
Appeal Decision

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: 06 May 2022

Appeal Ref: APP/B1740/W/21/3287728
24 Poplar Drive, Marchwood SO40 4XH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Cornish against the decision of New Forest District Council.
 - The application Ref 20/10136, dated 5 February 2020, was refused by notice dated 14 July 2021.
 - The development proposed is described as demolition of attached garaging and erection of infill dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with appearance, scale and landscaping reserved for future determination.

Main Issue

3. The main issues are the effects of the development on:
 - the integrity of European sites in relation to: (a) nutrients, (b) recreation and (c) air quality; and
 - the character and appearance of the area.

Reasons

European sites

4. The development 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, the development would have a likely significant effect 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.

5. 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 would, respectively, be at odds with these objectives.
6. Two separate AAs of the scheme in relation to nutrients and recreation have been undertaken by the Council. These have helped to inform my assessment.

(a) *Nutrients*

7. 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. Whilst the Council has made further general reference to schemes which enable credits to be purchased, no details of these schemes, their current availability, or the eligibility of the development in question to access them has been provided. 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.
8. 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.
9. The Council has 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.
10. 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 continues to lack a 5YHLS. Exactly what role nutrients plays in this is 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.
11. 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.

12. 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 the scheme in this regard, allowing the 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

13. 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.
14. 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.
15. Though work commenced on preparation of a Unilateral Undertaking (UU) to secure the required contributions during 2021, none has been provided to date. In the absence of full mitigation for the increased recreational pressure to which the scheme 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.
16. The scheme would therefore fail to mitigate the likely adverse effect it would have in relation to the recreation-sensitive sites. 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 scheme in this regard, allowing the appeal would be contrary to the Habitats Regulations. It would therefore again conflict with saved Policy DM2 of the SDM and Policy ENV1 of the LP as outlined above.

(c) Air quality

17. The decision notice additionally references a failure to mitigate adverse effects in relation to air quality, though this is not addressed within the Council's AAs.
18. 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.

19. 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.
20. Thus, had I been otherwise minded to allow the appeal it would have been necessary for me 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

21. The site is currently occupied by a garage attached to the side of 24 Poplar Drive. This forms part of a group of 3 detached 2-storey properties of two different designs arranged around two sides of a central hard surfaced space. These properties in turn form part of a relatively modern suburban estate of 2-storey properties which are arranged in small groups. The size, design and spacing of dwellings varies, as does the size and shape of their gardens.
22. The proposed dwelling would be positioned alongside No 24, similarly facing onto the central space. This would not require atypically close spacing and would complement the existing arrangement. Scale and appearance are both reserved matters, however in each regard a design generally consistent with that of adjacent dwellings could be secured.
23. The proposed garden space would be more compact than is typical within the estate at large. However, it is unlikely that this would be generally perceived. Indeed, the back garden would only be partially exposed to view from Long Lane, which itself lies outside the estate. From this vantage point the garden would not appear obviously at odds with other gardens which back onto the road. For this and the above reasons the development would not appear cramped, or the site overdeveloped.
24. I conclude therefore that the effect of the development on the character and appearance of the area would be acceptable. It would therefore comply with Policy ENV3 of the LP which amongst other things requires development to be sympathetic to its context.

Other Matters

25. Interested parties have raised a number of concerns not shared by the Council. These include the lack of safe or convenient parking, and related adverse effects on neighbour amenity in relation to traffic, light and air pollution. Given that space already used for parking would be utilised, additional parking would be provided to the rear of No 24, and screening could be introduced, I see no reason to reach a different view. Further concerns in relation to overlooking could be addressed by condition as appropriate, and there is no reason to believe that any unacceptable effect in relation to shading would occur when taking the relative orientation of dwellings into account.

26. A small part of the rear of the site falls within Flood Zone 3. In this regard the Environmental Agency and Council disagree over the acceptability of the development based on the submitted Flood Risk Assessment. On the basis that the proposed dwelling would have a smaller footprint than the building it would replace, both it and its access would fall outside Flood Zone 3, that a precautionary approach could be taken in relation to finished floor levels, and that No 24 would continue to have access from the front, I share the Council's view that the development would not be subject of or give rise to unacceptable risks in relation to flooding.
27. As noted above, the Council lacks a 5YHLS, and the appellant has accordingly drawn my 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 the application of paragraph 182 and Footnote 7 of the Framework, the tilted balance is not applicable in this instance.
28. The development 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.

Conclusion

29. The effects of the development 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 the appeal should be dismissed.

Benjamin Webb

INSPECTOR