

Appeal Decision

Site visit made on 29 June 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/C1760/W/21/3271383

24 Chambers Close, Nursling SO16 0TA

- 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 & Mrs Boyd against the decision of Test Valley Borough Council.
 - The application Ref 20/01671/FULLS, dated 17 July 2020, was refused by notice dated 25 September 2020.
 - The development proposed is erection of house.
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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 adjoining Site of Importance for Nature Conservation (SINC);
 - Protected Sites, including the New Forest Special Protection Area and Solent and Southampton Water Designated Sites;
 - living conditions of neighbouring occupiers at No 17 Chambers Close, with particular regard to the perception of overlooking;
 - trees forming part of the adjoining woodland.

Reasons

Character and appearance

3. The appeal site is tucked into a far corner of the Chambers Close estate, adjacent to and comprising part of the garden and parking area of No 24, separated by lengths of timber fencing. It adjoins a woodland to the other side and rear and to the front it adjoins the flank wall of No 17 and its 'L-shaped' garden. The dwellings in Chambers Close and the adjoining estates are largely detached dwellings laid out efficiently so as to have limited space between them. Frontages and front gardens are modest in scale and largely open with enclosed, private gardens set to the rear. Dwellings are generously proportioned.
4. The appeal proposal seeks to make use of an area to the side of No 24 for the construction of a single detached dwelling. The dwelling would be set away from No 24 with a large intervening gap, but would observe the same front building line. Parking would be to the front, the private garden to the rear. The

dwelling itself would be a narrow gable-fronted dwelling, with a generous length and small side projection towards the rear of the plot. It would contain three double bedrooms on the first floor with largely open-plan kitchen, lounge and dining area on the ground floor.

5. Given the efficiency of the layout of the originally planned estates, the absence of a dwelling on this particular area appears deliberate. The plot is constrained by some underground drainage infrastructure which dictates that the dwelling would be positioned to the eastern side of the plot. The combined effect of the suppressed scale of the dwelling, its illogical siting towards the outer side of the plot with a large intervening gap between it and the host dwelling, and its design, which would not be sufficiently reflective of others within the area, would result in the scheme appearing cramped and contrived, with detriment to the coherence of the character and appearance of the area.
6. Whilst I note the appellants' suggestion that the scale of the dwelling would display an appropriate degree of subservience to the host dwelling, there is no rationale for such an approach. The dwelling would be independent of No 24, rather than any form of ancillary outbuilding, and thus, should make an equivalent contribution in the streetscene to other dwellings. That No 24 has been extended and is wider than many others in the surrounding area would only exacerbate the incongruity of the smaller scale dwelling and large intervening gap proposed. Similarly, features of the dwelling would fail to reflect the prevailing design and appearance of dwellings in the area, including its roof form and fenestration.
7. In view of the above, the proposal would be harmful to the character and appearance of the area, contrary to, in particular, Policy E1 of the Test Valley Borough Revised Local Plan (2016) (Local Plan). This Policy seeks to ensure new development integrates, respects and complements the character of the area in terms of layout, appearance, scale, materials and building styles.

SINC

8. The SINC adjoins the site on the southern and eastern boundaries. The appellants noted the concerns of the Council that the proposal, including works during the construction phase, could adversely affect the SINC and any protected species potentially present thereupon or on the site itself. Whilst the appellants indicate in the Statement of Case that further advice was in the process of being sought and that a more detailed response would follow, none has been submitted and the timescales for submission of such have lapsed.
9. Consequently, in the absence of information to the contrary, the proposal would be harmful to the SINC, contrary to Policy E5 of the Local Plan which seeks to avoid loss, deterioration or harm to habitats and species of importance to biodiversity or geological conservation interests.

Protected Sites

10. The site is within the zones of influence of the Protected Sites¹ for which there is a significant range of habitat types, species and associated conservation objectives.

¹ New Forest Special Protection Area, New Forest Special Area of Conservation and RAMSAR Site, Solent and Southampton Water SPA and RAMSAR site, Solent & Isle of Wight Lagoons SAC and Solent Maritime SAC

11. As identified through the Local Plan, proposals for an increase in residential dwellings would result in likely significant effects (LSEs) on important interest features of the Protected Sites, alone and in combination with other plans and projects. Such effects would derive from an increase in recreational disturbance and the generation of additional wastewater.
12. The appellants have indicated a willingness to provide a planning obligation to provide mitigation contributions to offset the effects from increased recreational disturbance. These measures are in line with the Interim Framework², and, in principle, Natural England consider such measures sufficient to avoid an adverse impact on the Protected Sites' integrity from increased recreational disturbance. However, no such planning obligation has been submitted during the processing of the appeal.
13. In respect of the issue of increased wastewater and the need to ensure developments are nitrate neutral to avoid effects on the Solent and Southampton Waters Protected Sites, the appellant indicates that the proposal would generate an additional load of 0.8kg of nitrogen per annum which would need to be mitigated. Even if I accept this figure, it is clear that neither direct nor indirect mitigation measures have been put forward with the appeal, despite the appellant's acceptance that off-site mitigation would be necessary.
14. At this stage, nothing has been submitted, based on the best available scientific evidence or otherwise, to indicate that a mitigation solution is capable of being devised and implemented. Furthermore, were the mitigation measures to include any payment of contributions, the Planning Practice Guidance advises that it is not acceptable to require applicants to enter into a planning obligation or other agreement via negatively worded planning condition unless in exceptional circumstances. In the context of a general need to comply with the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), there is nothing uniquely exceptional in the delivery of a single dwelling and therefore, exceptional circumstances which might justify the use of such conditions do not exist.
15. Lastly, it is likely that the discharge of a planning condition in relation to a nitrate mitigation package would be subject of an appropriate assessment, of which I cannot predetermine the outcome. Thus, the effectiveness of any future measures are uncertain at this stage.
16. In view of the above, and in the absence of evidence to the contrary, I can only conclude that the development would have LSEs on the integrity of the Protected Sites. As such, the proposal conflicts with, in particular, Policy E5 of the Local Plan, which only permits development that will not result in adverse effects on the integrity of any of the Protected Sites.

Neighbouring Occupiers

17. The host dwelling is set at around 90 degrees to No 17 and its principal elevation faces much of its flank wall, albeit at a generous distance. The appeal dwelling would be set further to the east and so its principal elevation would be more directly aligned to face towards the rear garden of No 17.

² New Forest SPA Mitigation – Interim Framework (2014)

18. Due to the unusual layout arrangement, the front elevation has been designed to contain two obscure glazed windows at first floor level, serving two separate bathrooms. The appellants would accept a condition that would prevent the obscure glazed windows being opened.
19. I visited the garden of No 17 and noted the incidental overlooking from the upper windows of the adjoining dwelling at No 15 and also from No 24. The degree of incidental overlooking is fairly typical of a built-up area and the relationships between the gardens and dwellings are long- established.
20. The proposed dwelling would be directly aligned to face towards the garden of No 17. Whilst the use of obscure glazing and fixers to prevent the windows being opened could prevent direct overlooking, the undeniable presence of the windows and users within them, would result in a degree of intrusion and the perception of being continually overlooked that would be harmful to the living conditions of occupiers of No 17.
21. In view of the above, the proposal would be harmful to the living conditions of the occupiers of No 17 in terms of overlooking, contrary to Policy LHW4 of the Local Plan which seeks to ensure new development provides for the privacy and amenity of its occupants and those of neighbouring properties.

Effects on Trees

22. Due to the constraints posed by the drainage infrastructure, the dwelling would be sited within around 2 metres of the eastern boundary with the woodland, 'Home Covert'. This distance is closer than other dwellings within the estate.
23. In the preamble to Local Plan Policy E2, it states that a distance of approximately 15 metres should be provided between dwellings and the outer edges of canopies in order to ensure the health and future retention of existing trees. Clearly the proposal would be much closer than this suggested minimum.
24. The appeal application was submitted with an Arboricultural Impact Assessment (AIA) which confirms that only a modest amount of the dwelling would be within any root protection and canopy areas. A number of recommendations are made in respect of site excavation and construction phases, the foundation design and the location of services to avoid direct harm to the trees. Aside confirming that the dwelling and patio would receive afternoon and evening sunlight, the AIA also indicates that regular pruning of the trees to the boundary and management of leaf debris should be sufficient to avoid adverse effects on the living conditions of future occupiers.
25. I note that the Council's Tree Officer did not object to the appeal application and in my view, in at least technical respects subject to conditions, the relationship with adjoining trees would be satisfactory. However, I have already indicated above that the dwelling would appear cramped with in its plot which would be partly due to its proximity to the adjoining trees and the illogical gap between it and No 24. The combined effects of shading, the need for regular pruning and leaf litter picking also add to the shortcomings of the proposal that could only be overcome by siting the dwelling further from the trees.
26. Drawing the above factors together, I do not regard that the appeal proposal would directly conflict with Local Plan Policy E2 as the Policy does not carry the wording of the preamble. The Policy requires new development to avoid the loss of important local features such as trees, walls and hedges which the

proposal could do, subject to adequate protection measures required by conditions were it not failing for other reasons.

Planning balance and conclusion

27. The Council's decision notice references Policy COM2 which is supportive of the principle of development within identified settlement boundaries. From the evidence, the appeal site falls within the settlement boundary for Nursling. However, the Policy caveats such support on the basis that any development should also accord with other policies of the Local Plan. I have identified conflicts with a number of other Policies of the Local Plan, and thus, the proposal conflicts with not only Policy COM2, but with the Local Plan when considered as a whole.
28. The scheme would result in the provision of an additional dwelling to the housing stock that would enable an increased access to housing. This would be a social benefit in favour of the scheme. There would be economic benefits from the construction phase, albeit temporary, but longer-term economic support for local services and facilities would derive from the future occupiers of the dwelling once constructed.
29. These benefits, whilst capable of attracting a limited degree of weight given the scale of the proposal, are not sufficient to outweigh the identified harm. There are no other considerations, including the National Planning Policy Framework, that indicate that the decision should be taken other than in accordance with the development plan.
30. For the reasons set out above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR