant that this matter is capable of being dealt with by means of "legal agreement, financial contribution or condition".
22. For the above reasons, I therefore conclude that there is insufficient information to assess the potential impact of the appeal scheme on protected species, with particular reference to bats. As such, the proposal does not accord with the objectives of Local Plan Policy DSP13, Circular 06/05, and Chapter 16 of the Framework, which seek to ensure that new development does not harm protected species.

European Protected Sites

23. The Council's fourth and fifth reasons for refusal relate to potential harm arising from the proposed development to the Solent Coast EPS. This

comprises a coastline that has a network of mudflats, shingle and saltmarshes which provide essential winter feeding and roosting grounds for birds that spend the winter here, including more than 90,000 waders and wildfowl including 10 per cent of the global population of brent geese. The EPS was designated by the Government to protect these over-wintering birds.

24. The proposed net increase in residential development has a potential two-fold impact upon the EPS arising from, firstly, the prospect of increased levels of nitrogen and phosphorus entering the water and resulting eutrophication, arising from additional waste-water created by additional residents at the site, and, secondly, possible disturbance to the birds arising from increased recreational activity around the shorelines of the harbours.
25. The appellant's Nitrate Calculation concludes that the appeal scheme would result in a nitrogen surplus. As it has failed to demonstrate that the proposed development would be nitrogen neutral, there would be a likely significant impact on the EPS arising from increased waste water. The appellant considers this matter is capable of being dealt with by means of a Grampian condition. The Council disagrees, having regard to advice contained within the Planning Practice Guidance, and I concur with this view.
26. Local Plan Policy DSP15 confirms that the recreational impacts can be satisfactorily mitigated by means of a financial contribution in accordance with the Solent Recreational Mitigation Partnership. Whilst the appellant has confirmed willingness to enter into a legal agreement to secure the required contribution, no agreement has been completed.
27. Without mitigation, the appeal scheme presents a likely significant effect upon the integrity of the EPS, particularly when the impacts are considered in combination with other residential developments.
28. If I were mindful to allow the appeal, as the competent authority, I would need to undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017), of the implications of the appeal scheme for the EPS. 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 EPS, 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 EPS.
29. However, since I find the proposed development to be unacceptable in respect of the other main issues, 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 EPS any further as part of my decision.

Other Matters

30. I acknowledge that the proposal represents an amended scheme from that refused under planning application Ref P/19/1345/FP, including changes to the roof and window designs, the repositioning of the building and the introduction of new tree planting. However, this does not alter my conclusions in respect of the main issues having regard to the current proposal.

31. I am not persuaded that the development of the adjacent dwellings at nos. 251a and 251b has resulted in a harmful level of overshadowing and an overbearing impact on the appellant's garden that justifies the aforementioned harm that I have identified.

Conclusion

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

S Leonard

INSPECTOR