



Appeal Decision

Site visit made on 29 April 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2022

Appeal Ref: APP/X1735/W/21/3287602

16 Selborne Avenue, Havant, Hampshire, PO9 4PX

- 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 Len Sturgess against the decision of Havant Borough Council.
 - The application Ref APP/21/00353, dated 5 March 2021, was refused by notice dated 27 August 2021.
 - The development proposed is described as 'a two-storey new build dwelling to end of existing terrace'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has confirmed in its statement of case that The Havant Borough Local Plan was withdrawn from examination and work has commenced on a new local plan. As a result, the emerging policies within this document, which were referred to in the decision notice, are no longer relevant as a material consideration in my assessment.

Main Issues

3. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposal, having regard to policies concerned with development in areas at risk of flooding;
 - The effect of the proposed development on the character and appearance of the area; and
 - The effect of the proposed development on the living conditions of the occupants of 16 Selborne Avenue and 32 Overton Crescent, with reference to outlook, sunlight¹ and privacy, and future occupants with reference to the size and configuration of outdoor amenity space.

Reasons

The appropriateness of the appeal site for the proposed development

4. The appeal site is in Flood Zone 3a, and the appeal scheme would fall within the 'more vulnerable' classification. As a result, development would be appropriate subject to the application of the sequential test and, if necessary,

¹ The Council does not appeal to take issue with the impact on daylight. The Council has referred to overshadowing, which I take to mean an effect on direct sunlight entering No 32 and its garden.

the exceptions tests as set out in Policy CS15 of the Havant Borough Core Strategy 2011 (CS). This is consistent with the sequential approach set out in Paragraph 162 of the National Planning Policy Framework (the Framework), which explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding.

5. The appellant has identified the PO9 post code area as the basis for the sequential test area (STA). The rationale for defining the STA in this way is unclear. The approach was initially agreed by the Council but the reasons for doing so are also unclear. The start point should be those parts of the local authority area² at a lower flood risk. This should then be reduced if there are sustainable development reasons for doing so. For example, if affordable housing is required to serve a particular community or an area requires housing to support the aims of a local regeneration strategy. It may also be that a particular type of development, such as a school or doctors' surgery, needs to serve a particular catchment. In this instance, the appeal scheme would be an open market dwelling aimed at addressing the housing needs of the borough. As a result, a borough wide STA would not be unreasonable.
6. As there is no rationale before me, I see no reason to reduce the STA to the PO9 post code area. As a result, the STA could be much wider. The STA is therefore artificially small, and this has seriously undermined the assessment of potentially suitable and available alternative sites. Consequently, the appellant has not supported his sequential assessment with adequate evidence.
7. Even if I accepted the appellant's proposition that the STA should be the PO9 postcode, there are still limitations in the analysis. For example, the focus was on schemes where an end of terrace home was approved, rather than other similar semi-detached or detached properties. Moreover, sites were omitted if conditions had been discharged, but this broad-brush approach would not factor in the nature of the condition and the intentions of the site owner.
8. Furthermore, the Council identified two similar alternative sites³ which appeared to be reasonably available but were not considered by the appellant. There has subsequently been a further planning permission⁴ and two sites with applications awaiting determination⁵. In respect of the latter, a site need not have planning permission to be considered reasonably available and appropriate for the proposed development⁶. In this regard, allocations in the development plan could be considered. Therefore, the allocated site L146 from Policy LP2 of the Havant Borough Local Plan (Allocations) 2014 is relevant.
9. Site L146 was rejected by the appellant because of possible site constraints such as the need to account for displaced parking and to safeguard the living conditions of neighbours. However, the suitability of the site for housing would have been tested as part of the allocation process. In addition, it has not been demonstrated that the concerns raised are insurmountable. For example, there is no evidence that a planning application for a proposal at Site L146 has been refused, or that the owner has abandoned their development aspirations due to

² I note that the Council has produced general guidance, albeit not a formal Supplementary Planning Document, that correctly advocates this approach in the first instance.

³ Council reference APP/18/01141 and APP/19/00257

⁴ APP/21/00401

⁵ APP/21/01242 and APP/22/00096

⁶ There may be windfall sites that are not allocated in the local plan and do not have planning permission but could be available for development. These may be identified in housing and economic land availability assessments.

technical constraints such as the findings of a parking displacement assessment or daylight/sunlight report. Moreover, for reasons I go into, the appeal site is similarly constrained by impacts on living conditions. Thus, site L146's status as an allocation means it should currently be considered suitable for development and therefore its availability should have been explored.

10. Accordingly, the appellant has not established that there are not sequentially preferable sites that are reasonably available and appropriate for the proposed development. As the sequential test has not been passed the exception test in Policy CS15 of the CS and Paragraph 160 of the Framework is not relevant.
11. Neither the Environment Agency nor Southern Water would have commented on the sequential test so the absence of objections from these organisations in respect of this matter does not weigh in favour of the proposal.
12. I therefore conclude that the appeal site would be at risk of flooding and this risk has not been adequately justified through an absence of sequentially preferable sites in a logical and robustly identified STA. The proposal would therefore be contrary to Policy CS15 of the CS, which aims to sequentially direct relevant development away from areas at risk of flooding in a way generally consistent with the Framework.

The effect on the character and appearance of the area

13. The appeal site largely encompasses the side garden of 16 Selborne Avenue (No 16). This is an end of terrace property located within a residential estate. Houses within the estate are arranged in terraces and semis set amongst generous areas of greenery. The terraces on the northern side of Selborne Avenue exhibit a consistent use of materials, window and door positions, heights, and general massing. This is due to a repeated use of house types. The length of the respective terraces varies depending on how many properties it incorporates. The properties have been altered over time so that the original symmetry of the terraces has been eroded. Nevertheless, they retain a sense of balance. Accordingly, there is an overall high degree of uniformity to the appearance of the estate in which the appeal site is located. This sense of harmony provides a legible and discernible character.
14. The appeal scheme would result in a new dwelling being added to an existing terrace of four properties. Its presence would unbalance the terrace, the passageway being a clear manifestation of this. Moreover, the plot occupied by the proposed dwelling would appear relatively cramped with built form positioned close to the side boundary. This would result in the corner of the dwelling having to be discordantly chamfered. The rear garden would also have a narrow and awkward 'dog-legged' boundary alignment and the parking would appear squeezed in. Overall, the dwelling would have a contrived and incongruous appearance that would harmfully jar with the broad sense of uniformity and rhythm that is evident elsewhere in the estate.
15. The proposed dwelling could be finished in matching materials and would have the same eaves and ridge height as others in the terrace. It would also have a similar width and fenestration pattern. However, these positive aspects of the proposal would not mitigate for the harm I have identified, especially as the awkward nature of the proposal would be visible from the footpath to the east, Selborne Avenue, Overton Crescent and nearby properties.

16. In conclusion, the proposal would harm the character and appearance of the area. This would be contrary to Policy CS16 of the CS, supported by the Borough Design Guide Supplementary Planning Document (SPD). This policy seeks to secure development that is of a high-quality design, achieved by responding to and respecting local context, including plot widths and depths. Policy CS16 is consistent with Paragraph 130 of the Framework.

The effect on living conditions

17. 32 Overton Crescent (No 32) has a west facing rear garden. In views out from this space it is possible to see the rear elevations of other properties. However, there is a reasonable distance between No 32 and other properties due to intervening gardens. As a result, the garden at No 32 does not currently have a harmful sense of enclosure and benefits from a reasonably open aspect commensurate with its position within a residential estate.
18. The proposed dwelling would be positioned near the boundary with No 32 and enclose much of its southern aspect. Being two storeys in height, the proposed dwelling would tower over any boundary treatment. Thus, the building would have a constant and unavoidable close-range presence to the occupants of No 32 when in their rear garden or west facing rooms. The appeal scheme would therefore dominate and enclose No 32. Consequently, the proposal would have an overbearing impact on the outlook from No 32, thereby harming the living conditions of the occupants of this property.
19. The proposed dwelling would be located to the southwest of No 32. As a result, the appeal scheme would notably interfere with levels of direct sunlight in the afternoon and evening. The evidence before me does not demonstrate the residual level of sunlight entering No 32 and its garden would exceed any recognised standard. I therefore share the view of the Council that the loss of sunlight would be unacceptably harmful.
20. The rear garden of the proposed dwelling would have an awkward and contrived arrangement with a kink that would return behind the rear elevation of No 16. This would allow future occupants of the proposed dwelling to have a direct close-range view toward the rear elevation of No 16 even if a two-metre-high fence was erected. The appeal scheme would therefore unacceptably harm the living conditions of the occupants of No 16.
21. The contrived arrangement of the rear garden would also result in the future occupants of the appeal site having an awkwardly shaped outdoor amenity space that would be hard to use. There would be little space to comfortably sit out in a position that is not overlooked. The proposal would also fail to adhere to the guidance in the SPD that gardens should be a minimum of 10m in depth. As a result, the living conditions of future occupants would be inadequate.
22. In conclusion, the appeal scheme would result in a harmful loss of sun light and outlook to No 32 thereby harming the residents' living conditions. Similarly, there would be a harmful loss of privacy to the occupants of No 16 and future occupants of the appeal scheme would not have an adequate garden due to the size and layout. This would all be contrary to Policy CS16 of the CS and the SPD, which seek to secure design of a high standard that creates places where people want to live and does not result in unacceptable harm to neighbours. This is consistent with Paragraph 130(f) of the Framework.

Other Matters

23. The Council is currently unable to demonstrate a five-year housing land supply and therefore Paragraph 11d) of the Framework is relevant. For the reasons already set out, the proposal fails the sequential test, and this is contrary to the relevant policies in the Framework. As a result, the application of policies in the Framework that protect areas at risk of flooding provide a clear reason for refusing the development proposed. In these circumstances the 'tilted balance' in Paragraph 11d)ii of the Framework is not relevant.
24. Nevertheless, the housing supply position, which is reasonably acute at around 3.9 years, still means that housing delivery would be a point in favour of the proposal. I afford this moderate weight given the small scale of the development. Moreover, the proposal would result in benefits to the construction industry and future residents may spend locally. This would support the local economy at a point in time when it is bouncing back from a global pandemic. These are public benefits of limited weight as there is little before me to suggest one new household would have a significant impact in this respect.
25. The proposal has been designed to incorporate porous and permeable areas in lieu of existing hard standing both within the appeal site and at No 16. This form of Sustainable Drainage System would assist in the management of surface water and provide a modest benefit as a result. This is a further benefit in favour of the proposal although it would not address the risk from fluvial flooding and is therefore a matter of modest weight.
26. Overall, I afford significant weight to the harm that would arise from the appeal scheme and the subsequent conflict with the development plan, in part because the offended policies are consistent with those in the Framework. The harm would therefore outweigh the moderate cumulative benefits of the appeal scheme. This is not a material consideration that indicates the proposal should be determined otherwise than in accordance with the development plan.
27. Given my overall conclusion that the appeal should fail, it would have no effect on the Solent European Site. It is therefore unnecessary to consider this matter further.

Conclusion

28. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is dismissed.

Graham Chamberlain
INSPECTOR