

Appeal Decision

Site visit made on 22 March 2022

by J P Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2022.

Appeal Ref: APP/Y3940/W/21/3289227

4 The Flood, Middle Winterslow, SP5 1QT

- 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 Paul Martin against the decision of Wiltshire Council.
 - The application Ref 21/00943/FUL, dated 28 January 2021, was refused by notice dated 19 July 2021.
 - The development proposed is the erection of a four bedroom detached house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Unilateral Undertaking to provide for the cost of mitigating the effects of development on protected habitats was advised as necessary as such a matter could not be the subject of a Grampian condition. The Undertaking has not been submitted and I have considered the appeal accordingly.

Main Issues

3. The main issues are:
 - the effect of the proposal on the living conditions of the neighbouring Middleton House with particular regard to overlooking and;
 - the effect of the proposal on the River Test Special Area of Conservation, Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA), Portsmouth Harbour SPA, Solent and Southampton Water SPA.

Reasons

The effect of the proposal on living conditions

4. The appeal site is located within the perceptible built-up confines of the village of Winterslow. The Flood is the main village road and there are houses opposite and adjacent.
5. Middleton House lies just behind the houses on The Flood and accessed off a side road. It shares a common boundary with the appeal site but the house itself is sited tangentially and its grounds are more extensive beyond the building line.

6. The neighbouring dwellings are at a similar land level to the appeal site. Indeed, the Design and Access Statement suggests only a 300mm difference across the appeal site itself.
7. The appeal site is open without any physical structure and consists of overgrown scrub. On the rear boundary there are some well-established trees, but these do not extend to the boundary towards Middleton House. On the common (side) boundary there is a poorly managed mixed species hedge.
8. The appellant's statement provides an annotated plan showing that the proposed dwelling would be sited 10m back from the rear boundary of the appeal site. This plan also shows the outline of Middleton House although not its conservatory.
9. Middleton House is sited behind the building line of the proposed dwelling. The new dwelling would have windows orientated to the rear and front. Three first floor windows are proposed, two serving bedrooms, the third, shown as a rooflight on the amended plans, would serve a bathroom.
10. The side of the original Middleton House has a blank wall which would not lead to overlooking to those first-floor rooms.
11. However, the windows of the first-floor rooms on the rear elevation of the proposed house would face, albeit indirectly, the conservatory on the corner of Middleton House. This conservatory has a transparent roof and would be visible above the existing boundary hedge. As I observed on my site visit it is used as a sitting room by the occupants.
12. The intended occupants of the new dwelling would overlook the conservatory of Middleton House. In addition, the occupants of Middleton House would have the perception of being overlooked by the new dwelling which would be unsettling. Whilst this overlooking would not be direct and more tangential, it would nonetheless be very close and from elevated positions, and thus would be significant. Consequently, the proposal would harm the living conditions of the occupants of Middleton House.
13. Obscure glazing would not be appropriate on the two bedrooms of the new house as it would spoil the outlook and amenity of those rooms. Indeed, the appellant's statement¹ only suggests obscure glazing to the bathroom. It may well be feasible to devise alternative fenestration but that would change the appeal proposal, warranting consultation and would be beyond the scope of a condition. Additionally, a new boundary fence would be very likely to be of insufficient height to screen this view. I note the suggestion in the appellant's statement that the boundary vegetation would screen views but that would be insufficient in height currently and would be likely to take a long time to do so.
14. The windows would overlook part of the garden of Middleton House which is used as a sitting out area. However, the rear garden does extend away from the appeal site which would allow an alternative private area. Consequently, in terms of the impact on the outdoor space, I do not find that the proposal would be significant.

¹ Paragraph 3.7

15. The appeal site follows the alignment and the plot sizes of existing properties along The Flood. It is large enough to accommodate the proposed dwelling without any significant overbearing or overshadowing implications.
16. I therefore conclude that the proposal would lead to overlooking of the occupants of Middleton House, harming their living conditions.
17. Wiltshire Core Strategy Policy CP57 requires development to have regard to the compatibility of adjoining buildings and uses and the impact on the amenities of existing occupants. Paragraph 124 of the National Planning Policy Framework (the Framework) whilst promoting the efficient use of land highlights the need for healthy places. Similarly, paragraph 130 promotes health and well-being. The proposal would be in conflict with these policies.

The effect of the proposal on the River Test Special Area of Conservation, Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA), Portsmouth Harbour SPA, Solent and Southampton Water SPA.

18. The site lies within the zone of influence of the River Test, which drains into the Solent.
19. The Solent Water is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations 2017 (as amended) as well as through national legislation for many parts of the coastline and adjacent maritime areas. Natural England has confirmed high levels of nitrogen are entering this water environment and that there is sound evidence that this eutrophication is causing excessive growth of plants and algae which reduces oxygen and light levels and is leading to negative effects on the special features for which the European sites are designated. These nutrients arise from agricultural sources and wastewater from existing housing and other development.
20. The new house would increase the volume of water disposal and the resulting contaminants in the waste water could enter into the ground water system. This could lead to enriched nutrient levels, particularly nitrates, resulting in growth of weeds and impairing aquatic ecology and the conservation objectives of the above designations.
21. The Council, similar to others in the area has a mitigation scheme. This would permanently change an intensively managed, high nitrogen producing dairy farm to chalk grassland, lowland meadow and woodland. Using the latest Natural England methodology a nitrogen burden of 3.16 kg/N/yr would result from the proposal and mitigation is required to ensure there are no adverse effects on the integrity of these protected sites. This necessitates a financial payment to cover the cost of changing the land. The Council advise that the cost equates to £7900. A unilateral undertaking is therefore required.
22. As the undertaking has not been provided, the proposal would harm protected species and would not accord with the Council's mitigation strategy agreed with Natural England. The proposal would be contrary to Wiltshire Core Strategy Policy 50 and paragraph 181 of the Framework and the Conservation of Habitats and Species Regulations 2017.

Other matters

23. The new house would be an economic benefit by its construction although this would be only very short-term. The occupants would be well placed to support the local services. The proposal would help vitality of the village and contribute to the housing land supply although only minimally. These benefits would not offset the impact on the living conditions of the occupants of Middleton House and the impact on protected species.
24. I note there has been previous permissions for a dwelling here but that does not make this particular proposal acceptable in these current circumstances.

Conclusion

25. I therefore conclude that the appeal should be dismissed.

John Longmuir

INSPECTOR