
Appeal Decision

Site visit made on 10 May 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2021

Appeal Ref: APP/C1760/W/20/3252467

Land between Yew Tree Cottage and Ivy Cottage, Romsey Road, East Wellow

- 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 Mrs Beverley Davies against the decision of Test Valley Borough Council.
 - The application Ref 19/02572/FULLS, dated 24 October 2019, was refused by notice dated 17 December 2019.
 - The development proposed is construction of one self-build dwelling and detached garage for occupation by operator of Carlo's Ices and Tea Rooms.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Beverley Davies against Test Valley Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The Council has advised that, following receipt of a contribution towards the New Forest Interim Mitigation Strategy, it no longer wishes to pursue Refusal Reason No 6 regarding the impact of the proposal on the New Forest Special Protection Area as a result of increased recreational pressure.
4. The Highway Authority has confirmed that the proposed visibility splay has been accepted as a departure from technical standards. On this basis, the Council is no longer seeking to defend Refusal Reason No 7 in relation to highway safety.
5. The appellant has submitted a revised block plan¹ and revised tree protection plan² as part of the appeal. These show the deletion of a vehicle pull-in at the front of the site and additional replacement tree planting comprising 7 No. oaks behind post and rail fencing and native hedging at the back of the visibility splay. No party would be prejudiced if I were to determine the appeal based on the amended plans.

¹ Plan ref 18-1105-001 L

² Plan ref Eco 8 Revised

Main Issues

6. The main issues are:

- a) whether or not the site is a suitable location for a dwelling, having regard to development plan policy and the principles of sustainable development;
- b) the effect of the proposal on the character and appearance of the area, with reference to protected trees;
- c) the effect on the Solent and Southampton Water Special Protection Area, and in particular whether the scheme would achieve nutrient neutrality; and
- d) whether there are other material considerations sufficient to outweigh any conflict with the development plan in respect of the above issues.

Reasons

Whether the site is a suitable location for a dwelling

7. The appeal site is a rectangular plot located between the existing dwellings of Yew Tree Cottage and Ivy Cottage on the north side of Romsey Road. The land lies outside of the settlement boundaries defined for East and West Wellow in the Test Valley Borough Revised Local Plan 2011-2029 (LP). Policy COM2 of the LP states that development outside the boundaries of settlements will only be permitted if it is appropriate in the countryside as set out in specified policies; or it is essential for the proposal to be located in the countryside.
8. The policy seeks to direct new development to locations within settlement boundaries at a scale which is appropriate to the settlement's position within the defined hierarchy. Sites outside of settlement boundaries are deemed to be within the countryside for policy purposes and residential development here is strictly controlled. This approach is compatible with the promotion of sustainable development in economic, social and environmental terms, as set out in the National Planning Policy Framework.
9. Open market housing is not essential in the countryside. LP Policy COM10 permits accommodation for rural workers at or near where they work, provided that there is an essential functional need for the dwelling based on evidence of that business. The supporting text states that the dwelling should be located within the curtilage of the site. The appellant currently manages Carlo's tea rooms and ice cream parlour which is located approximately 290 metres from the appeal site. The operation of this business involves early morning starts, but there is no substantive evidence to indicate a requirement for overnight accommodation. Whilst it may be more convenient for the appellant to reside near to Carlo's, this does not translate to an essential functional need. As such, compliance with Policy COM10 has not been demonstrated.
10. It is contended that the proposal accords with LP Policy COM9 on the grounds that it would be community led development aimed at sustaining existing community facilities. There is no reason why this business should not be treated as a community facility; tearooms provide a similar benefit to public houses and local shops. Furthermore, as the number of letters included with the application demonstrate, Carlo's is a valued part of the local community. However, there is no firm evidence to indicate that the community was actively involved in the preparation of the proposal – this is one of the fundamental policy requirements.

The policy supporting text explains that proposals should be led by the parish council and could come forward through a neighbourhood plan or parish plan. Exceptionally, proposals can be led by interested parties provided that they can demonstrate that there has been extensive parish council and community involvement and the proposals are supported. The parish council in this case has had no involvement and does not support the proposal. I therefore find that the scheme does not comply with Policy COM9.

