



Appeal Decision

Site visit made on 9 August 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/L1765/W/21/3272076

Nestledown, Curdridge Lane, Waltham Chase SO32 2LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission.
 - The appeal is made by Mr John Weight against Winchester City Council.
 - The application Ref 20/02184/FUL, dated 5 October 2020, was refused by notice dated 22 January 2021.
 - The development proposed is demolition of existing bungalow, annexe and music room and construction of 1 one and a half storey 1/2 storey 4 bed property and 1 3 bed rooms in roof bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Subsequent to the Council's decision, a revised National Planning Policy Framework was published. The parties have had the opportunity to comment on the implications for the appeal.

Main Issues

3. The main issues are:
 - a) the effect of the proposal on the integrity of European protected sites;
 - b) the effect of the development on the character and appearance of the area; and
 - c) the effect on the living conditions of the occupiers of neighbouring residential properties, with reference to outlook and privacy.

Reasons

European protected sites

4. The Solent has recognised problems from nitrate enrichment; high levels of nitrogen from human activity and agricultural sources in the catchment have caused excessive growth of green algae (a process called eutrophication) which is having a detrimental impact upon protected habitats and bird species. Wastewater discharge within the Solent Catchment Area is a contributor to the problem and this increases as a result of new housing development.

5. The submitted nitrogen budget indicates that the proposed development would generate additional nitrogen. Taken in combination with other residential developments within the relevant catchment area, the appeal scheme would give rise to likely significant effects on the internationally important interest features of the Solent Special Protection Areas. Appropriate Assessment is therefore required prior to any grant of planning permission.
6. The Council has directed me to a position statement which indicates that a number of mitigation schemes are being brought forward whereby developers can choose to buy credits from private landowners to offset the impact of their development on the water environment of the Solent. In most instances, the mitigation scheme would need to be located in the same catchment as the development approved.
7. The appellant invites me to impose a negatively worded condition to secure water efficiency measures and a mitigation package, in line with the approach being taken by the Council elsewhere. However, I have not been provided with any details of the mitigation measures being proposed. The Council's European sites checklist has been completed, but this states that 'the full extent of avoidance and mitigation package is not yet known, but it will take the form of a financial contribution'. However, there is no planning obligation before me to secure these monies or tie them to a particular mitigation scheme.
8. Acting as competent authority under the Habitats Regulations¹, I must have sufficient information to demonstrate, beyond reasonable scientific doubt, that the integrity of the designation would not be adversely affected. Without details on what the mitigation would involve, and guarantees that it is secure, I cannot be confident that harm to the integrity of European protected sites would be avoided. The level of information needed for a robust Appropriate Assessment has not been provided.
9. I therefore conclude that the proposal would conflict with Policy CP16 of the Winchester District Local Plan Part 1 Joint Core Strategy (2013) insofar as this seeks to protect sites of international, European and national importance. The failure to address the rigorous requirements of the Habitats Regulations is fatal to the appeal, even in the absence of other reasons for dismissal.

Character and appearance

10. The appeal site lies within a predominantly residential area and is bounded on three sides by modern estate housing. The Council contends that the proposed development would be cramped, but the plots would be similar in size to, and in some cases larger than, neighbouring plots. The spacing between the new dwellings and their distances to site boundaries would also be comparable, and the properties would sit well back from the road. In my judgement, this would not read as an overdeveloped site; the density would respect the established pattern of development.
11. The Council does not raise any specific concerns regarding the design of the buildings themselves. The dwellings would have a different appearance to surrounding houses, principally due to their low eaves and roof dormers, but given the architectural variety which exists in the local area, I do not consider

¹ Regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017

that this would be inherently harmful. The development would fit comfortably into the street scene and it would not be unduly prominent.

12. Policy DM15 of the Winchester District Local Plan Part 2 Development Management and Site Allocations (2017) (LPP2) states that developments should respect the qualities, features and characteristics that contribute to the distinctiveness of the local area. LPP2 Policy DM16 seeks development which responds positively to the character, appearance and variety of the local environment, within and surrounding the site, in terms of its design, scale and layout. These requirements are met by the appeal scheme and therefore I conclude that there is no policy conflict.

Living conditions

13. The proposed 4-bed dwelling would be significantly taller than the bungalow it is replacing and it would have greater overall mass due to the additional height and gabled roof. Consequently, the development would be more noticeable for the occupiers of 2 and 4 Clayhill Close, compared to the existing bungalow which is modest. However, the layout of the site would maintain at least 16 m between the proposed dwelling and the rear wall of No 4. Furthermore, the dwelling would be set off the boundary by several metres, making room for tree and hedge planting. Details of the landscaping could be secured by means of a planning condition. The separation distance and planting opportunities would ensure an acceptable outlook for the occupiers of Nos 2 and 4. Thus I do not consider that the development would be overbearing. As demonstrated within the appellant's evidence, back-to-side relationships between other 2-storey properties in the area are typically closer.
14. The Council does not expand upon its concerns over privacy. The proposed 4-bed house would present a blank upper gable towards Nos 2 and 4 and views from first floor windows into the garden of No 2 would be very oblique and from a bathroom and en-suite in any event. There would be views towards other gardens, notably 12 Clayhill Close, but bearing in mind the distances involved and the fact that a degree of overlooking is often unavoidable in urban situations, these would not lead to an unacceptable loss of privacy.
15. Accordingly, I conclude that there would be no material harm to the living conditions of the occupiers of 2 and 4 Clayhill Close, or the occupiers of other surrounding properties. There would be no conflict with LPP2 Policy DM17 insofar as it seeks to ensure that development does not have an unacceptable adverse impact on adjoining land, uses or property by reason of overlooking, overshadowing or by being overbearing.

Conclusion

16. The proposal would not cause harm to the character and appearance of the area, or the living conditions of neighbouring residents. However, it would conflict with the development plan and the Habitats Regulations in relation to its impact on European protected sites. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR