



Appeal Decision

Site visit made on 15 September 2021

by Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 8 October 2021

Appeal Ref: APP/B1740/W/21/3277464

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 20/11446, dated 21 December 2020, was refused by notice dated 19 May 2021.
 - The development proposed is to demolish existing garage, sever land and erect a detached dwelling with associated access and parking (Revised Scheme).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted the Government has published a new National Planning Policy Framework (the Framework). As the main parties have had the opportunity to provide comments, no injustice has been caused and I have considered the appeal on the basis of the revised Framework.
3. The appeal site is within the zone of influence of a range of Protected Sites, including the New Forest Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site, the Solent Coastal Protected sites, comprising the Solent and Southampton Water SPA and Ramsar site, the Solent & Isle of Wight Lagoons SAC and Solent Maritime SAC (hereafter called the Protected Sites). Whilst the effects of the proposal on the Protected Sites was not a matter in dispute between the parties or reason for refusal, I have sought comments in relation to the promotion of this matter to a main issue.
4. A planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990, signed on the 7 April 2021, was submitted with the appeal. I return to this matter below.

Application for costs

5. An application for costs was made by Mr G Leicester against New Forest District Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are the effects of the proposal on (i) the nearby Monterey Pine Tree, and (ii) the Protected Sites.

Reasons

Monterey Pine Tree

7. The appeal site is formed from a side garden area and double garage associated with the host dwelling No 23 Mount Avenue; which itself is a semi-detached two storey dwelling noted as being of character within the New Milton Local Distinctiveness SPD¹ (SPD). A Monterey Pine Tree lies immediately adjacent to the street but its extensive canopy overhangs the site to a large degree and its root spread is evident in the areas surrounding the substantial trunk. It is protected by a Tree Protection Order (TPO) which was imposed in 1997 and is also recognised as being one of the “*significant street trees*” within the SPD. A Yew tree, also protected by a separate TPO, lies within the rear garden of an adjoining property.
8. The substantially-scaled tree makes a significant contribution to the appearance of the area and is readily appreciable from the wider surroundings as a valuable landscape feature, helping to break up the built form and providing a pleasant green quality to the street scene.
9. The appeal proposal seeks to remove the existing garage and hardstanding area and construct a single dwelling, alongside but detached from the host dwelling. It would be set further back than the garage, to a greater degree outside of the canopy spread of the tree but still within around 6 metres thereof. A parking area would be provided to the front of the new dwelling and a separate parking space would be provided to the front of the host dwelling to offset the loss of its own and the garage. Previous appeals² for similar schemes have been dismissed on the effects on the tree and consequently, the appeal scheme was submitted with an *Arboricultural Assessment and Method Statement* and seeks permission for a smaller scale dwelling set further back from the Monterey Pine and similarly seeking to minimise any potential effects on the Yew tree to the rear.
10. In terms of the direct effects, the existing garage and hardstanding would be removed, reducing the amount of hardstanding directly below the canopy and in close proximity of the tree, with an increased area for root growth. The closest corner of the proposed dwelling would be approximately 16 metres from the Monterey Pine tree trunk and so would be built, following the *Arboricultural Method Statement*, with a pile/suspended floor foundation arrangement to minimise excavation, and allow rainwater to be returned to the soil beneath the floor slab. Additionally, the hard surfacing would be installed using a ‘*no-dig, permeable specification*’. Given the limited extent of the encroachment within the RPA of the Yew tree, it is not envisaged that there would be material adverse harm or that any specific construction measures would be necessary.
11. In terms of indirect effects on future occupiers, the Monterey Pine is fully mature and located off-site, to the north east of the proposed dwelling. It would not cast any shade, or cause restriction to sunlight for the proposed building nor materially affect the small proportion of the front garden that would be beneath its canopy. As the growth of the fully mature tree would be limited to around 50 to 75mm annually, further lateral spread would continue at a very slow pace and would be unlikely to affect future occupiers of the

¹ New Milton Local Distinctiveness Supplementary Planning Document (2010)

² Appeal Refs: APP/B1740/A/12/2170631 and APP/B1740/W/20/3249666

dwelling. Similarly, there would be no post-construction considerations in relation to the Yew tree.

12. In view of the above, subject to conditions, the proposal would adequately protect the Monterey Pine tree and ensure that future occupiers would not be likely to apply pressure to prune or fell the tree, with consequent effects on the local character and appearance. The proposal therefore complies with, in particular, Policy ENV3 of the New Forest District Council Local Plan Part 1: Planning Strategy (2020) (LPP1) which seeks to ensure that new development is of a high quality design that contributes positively to local distinctiveness and is sympathetic to the environment, its context and adjoining buildings, spaces and landscape features. It would also accord with the SPD which also promotes development that reinforces local character and distinctiveness.
13. The proposal would also comply with the revised Framework insofar as it seeks to protect trees for their important contribution to the character and quality of urban environments.

Protected Sites

14. The project site lies within the zones of influence of the Protected Sites for which there is a significant range of habitat types and species and associated conservation objectives. Clearly, this project is not directly connected with or necessary to site management for nature conservation.
15. As identified through the Plan for the area and through the project-specific assessment, the proposal is likely to have a significant effect (LSE) on internationally important interest features of the site alone and in combination with other plans and projects. The LSEs would principally arise from an increase in population. This is due to associated recreational disturbance, the generation of additional wastewater, and air pollution from additional vehicular movements. Some pollution would also be generated during construction.
16. An Appropriate Assessment (AA) concludes that the proposal would result in effects on the Protected Sites unless appropriate mitigation were secured. The submitted signed S106 Planning Obligation provides for mitigation contributions for Habitats Mitigation (Access, Management and Monitoring), an Infrastructure Contribution and Air Quality Contribution as defined therein. These measures are in line with the current strategic mitigation scheme outlined in the LPP1, including Policies CS3, and CS25, and Policy DM3 of the Local Plan Part 2³, and the Statutory Nature Conservation Body (SNCB) (Natural England) consider it sufficient to avoid an adverse impact to the integrity of the Protected Sites and their relevant features in respect of recreational and air quality effects.
17. However, the LSEs relating to additional wastewater is the aspect for which there is as yet no specific defined mitigation strategy to ensure that nitrate neutrality can be achieved prior to any new dwelling being occupied. It appears that the Council are working on a strategy and that until the strategy is adopted, an interim approach is being followed as outlined in an agreed Position Statement⁴. The interim approach requires applicants to either produce a site-specific mitigation scheme that achieves nutrient neutrality or the use of a Grampian condition to ensure the provision of an avoidance and mitigation scheme prior to occupation of the development.

³ Local Plan Part 2: Sites and Development Management (2014)

⁴ Position Statement on Nutrient Neutral Development – Interim Nitrogen Mitigation Solution (4 September 2019)

18. No site-specific mitigation scheme has been put forward with the appeal proposal but the appellant appears to agree to the imposition of a Grampian condition to require the submission of a mitigation package. This would address the additional nutrient input arising from the development and for the occupation of the dwellings to be prevented until all measures forming part of that mitigation package have been provided to the Council.
19. At this stage, nothing has been submitted, based on the best available scientific evidence or otherwise, to indicate that such additional nutrient loading would not have an adverse effect on the integrity of the Protected Sites. Without fettering the interests of any future decision maker as competent authority, I am not certain that such measures are capable of being devised. 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 contributions unless in exceptional circumstances. I acknowledge that the need to mitigate against the adverse effect of nutrients has provided a challenge to the delivery of housing in the area. However, in the context of a general need to comply with the Conservation of Habitats and Species Regulations 2017 (the Habitats Regs), there is nothing uniquely exceptional in this. Exceptional circumstances which might justify use of such a condition do not therefore exist.
20. Furthermore, the SNCB would also expect that the discharge of any such Grampian condition would need to be subject to a further AA, including full details of the development and mitigation nitrogen budgets, upon which further consultation with the SNCB would be expected. I cannot predetermine the outcome of any future AA. Thus, the effectiveness of any measures put forward are uncertain and would need to be thoroughly tested as part of an AA.
21. Alternative solutions to the scheme that would have a lesser impact on the integrity of the Solent sites clearly exist. This is because at any given site the provision of appropriately evidenced, scaled, and secured mitigation in line with the Position Statement could potentially address LSEs. As such, allowing the appeal would be contrary to the Habitats Regs. It would also be contrary to advice in the Framework, which indicates that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.
22. In view of my reasons above, I conclude that the development would at least have an LSE on the integrity of the Solent Coastal Protected Sites due to the additional generation of nutrients and the lack of appropriately secured mitigation. The proposal would therefore conflict with LPP1 Policy CS3, and Policy DM3 of the Local Plan Part 2, which only permit development that will not result in adverse effects on the integrity of any of the relevant protected sites. It would also be contrary to advice in paragraph 180(a) of the Framework, which indicates that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.

Planning Balance and Conclusion

23. The Council acknowledge that it cannot currently demonstrate a five-year supply of deliverable housing land (5YHLS), and that it is likely that even an imminent update to the housing land supply position will reveal a level below

the required 5 years. In the event that a council cannot demonstrate a 5YHLS, the Framework dictates that the most important policies for determining the application are out-of-date and that the 'tilted balance' outlined in paragraph 11 d) is engaged. This requires that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole.

24. However, paragraph 11 d) i) prevents the application of the tilted balance where Framework policies that seek to protect areas or assets of particular importance apply that would otherwise provide a clear reason for refusing the development proposed. Footnote 7 of the same sets out that such policies relate to habitats sites, such as the Solent Coastal Protected Sites.
25. Despite that the scheme would deliver a dwelling in a sustainable location with both social and economic benefits, and without harm to protected trees, in the absence of evidence to conclude that the proposal would not harm the integrity of the Protected Sites, the proposal is in conflict with the Framework policies taken as a whole. The tilted balance does not, therefore, indicate that the appeal should be allowed.
26. For the above reasons, the appeal is dismissed.

Hollie Nicholls

INSPECTOR