
Appeal Decision

Site visit made on 13 December 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/B1740/W/21/3277558

Land adjacent to 4 Brockhills Lane, Ashley, New Milton BH25 5QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Solent Projects Ltd against the decision of New Forest District Council.
 - The application Ref 20/10672, dated 29 June 2020, was refused by notice dated 21 January 2021.
 - The application sought planning permission for 7 detached houses; parking; landscaping; access from Brockhills Lane and Cullwood Lane without complying with a condition attached to planning permission Ref 15/10784, dated 6 January 2016.
 - The condition in dispute is No 2 which states that: The development permitted shall be carried out in accordance with the following approved plans: Dusk and Dawn Echolocation Study Report, Ecology Mitigation, Enhancement and Management Plan, Planning and Design Statement, Arboricultural Impact Assessment, sewer record, 2009-35-30A, 2009-35- 32A, 2009-35-31, 2009-35-33, 2009-35-38A, 244.02F.
 - The reason given for the condition is: To ensure satisfactory provision of the development.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue is whether the condition is reasonable and necessary having regard to:
 - i. the suitability of the proposed alternative footpath in terms of connectivity and ability to promote walking as a means of sustainable transport, and
 - ii. the effects of the alternative footpath on protected trees.

Reasons

Connectivity

3. The original scheme for 7 houses included the provision of a footway from outside No 4 Brockhills Lane (where it currently terminates), to the vehicular access of the development. This would have continued the footway on the western side of Brockhills Lane adjacent to the carriageway, giving sufficient protection to pedestrians along what becomes a more rural road in a northerly direction from the appeal site, with a narrowing of the carriageway, reduced verge width and absence of streetlighting.

4. The development of 7 dwellings has been partially completed and the vehicular access put in place, although the footpath has not yet been provided. This proposal seeks to provide an alternative footpath arrangement within the scheme, linking the south-eastern corner of the footpath through to the back of the site, along the open space and linking to Cullwood Lane to the west.
5. Since planning permission was granted for the original scheme, the Council has adopted the Local Plan 2016 – 2036 Part 1: Planning Strategy (LPP1) (2020). The LPP1 contains a housing allocation 'Strategic Site 10' (SS10) for land to the east and north-east of the site providing for around 130 dwellings. The pedestrian connectivity of SS10 to New Milton relies heavily on the appeal scheme as per the current approved layout plan.
6. Whilst there would be no disbenefit to providing an additional footway link in the manner proposed by the appeal scheme, there would be an obvious disadvantage to not providing one along the site's frontage with Brockhills Lane in terms of pedestrian connectivity with the wider area for New Milton residents and future residents within SS10. It would be preferable to provide both, in terms of maximising the site's connectivity to help minimise car dependency.
7. Though the site allocation Policy SS10 has only been formally adopted since approval of the original scheme, the Council had relied upon the plan showing the footway along Brockhills Lane irrespective of the status of the development plan containing that allocation. That Policy is now a material consideration of relevance to the appeal scheme. The subsequent formal adoption of the plan and status of the allocation only serve to underscore the need to provide the footway as originally intended. The need for the footway was clear at the time of the permission and it has not become an additional requirement since the approval of the scheme. The live pre-application for which the Council has provided details is further indication of the likely direction of growth for New Milton, for which the appeal scheme would deliver a necessary pedestrian link.
8. I note that much emphasis has been put on the constraints and challenges to providing a footway along the carriageway edge of Brockhills Lane, including, the existence of the drainage ditch, the need to relocate overhead lines, potential interference with tree roots and the inability of a normal kerb upstand to provide sufficient protection to pedestrians. Whilst I do not doubt that the extent of the difficulties has become clearer following further investigation, these factors would have been obvious at the time that planning permission was granted. The difficulties, whilst potentially costlier to address, do not appear insurmountable and would not necessarily be at the expense of the trees or rural character of the area.
9. I also noted the existence of a large verge between the highway and the internal post-and-rail fence demarking the edge of the private driveway which may be capable of accommodating an alternative footway inside the tree line. Clearly, I cannot be certain of the suitability of such a route or the adaptations that would need to be made at the vehicular access, but it is an option that does not appear to have been fully explored prior to promotion of the appeal scheme which would sever the necessary pedestrian connectivity along Brockhills Lane.
10. In view of the above, condition No 2 is reasonable and necessary with regard to the connectivity of the site and the scheme's ability to promote walking as a means of sustainable transport, in the context of, in particular, Policies CCC2

and ENV3 of LPP1. These Policies seek to prioritise the provision of well-connected, safe and convenient pedestrian access within developments and by linking them to more extensive walking networks wherever possible. The variation of the condition as proposed would also be prejudicial to the satisfactory delivery of the allocation detailed in LPP1 Policy SS10.

Effects on protected trees

11. The appeal was submitted with an Arboricultural Report (John Shutler Tree Services, 12/04/21) which indicates that the alternative footway can be provided without harm to the root systems of the main protected Oak trees through which it would pass.
12. The Arboricultural Report provides a detailed methodology, including for the provision of construction exclusion fencing and a 'no-dig' solution. Having given careful consideration to the parties on this matter, I am of the view that the works could be undertaken following the detailed methodology subject to the necessary planning conditions and the works could be supervised by an arboricultural specialist to ensure the same.
13. However, as the appeal is failing for other reasons, this matter is not decisive in any event.

Conclusion

14. For the reasons given above, the condition is reasonable and necessary having regard to the aims of the development plan and National Planning Policy Framework.
15. The appeal is therefore dismissed.

Hollie Nicholls

INSPECTOR