
Appeal Decisions

Site visit made on 20 April 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 04 May 2022

Appeal A: APP/B1740/21/3284016

Land to the rear of 139 and 141 Hampton Lane, Blackfield SO45 1WE

- 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 Andrew Hill of APE Properties Ltd against the decision of New Forest District Council.
 - The application Ref 21/11002, dated 5 July 2021, was refused by notice dated 27 August 2021.
 - The development proposed is erection of a two-bedroom bungalow.
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Appeal B: APP/B1740/W/21/3287961

Land to the rear of 139 and 141 Hampton Lane, Blackfield SO45 1WE

- 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 Andrew Hill of APE Properties Ltd against the decision of New Forest District Council.
 - The application Ref 21/11377, dated 1 October 2021, was refused by notice dated 11 November 2021.
 - The development proposed is erection of a two-bedroom bungalow.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. As set out above, there are 2 appeals on this site. Each relates to the same site but to alternative schemes of development. I have considered each on its individual merits, however, in order to avoid duplication, I have dealt with the appeals together, except where otherwise indicated.
4. I have modified the site address given in the banner headings above to reflect the fact that the site consists of 2 currently separate parcels of land to the rear of 139 and 141 Hampton Lane.

Main Issues

5. The main issues are the effects of the development on:
 - the integrity of European sites;
 - the character and appearance of the area; and

- the living conditions of the future occupants of the proposed dwellings in relation to privacy; and of occupants of 1 Hartsgrove Close in relation to outlook, noise-related disturbance and light intrusion.

Reasons

European sites

6. Each of the proposed developments would support an increase in population within reasonably close proximity to a number of European sites. In this regard, considered alone and in combination with other plans or projects, both developments would have likely significant effects on the integrity of the Solent and Southampton Water SPA and Ramsar sites, Solent and Isle of Wight Lagoons SAC, and Solent Maritime SAC (the nutrient-sensitive sites) as a result of nutrients in wastewater entering the catchment via water treatment works, and on the New Forest and the Solent and Southampton Water SPA/SAC/Ramsar sites (the recreation-sensitive sites), as a result of increased recreational pressure. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) Appropriate Assessment (AA) is therefore required.
7. The designation of the above sites relates to the range of protected priority habitats and species that they support. Where available, their conservation objectives seek to maintain or restore integrity, including that of qualifying features. Increased recreational use and eutrophication caused by nutrients would be at odds with these objectives.
8. Two separate AAs of each of the appeal schemes in relation to nutrients and recreation have been undertaken by the Council. These have helped to inform my assessment.

(a) Nutrients

9. Recent guidance produced by Natural England (NE) both sets out its position in relation to nutrients, and provides advice on calculating nitrogen budgets, offsetting, and achieving nutrient neutrality. Though the Council is working on strategic solutions in line with NE's advice, this work has not been concluded. Thus, aside from implementing generic water efficiency measures which would limit but would not eliminate the production of wastewater, no means of mitigation has been proposed, specifically identified or secured in relation to either appeal scheme.
10. The Council has instead suggested that mitigation could be secured at a later stage by use of a Grampian condition. This would not explicitly require the appellant to enter into a planning obligation or other agreement, though it is unclear how else mitigation would be secured. Here the Planning Practice Guidance (PPG) states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases, and only then in exceptional circumstances.
11. The Council has provided a case for use of Grampian conditions prepared in relation to mitigation of recreational impacts on European sites. Whilst the material is therefore only of indirect relevance, it is otherwise dated in terms of its age, inclusion of superseded documents and its reference to revoked legislation. Insofar as appeal decisions are included, Inspectors in the most

recent of these, all of which are dated to 2018, rejected the Council's proposed use of Grampian conditions. This material therefore does little to support the Council's proposed approach.

12. The Council has separately highlighted a 2020 appeal decision in which the Inspector agreed to use of a Grampian condition in relation to nutrients. However, that case differed markedly from the cases subject of the current appeals in that whilst a scheme of mitigation actually appears to have been secured, it was considered that this would be better secured in the context of an emerging overarching agreement. There is therefore no direct parallel between the schemes. In the absence of any other evidence, it is otherwise unclear how representative this 2020 appeal decision is, particularly given the unusual circumstances.
13. The Inspector in the 2020 appeal additionally considered that the Council's lack of a demonstrable 5-year supply of deliverable housing sites (5YHLS) provided exceptional circumstances justifying a departure from the PPG. The Council also lacked a 5YHLS in 2018 and continues to do so. Exactly what role nutrients plays in this unclear. Insofar as the need to secure mitigation otherwise acts as an impediment to housing delivery, use of the proposed condition would not resolve the issue. Nor would it address other issues which might have a bearing on the Council's 5YHLS position. I therefore find that the Council's lack of 5YHLS is not an exceptional circumstance justifying use of the proposed condition.
14. As such, use of the proposed condition would be clearly contrary to the PPG. As I have no clear indication of what form mitigation would take, the proposed condition would further fail to meet the test of precision and would provide no certainty of mitigation. Given that nutrient neutrality has not been secured and given the absence of an appropriate mechanism by which it could be secured, adverse effects on the integrity the nutrient-sensitive sites cannot be excluded.
15. Alternative solutions which would have a lesser impact on the integrity of the nutrient sensitive sites clearly exist. Indeed, properly evidenced, scaled, and secured avoidance/mitigation could potentially address the likely significant effects identified above. As such and given the failure of both schemes in this regard, allowing either appeal would be contrary to The Habitats Regulations. It would also conflict with saved Policy DM2 of the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management 2014 (the SDM), and Policy ENV1 of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (the LP) which together support the process of AA and require development to mitigate its impact on international nature conservation sites.

(b) Recreation

16. The Council's strategy for achieving mitigation of increased recreational pressure on European sites is currently set out within the Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document 2021 (the SPD), and the Solent Recreation Mitigation Strategy 2017 (SRMS). In each regard mitigation comprises funding for provision of sites of alternative natural green space (SANGS), and provision of site access management and monitoring measures (SAMM). The SPD indicates that funding will be through a mix of CIL and financial contributions, and the SRMS, through financial contributions.

17. The SRMS contains a general endorsement from NE, and NE has provided general advice to the Council confirming that it will not object to schemes provided mitigation is secured in line with local strategy.
18. The appellant has submitted a signed but undated Unilateral Undertaking (UU) which seeks to secure payment of the required contributions. As the UU has not been properly executed, and its terms are incapable of operation in the absence of a date, it attracts no weight. In the absence of full mitigation for the increased recreational pressure to which both schemes would give rise, adverse effects on the integrity of the recreation-sensitive sites cannot be excluded. As considered above, this matter could not be properly addressed through the imposition of a Grampian condition.
19. Again, alternative solutions would have lesser effect exist, insofar as provision of appropriately secured mitigation would address the scheme's likely significant effects. As such and given the failure of the schemes in this regard, allowing either appeal would be contrary to the Habitats Regulations. They would therefore again conflict with saved Policy DM2 of the SDM and Policy ENV1 of the LP as outlined above.

(c) Air quality

20. The decision notices additionally reference failure to mitigate adverse effects in relation to air quality, though this is not addressed within the Council's AAs.
21. Air quality is however covered within Policy ENV1 of the LP in relation to the New Forest SPA and SAC. The supporting text states that the deposition of nitrogen and ammonia from vehicle exhausts is a risk factor which requires a financial contribution to cover monitoring. The Council's requested contribution is covered within the UU, but given my findings above, it has not been properly secured.
22. Notwithstanding the Council's reason for refusal, the stated purpose of monitoring is to identify whether adverse effects are occurring or likely to occur, rather than to mitigate them. Whilst likely significant effects on the integrity of the New Forest SPA and SAC cannot therefore be ruled out, given evident uncertainty, it is unclear whether any mechanism exists by which adverse effects can in fact be excluded.
23. Thus, had I been otherwise minded to allow either appeal it would have been necessary to seek further information and evidence in relation to this matter, and to extend my AA accordingly. Given my findings in relation to matters (a) and (b) above however, this is unnecessary.

Character and appearance

24. The site occupies space to the rear of Nos 139 and 141, which are semi-detached and face Hampton Lane. The part of the site to the rear of No 139 is laid out as a garden, whilst the part to the rear of No 141 appears to be currently used for storage. Insofar as it is possible to clearly determine, space to the rear of other buildings along the same Hampton Lane frontage between Hartsgrove Avenue and Exbury Lane, are varied in character, many containing single storey structures. The frontage itself is of mixed character hosting both residential and commercial uses, and there is little sense of overall consistency or distinctiveness. The broader area contains a mix of 2-storey dwellings and bungalows whose layout and density varies.

25. In each case a single storey bungalow would be built to the rear of the semi-detached building on the street frontage. This would not be typical of the current layout of development along the same section of Hampton Lane. It is however of note that a similarly located residential development has recently been approved just to the north of the site, indicating that change is likely to occur whether the appeals are allowed or not.
26. In each case there limited views of the bungalows would be available from the street frontage. Even within these views the developments would not appear at odds with their setting given the common presence of single storey buildings to the rear of the main frontage, and its otherwise mixed character. Insofar as the bungalows could also be viewed from Harts Grove Avenue, they would draw some visual association with a similar bungalow recently constructed on the adjoining plot immediately to the south east of the site.
27. As both schemes would involve infilling they would inevitably require a plot to be 'created', and would give rise to a localised increase in density. In view of my findings above this would not cause any perceived harm to the character of Hampton Lane. In each case the size of the plots formed would otherwise generally fall within the range of other existing bungalows within the immediate vicinity, including that on the adjoining plot, and others located to the southwest of the site along Harts Grove Close. For this and the above reasons the plot would not appear cramped or harmfully contrived.
28. For the reasons outlined above I conclude that the developments subject of both appeals would be acceptable in relation to their effects on the character and appearance of the area. They would therefore comply with Policy ENV3 of the LP which amongst other things requires development to be sympathetic to its context.

Living conditions

29. No 1, which is located on the plot to the west/southwest side of the site, is a single storey bungalow with recently constructed rear roof extension. Each appeal scheme would see a bungalow built on space reasonably close to the side boundary of its back garden. That subject of Appeal A would both stand slightly closer and occupy more space than that subject of Appeal B.
30. The bungalows would each be modest in scale, featuring very shallow hipped roofs. Though they would clearly exceed the height of the boundary between the site and the plot on which No 1 stands, their visual presence would be greatly limited by the above, and would not be sufficient to be perceived as overbearing. This would be underlined in contrast with No 1 itself, whose overall height and massing would far exceed that of either proposed bungalow. The outlook from No 1 and its garden would remain reasonably open in other directions, without obstruction by built form outside the plot. For this and the above reasons the development would not cause undue or oppressive sense of enclosure to occupants of No 1.
31. Given the way in which the site is currently used, noise related to garden use and vehicular access presumably occurs adjacent to its boundaries with other properties at present. The fact that it would also occur in much the same locations in relation to each of the appeal schemes does not therefore indicate that any marked change in character would occur.

32. I have otherwise been given no reason to believe that noise generated inside the proposed bungalows themselves would be atypical of normal domestic use. Given that the gap between No 1 and the proposed dwellings would fall within the range seen in the immediate suburban context, scope for disturbance would thus fall well within the normal range. The above being so, there would be no unacceptable effect on the living conditions of occupants of No 1, or for that matter, occupants of any other adjoining dwellings, in relation to noise-related disturbance.
33. The Council's concerns in relation to light intrusion are unclear. Indeed, the site is within an established suburban location which features street lighting. Again, I have been provided with no reason to believe that light spill from either of the proposed bungalows would be atypical in nature, and given the modest scale of the bungalows much of this would in any case be screened by the boundaries. No unacceptable effect would therefore arise.
34. The rear roof extension at No 1 did not exist when the application subject of Appeal A was determined, but was under construction when the Council assessed the application subject of Appeal B. The windows within this extension provide views into the site which are reasonably direct towards its far northwest end but grow increasingly oblique towards its southeast end. In each case the outdoor amenity space of the proposed bungalows would be located in the south-eastern half of the site. This would largely correspond with the location of the existing garden to the rear of No 139. The limited extent to which the proposed garden space would be overlooked would thus be little different to the limited extent to which the space is at present. This would not provide unacceptable living conditions for future occupants.
35. The extent to which users of outdoor space within each scheme could see into the windows of the roof extension would again be the same as at present. Such views are greatly limited by the oblique angle, upward nature of the view, and small size of the windows. Intervisibility between windows in the extension and the bungalows would differ slightly between the schemes, but again, given the angle of view and window size such views would be negligible.
36. Insofar as interested parties have claimed loss of privacy in relation to 143 Hampton Lane, my findings above similarly apply.
37. Interested parties further state that noise, disturbance and effects on the privacy of occupants of No 1 and No 143 would cause interference with the qualified rights set out in both Article 8, and Article 1 of the First Protocol to the European Convention on Human Rights (ECHR), as incorporated in the Human Rights Act 1998 (HRA). These state that everyone has the right to respect for his private and family life, his home and his correspondence, and every natural or legal person is entitled to the peaceful enjoyment of his possessions. Given that the likely effects of the developments would be much the same as they are at present, or otherwise fall within the normal range expected within a suburban area, I am satisfied that were I to allow either appeal there would be no such interference.
38. For the reasons outlined above I conclude that the developments subject of both appeals would be acceptable in relation to their effects on the living conditions of occupants of No 1, and future occupants of the proposed bungalows. They would therefore again comply with Policy ENV3 of the LP which amongst other things seeks to secure development that avoids

unacceptable effects by reason of overbearing impact, overlooking, noise and light pollution or other adverse impacts on residential amenity.

Other Matters

39. Interested parties have raised concern relating to protected species. However, a submitted survey has confirmed limited/negligible potential for their presence. As such this is a matter which could be addressed by condition.
40. As noted above, the Council lacks a 5YHLS, and the appellant has accordingly drawn attention to the 'tilted balance' set out in paragraph 11 of the National Planning Policy Framework (the Framework). However, given my findings in relation to European sites, and as indicated by paragraph 182 and Footnote 7 of the Framework, the tilted balance is not applicable in this instance.
41. The developments subject of both appeals would otherwise provide a single additional dwelling in an accessible location, helping to make better use of the site. However, notwithstanding the social and economic benefits this would deliver, including in relation to the Council's shortfall, they would be clearly outweighed by the potentially adverse environmental effects of the scheme.
42. Interested parties have raised further reference to Article 6 of the ECHR as incorporated in the HRA. This guarantees the right to a fair trial. I am satisfied that in this regard the appeal process has been fair to all parties.

Conclusion

43. For the reasons set out above the effects of the developments in relation to European sites would be unacceptable, giving rise to conflict with the development plan. There are no other considerations which alter or outweigh these findings. I therefore conclude that Appeal A and Appeal B should be dismissed.

Benjamin Webb

INSPECTOR