11. The site is approximately 850 m from the nearest settlement boundary. There are some services and facilities within Wellow, including a primary school, but occupiers of the new dwelling would need to walk several hundred metres along unlit carriageway to reach the nearest pavement. Although some residents may choose to make this journey on foot, there is an element of risk and therefore the location of the site would encourage reliance on the private car. This conflicts with the environmental objective of sustainable development and adds weight to the case for not developing outside of the settlement boundary.
12. Accordingly, I conclude that it is not essential for the development to be located in the countryside and the proposal is not compliant with LP Policies COM9 and COM10 as regards community led development and rural worker housing. As such, the site is not a suitable location for a dwelling and there is conflict with LP Policy COM2 in this regard.

Character and appearance

13. This stretch of Romsey Road has a strong semi-rural and verdant character. There are various dwellings along the northern side of the road but the street scene is dominated by mature trees and vegetation. The site itself has a number of protected³ oak trees along its frontage, adjacent to the highway edge. The attractive tree canopies overhang the road and are of high public amenity value. Although perhaps not in the best condition, there is no indication that the trees are in decline. The submitted arboricultural report places them in BS 5837⁴ Category B2 which suggests a remaining life expectancy of at least 20 years.
14. Removal of the oaks would be needed in order to create a new access and visibility splays for the development. The appellant contends that the proposal would represent an opportunity to replace the trees, in the interests of good long-term tree management. However, there is nothing in the evidence to convince me that these trees are in imminent need of replacement. S206 of the Act places a duty on landowners to replace a tree removed, uprooted or destroyed in contravention of the regulations⁵. This duty also applies if a tree (except a tree protected as part of a woodland) is removed, uprooted or destroyed because it is dead or presents an immediate risk of serious harm. The Council has the powers to enforce the planting of replacement trees.
15. The removal of the existing trees would cause significant harm to the character and appearance of the area. Since any replacements would take many years to reach the same height and crown spread, and therefore amenity value, this would not mitigate the harm, at least in the short to medium term.

³ Tree Preservation Order TVBC.760A (2003) – Land adjacent to Ivy Cottage, Romsey Road, East Wellow

⁴ BS 5837:2012 Trees in relation to design, demolition and construction

⁵ Town and Country Planning (Tree Preservation) (England) Regulations 2012

16. Concerns have also been raised regarding the impact of the development on off-site protected trees⁶ within the curtilage of Yew Tree Cottage. The trees have not been accurately surveyed for the submitted arboricultural report and therefore the extent of the root protection areas (RPAs) is unclear. I note that there is inconsistency with an earlier report for the adjoining site as regards the tree dimensions. The appellant concedes that there may be some impact on roots and has proposed pile and beam foundations for the garage and a no-dig construction for the driveway. Although it is put to me that the detail of this solution should be conditioned, the absence of clarity on the extent of the development's incursion into RPAs creates uncertainty over the impact on the protected trees.
17. The plot is substantially enclosed by trees, but it was evident from my site visit that the proposed dwelling and large parts of its garden would enjoy sunlight. Consequently, I am satisfied that the proposal would not give rise to pressure to fell protected trees or carry out works which would harm their amenity value.
18. Permission was refused partly on the grounds that the proposed vehicular access, pull-in area and driveway area would be overly suburban and detrimental to the semi-rural character of Romsey Road. I am content that the amended plans have addressed this issue by removing the pull-in. Had the removal of the protected trees been acceptable in principle, the landscaping scheme for the site frontage would be sufficient to mitigate the visual impact of hard surfacing and buildings within the site.
19. I conclude that the premature loss of protected trees on the site frontage would cause significant harm to the street scene of Romsey Road. The offer of replacement tree planting would not be sufficient to offset this harm. The failure to demonstrate that the development would avoid adverse impacts on off-site protected trees is a further reason to find the scheme unacceptable. There is conflict with LP Policy E2 insofar as it seeks to protect, conserve and enhance the landscape of the Borough by ensuring that development does not result in the loss of important local features such as trees.

Solent and Southampton Water Special Protection Area (SPA)

20. During the course of the application, a new issue arose in relation to the impact of new housing on levels of nitrogen and phosphorus in wastewater effluent discharged into the Solent. These substances contribute to the creation of dense mats of green algae which adversely affect the habitats and species of the Solent and Southampton Water SPA. Whilst Natural England remains uncertain about the effect, it is sufficiently concerned to advise local planning authorities that all new housing development should achieve nutrient neutrality if it is to be considered acceptable. On the available evidence, and applying the precautionary principle, this position is justified.
21. In the absence of an agreed mitigation strategy, it is proposed to achieve nutrient neutrality by permanently removing chickens from land within the appellant's control at Carlo's tearooms. A unilateral undertaking (UU) has been provided to secure this bespoke mitigation in perpetuity. There is reliable evidence to demonstrate that chickens have been kept on the land for the past 15 years, with their manure being spread on local fields on a regular basis.

⁶ Tree Preservation Order TPO.TVBC.1119 (2017) – Land at Yew Tree Cottage, Romsey Road, East Wellow

22. Subsequent to the decision notice being issued, the appellant engaged with Natural England and supplied it with a nutrient budget which demonstrates that the proposal would be nutrient neutral. The Council questions whether the calculations use the correct wastewater treatment works as the two possible sites have different permit limits. However, I note that the proposal achieves nutrient neutrality regardless of which limit is applied.
23. The Council is concerned that the UU includes no mechanism to prevent alternative agricultural uses on the land. This seems unlikely as the land falls within the curtilage of Carlo's. Nevertheless, I see no reason why a condition could not be framed to deal with this issue. Together with the UU, this would ensure that the proposal achieves nutrient neutrality, thereby avoiding adverse impacts on the integrity of the SPA and securing compliance with LP Policy E5.
24. Appropriate assessment would be required prior to any planning permission being granted, and this would necessitate consultation with Natural England. However, since the appeal is being dismissed for other reasons there is no need for me to invoke this process.

Planning Balance and Conclusion

25. The appeal scheme is being advanced to enable the appellant to relocate back to the village where she grew up, in order to support elderly parents, one of whom has a long term health condition. The appellant's intention is to help with providing care whilst continuing in her role as manager of Carlo's.
26. The tearoom already has a dwelling attached, but this is occupied by the appellant's parents and it would not be in their best interests to relocate given the potential impact on health and wellbeing and the fact that Mr Donnarumma is still active within the business.
27. The proposal would enable the appellant to live nearby and thereby reduce her daily commute which is currently from Chandlers Ford. Alternatives have been considered, such as the purchase of an existing property, but the submitted evidence from an online portal indicates that properties within the locality of the site would be out of the appellant's price range. A self-build dwelling using land already in family ownership would provide an affordable solution.
28. There is strong support from within the local community for Carlo's which has been described as an institution. The business is long established and has been passed down through generations. Whilst I have not had sight of any financial accounts, all the evidence points to it being successful, in addition to providing some employment.
29. I am told that Carlo's would close if the appeal were to fail. I have no means of knowing whether this would happen. But in any event, there would be no mechanism to ensure that the business stayed open, even if the appeal were allowed. The appellant has indicated that she would accept a condition tying occupancy to the business, but the lack of a functional need for the dwelling means that such a condition would not pass the test of necessity. The business has no long term requirement for two dwellings, and the existing house on-site would most likely be the preference for any future proprietor as it is contiguous with the tearoom.
30. Carlo's ice cream is made to a secret recipe and a member of the Donnarumma family needs to be present from an early hour. However, there is no reason

why the business cannot rely upon employees for most aspects of its day-to-day running. Although there is currently an internal link between the tearoom and dwelling, the two parts of the building can function separately. There is no compelling medical evidence to support the assertion that appointing a non-family member as manager would be detrimental to Mrs Donnarumma's health.

31. The proposed dwelling would remove the daily commute, thus reducing pressure on the appellant, but it has not been shown to be essential. Although some information has been presented in relation to the property market in and around Wellow, there is no comparable evidence for existing properties in locations such as Romsey which are within 10 minutes' drive and therefore a realistic alternative.
32. The appellant's personal circumstances attract some weight in favour of granting permission, as does the fact that the proposal would contribute to meeting the demand for self-build dwellings. However, these benefits must be balanced against the harm arising from the site's location outside of settlement boundaries and the adverse impacts on protected trees. On balance, the other material considerations put forward do not outweigh the conflict with the development plan in relation to these matters. In reaching this view, I am mindful that the development would continue to exist long after the personal circumstances cease to be relevant.
33. I have considered the rights of the appellant and her family under the European Convention on Human Rights. Article 8 affords the right to respect for private and family life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. I have also had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Age and disability are included in the list of protected characteristics.
34. A decision to dismiss this appeal would not render the appellant or her family homeless. Neither is there any suggestion that her elderly parents would need to leave their home or that they would be left without personal care. I am therefore satisfied that there would be no violation of human rights. The refusal of permission for a dwelling on the appeal site is a proportionate response and necessary in the public interest, as part of regulating land use through planning control.
35. For the reasons given above and having regard to all other matters raised, including the letter of support from the local Member of Parliament, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR