
Appeal Decision

Site visit made on 5 April 2022

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/W1715/W/21/3282387
143 Passfield Avenue, Eastleigh SO50 9NH

- 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 Claire and Marco Teague against the decision of Eastleigh Borough Council.
 - The application Ref F/20/88912, dated 2 October 2020, was refused by notice dated 12 April 2021.
 - The development proposed is the erection of a single Wheelchair User Dwelling (Category M4(3) Building Regulations, 2010) to the rear of 143-145 Passfield Avenue, Eastleigh SO50 9NH, together with associated access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the refusal of the planning application, a revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. I have taken the revised Framework into account where relevant to my decision.
3. The Council has confirmed that, since the refusal of the planning application and the submission of this appeal, progress on the *Submitted Eastleigh Borough Local Plan 2016-2036* (the Emerging Local Plan) has advanced. The Council carried out public consultation in June and July 2021 in respect of main modifications to the Emerging Local Plan. The responses were sent to the Local Plan Inspector in October 2021, who has subsequently confirmed that adoption can proceed. The Council intends to adopt the Emerging Local Plan on 25 April 2022. Having regard to the advanced stage reached, I have afforded a high degree of weight to the relevant Emerging Local Plan policies referred to in the Council's reasons for refusal in the determination of this appeal.
4. Since the refusal of the planning application, a new issue has arisen in respect of the impact of the proposal on the integrity of the New Forest European Protected Sites (EPS). This is a matter to which I later return.

Main Issues

5. The main issues are:
 - The effect of the appeal scheme on the character and appearance of the area;

- The effect of the appeal scheme on the living conditions of future occupiers of the development, having regard to noise disturbance impacts; and
- The effect of the appeal scheme on the integrity of the Solent and New Forest EPS.

Reasons

Character and appearance

6. The appeal site is located in an established residential area in the southeast part of Eastleigh, within the defined settlement policy boundary. Notwithstanding some commercial and community uses within the locality, such as a leisure centre on the opposite side of the road, and a petrol filling station adjacent to the south side of the site, the site forms part of an established residential area to the east side of Passfield Avenue.
7. It is positioned at the southern end of a long row of road-facing, two-storey, semi-detached dwellings, which lie between the petrol filling station and Dew Lane. Whilst incorporating some differences in front elevation and roof design detailing, these properties overall exhibit a strong degree of uniformity of height, scale, massing and materials, comprising traditionally designed brick walled houses under tiled pitched/hipped roofs. They are set on a regular front building line in relation to the street, and the majority of these properties to the south of Tinning Way have long narrow back gardens. Frontages are either open, or defined by low walling/hedging.
8. The appeal site forms an integral part of this prevailing spacious layout of residential development. It comprises a long rectangular-shaped site, which is occupied by a two-storey semi-detached pair of properties which front onto the east side of Passfield Avenue, with long narrow grassed back gardens behind. The building differs from the wholly residential properties to the north, by incorporating commercial uses at ground floor, in addition to residential use above, and there is some variation in architectural detailing. However, overall, the height, scale, massing, siting and materials of the building are consistent with the prevailing pattern of built development within this part of the road.
9. Within this stretch of the road, parking is generally situated to the front of the dwellings, accessed directly from Passfield Avenue. The appeal site also includes an unmade shared access lane which runs from Passfield Avenue adjacent to the northern site boundary between Nos. 141 and 143, providing access to a garage and parking area in the rear part of the appeal site. The access also serves rear garaging and parking for several neighbouring dwellings to the north of the site, thereby reinforcing a connection between the appeal site and the residential development to the north.
10. The existing garage building on the site is of a design, height and scale which is typical of that an ancillary domestic outbuilding, and similar to those of existing detached garages in neighbouring rear gardens to the north of the site. The appeal scheme would replace this structure with a detached 2-bedroom dwelling which would be occupied independently of the host properties at the front of the site. Whilst the new structure would be single storey, it would comprise a significantly larger footprint, height, scale and massing than the existing garage, and its design would be overtly that of a dwelling.

11. The proposed tandem siting arrangement of the new dwelling in relation to the host properties would introduce an 'ad hoc' dwelling positioning, which would be at odds with the established strong linear arrangement of dwellings along this part of Passfield Avenue. It would be incongruous within an area where there are no other independent dwellings within rear gardens.
12. The wide and single storey design of the new dwelling would be at odds with the narrow vertical two-storey dwellings which characterise the frontage development within this part of the road. The proposed plot severance would result in uncharacteristically short rear gardens for both the host properties and the new dwelling, and this, combined with the proposed large footprint and steeply pitched roof form and proximity of the new dwelling to both side boundaries would result in an unduly cramped form of development which would be out of keeping with the prevailing more spacious layout of development.
13. Due to its scale, height and positioning, the new dwelling would be visually apparent in views from the public realm of Passfield Avenue due to the gap between the adjacent petrol filling station building and the appeal site, as well as from users of that site and occupiers of neighbouring residential properties.
14. I have noted the appellants' confirmation of ownership of the access drive, and that other properties only benefit from rights of way, and that there are no other existing access lanes within the stretch of properties along Passfield Avenue within which the appeal site is located. However, this does not overcome or justify the harm arising from the appeal scheme, and would not necessarily preclude a future change of ownership, nor the creation of vehicular access to other rear gardens within this group of houses by other means in the future.
15. The appellants have drawn my attention to several approved developments to the rear of dwellings within the locality. Two of these schemes comprise ancillary garages/outbuildings, which are not uncommon features within gardens of built-up residential areas. The third, relates to a scheme for a new dwelling in Chestnut Avenue where the established pattern of existing residential built development is notably different to that of the appeal site and its surroundings. As such, by their very nature and locations, these developments are not directly comparable with the appeal proposal. Moreover, I must determine this appeal on the merits of the scheme before me, and the appeal site circumstances.
16. For the above reasons, I therefore conclude that the appeal scheme would cause significant harm to the character and appearance of the area. As such, it would be contrary to Saved Policy 59.BE of the *Eastleigh Borough Local Plan Review 2001–2011* (2011) (the Local Plan) and Emerging Local Plan Policy DM1. These policies and guidance, amongst other things, seek to ensure that new development is well-designed and is appropriate in mass, scale, layout, density, design and siting in relation to adjoining buildings, spaces and views.
17. For similar reasons, the proposal would also be contrary to Policies of the Framework which seeks to ensure high quality design as set out in Chapter 12.

Living conditions - future occupiers

18. Notwithstanding the existing boundary screening, the proximity of the new dwelling and its garden immediately next to the petrol filling station site, and close to its car park, deliveries and waste storage and collection areas, means that the appeal scheme would be susceptible to noise impacts from the operation of the adjoining business. In this respect the permitted petrol filling station and associated retail shop opening hours of between 5am and midnight are pertinent. The allowed activities during these hours include deliveries and the use of air compressors.
19. Potential noise impacts associated with the commercial premises include short duration irregular sound events, such as car movements, revving engines, door slamming, in-car entertainment, customer conversations and use of the air compressors. Moreover, additional delivery-related noises could arise from lorry movements, air-brakes, reversing beepers, and crashing/banging associated with the movement of delivery crates/cages.
20. Such short-term intermittent incidences of noise would be set apart from the general background noise associated with traffic within the site vicinity, and arguably have a greater potential to disrupt sleep patterns than more regular, constant sources of background noise.
21. The appellants have provided evidence in respect of actual delivery times that have occurred over a specified period of time, which found that deliveries tended to take place after 7am and before 11pm. However, account must be taken of the permitted business delivery and operation times, and the possibility that delivery times may be altered subsequently in response to the business needs of the premises.
22. Any subsequent complaints from occupiers of the new dwelling, leading to statutory nuisance investigations, could potentially affect the operation of the business. As such, I am not persuaded the proposal accords with advice within the Framework that requires planning decisions to ensure that new development can be integrated effectively with existing businesses, which should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The Framework is clear that, where the operation of an existing business or community facility could have a significant adverse effect on new development, including changes of use, in its vicinity, the 'agent of change' should be required to provide suitable mitigation before the development has been completed.
23. Having regard to the above, the proximity to, and juxtaposition of the appeal scheme to the neighbouring business are such that the permitted business operation has the potential to create harmful noise and disturbance at a time that would impact on the sleep patterns of the residents of the appeal scheme. As such, the onus is upon the appellants to provide demonstrable evidence that the proposal would not result in conflicts between the new dwelling and the established commercial operation.
24. The appellants' submitted Noise Impact Assessment (NIA) does not identify commercial noise specifically arising from the petrol filling station site, having regard to observations or sound level measurements carried out on the site, but instead, uses library data derived from other premises. As such, there is no cogent evidence before me that the data is representative of that specifically associated with the adjacent filling station site. Moreover, and notwithstanding the appellants' intention to incorporate sound insulation to ISO standards, the

NIA concludes that adverse noise impact is possible, and also recognises incidences of high L_{Amax} levels earlier than 7am, which are unexplained, and could potentially arise from impulsive noise events associated with commercial activity.

25. I note the intention to incorporate hedging within the scheme, to a height that would obscure the roof view from the filling station car park. However, I am not persuaded that such mature landscaping is capable of being provided to the side of the dwelling, having regard to the available width between the south side wall and the site boundary. Moreover, the provision of such hedging along the southern site boundary of the rear garden would be likely to result in significant overshadowing impacts on the private rear amenity area for the new dwelling. As such, I consider that the implementation and future retention of the proposed noise mitigation landscaping could not be guaranteed in the future, and it is not appropriate to rely upon such to mitigate against potentially harmful noise impacts from the neighbouring business.
26. I acknowledge factors such as a predicted low likelihood of deliveries occurring before 7am and after 11pm, potential screening of noise associated with delivery and waste activities by the vehicles themselves, and the existing occurrence of domestic waste collection activities within the site vicinity. However, on the basis of a deficiency in site-specific noise emission evidence in respect of the filling station site, and details of appropriate sound mitigation measures for the new dwelling, I am unable to conclude with any degree of certainty that the proposal would not harm the living conditions of future occupants of the new dwelling, having regard to noise emissions that could potentially occur as a result of neighbouring commercial activities during the period when the occupiers of the dwelling could reasonably be expected to be asleep.
27. Whilst there are existing residential properties adjacent to the business, I must consider this appeal having regard to the particular circumstances of the current appeal proposal. These include the juxtaposition of the appeal scheme in relation to the commercial property. This differs notably from that of other neighbouring dwellings, including Nos. 143 and 145, which are sited close to the road, where ambient noise levels associated with the busy road would reasonably be considered to be higher, and Passfield Close properties which are largely screened from the filling station by robust boundary landscaping.
28. For the above reasons, I therefore conclude that, on the basis of the evidence before me, it has not been satisfactorily demonstrated that the proposal would provide satisfactory living conditions for future occupiers of the development, having regard to noise disturbance impacts. As such, the development would not accord with Local Plan Saved Policies 59.BE and 30.ES and Emerging Local Plan Policies DM1 and DM8. These policies, amongst other things, require development proposals to avoid unduly interfering, disturbing or conflicting with adjoining or nearby uses, including in terms of noise, and to ensure that there is no unacceptable impact on the residential amenities of new residents, including loss of amenity through noise pollution.
29. This is generally consistent with paragraph 130 of the Framework, which seeks to ensure that developments will function well, and create places which promote health and well-being, with a high standard of amenity for existing and future users. It is also consistent with paragraph 174 of the Framework

which requires planning decisions to prevent new development from being adversely affected by unacceptable levels of noise pollution, and the aforementioned objectives of paragraph 187 which requires new development to integrate effectively with existing businesses, and that these should not have unreasonable restrictions placed upon them as a result of development permitted after they were established.

Solent EPS

30. The Council's third reason for refusal relates to the failure of the appeal scheme to mitigate the 'in combination' effects of the development upon the Solent EPS, having regard to increased levels of nutrients from wastewater from new dwellings entering the Solent and causing eutrophication at the designated sites, which impacts on the protected habitats and bird species. No mitigation measures have been submitted by the appellant to offset the impact of nitrogen output into the Solent.
31. Moreover, the Council has confirmed that, since the refusal of the planning application, a further issue has been identified in respect of recreational impacts arising from new housing developments upon the New Forest Special Protection Area, Special Area of Conservation and Ramsar site (the New Forest EPS). As the appeal site lies within the 13.8km zone of influence, this would require the appellants to mitigate against this impact. The appellants have had the opportunity to respond to the Council's statement and have not, therefore, been unfairly prejudiced by the late introduction of this issue. I have noted the appellants' request that the appeal be determined on the basis of the policies/issues that were relevant at the time of the application decision. However, I must determine this appeal on the basis of the current relevant policies/issues.
32. No EPS mitigation measures have been put forward by the appellants. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the European designated sites fall to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake an Appropriate Assessment (AA) of the implications of the appeal scheme for the European designated sites. However, as the first two main issues provide clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is therefore no need for me to consider this matter any further as part of my decision, since any findings on this issue would not change the appeal outcome.

Other matters

33. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be within a designated settlement policy boundary where access to facilities and public transport connections is likely to be greatest. It would contribute towards the Council's housing supply, and it could be built-out relatively quickly, having regard to paragraph 69 of the Framework. However, the contribution would be very modest, and the Council has confirmed that it can identify a five year supply of deliverable housing.

34. There would also be modest economic benefits as a result of the construction of the development and the occupation of the new dwelling. By providing a small, single storey unit, which would be designed to suit mobility-impaired occupants, and could also suit first-time buyers, or elderly downsizers, the proposal would also contribute to the Framework objective of creating mixed and balanced communities.
35. In reaching my decision, I have had regard to the Public Sector Equality Duty contained in the Equality Act 2010. The application proposes that the development would meet the criteria of Building Regulation Standard M4(3) in respect of wheelchair user access. As such, the new dwelling would provide a dwelling that would meet a specialist need for wheelchair users. Moreover, there is evidence before me that there is a shortage of housing suitable for people with mobility issues and for wheelchair users, both nationally, and within Eastleigh Borough. Also there is an identified need by the NHS and Care Services for the type of housing proposed. Moreover, there is positive support for the provision of such units in national policy, and this accords with the objectives of Policy DM31 of the Emerging Local Plan.
36. Having regard to the above, the provision of the proposed greater level of accessibility within the new dwelling therefore weighs in favour of the scheme, as a material benefit. However, the weight I attach to this is diminished by the absence of a legal agreement or other mechanism before me to ensure that the new dwelling is only occupied by disabled persons or those who are mobility impaired. Moreover, when weighed against the harms that would result to the character and appearance of the area and the living conditions of the future occupiers of the dwelling, in addition to the potential harm to the integrity of the EPS, the harms would outweigh the benefits.
37. Whilst the Framework encourages the effective use of land in meeting the need for homes, and requires the Council to approach decisions in a positive and creative way, this is not unqualified, and would not address, or outweigh, the aforementioned harms that I have identified in respect of the first two main issues.
38. The Council has raised no objection to the appeal scheme in respect of matters including highway safety, parking, on-site biodiversity, flood risk and drainage. In terms of the planning balance, the lack of identified harm is a neutral factor that does not diminish the significant harm that would arise from the proposal in respect of the character and appearance of the area and the living conditions of future occupants.

Conclusion

39. When assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits, and the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.
40. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR