



Appeal Decision

Site visit made on 8 August 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2022

Appeal Ref: APP/L1765/W/22/3294514

The Briars, 3 Elizabeth Close, Kings Worthy SO23 7PE

- 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 Alex Johnson against the decision of Winchester City Council.
 - The application Ref 21/01058/FUL, dated 20 April 2021, was refused by notice dated 15 December 2021.
 - The development proposed is the erection of a new detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The submitted evidence indicates that a net increase in housing development within the Council area is likely to result in impacts to the integrity of the Solent Special Protection Areas due to increased levels of nitrates that would enter the water environment from wastewater, which can affect important bird habitat and feeding grounds. The Council's appeal statement sets out that an additional reason for refusal should have been included on its decision notice relating to the effects on the Solent Special Protection Areas. This is because the proposed development would result in increased nitrates being discharged, rather than being nitrate neutral which was the Council's conclusion when it considered the application. Given the obligations imposed by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and the main parties have addressed this matter in their appeal submissions, I have taken it into account in my decision.

Main Issues

3. The main issues are the effects of the proposed development on:
 - the integrity of the Solent Special Protection Areas; and
 - the character and appearance of the area.

Reasons

Solent Special Protection Areas

4. The Solent Special Protection Areas (the SPAs) are afforded protection under the Habitats Regulations. The Habitats Regulations require the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from a proposal, either alone or in combination with other plans or projects.

5. The submitted information highlights Natural England's advice that there is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment. These substances contribute to the creation of thick mats of algae which adversely affect the features of interest for which the SPAs are designated. It is Natural England's view that there is a likely significant effect on the SPAs from new housing developments due to the increase in wastewater.
6. The proposed development would be within the Solent catchment. The proposal is supported by a nutrient budget, which Natural England has confirmed is calculated in line with its Nutrient Neutrality Generic Methodology (February 2022). The nutrient budget establishes that the total annual nitrogen load to mitigate would be 3.16kg. Wastewater discharge from the proposed development would therefore have the potential to cause additional nutrients to enter the SPAs. As such, there would be a likely significant effect on their qualifying features, particularly when the impacts are considered in combination with other residential developments located within the area.
7. As the competent authority, it is therefore necessary for me to conduct an AA in relation to the effect of the proposal on the integrity of the SPAs. Considering the conservation objectives, there would be adverse effects on the integrity of the SPAs from the proposed development through increased nutrients entering the water environment from wastewater discharge. I must therefore consider whether measures could be put in place to avoid or mitigate the impacts.
8. Nutrient neutrality can be an appropriate way of mitigating nutrient impacts from development. I have consulted with Natural England which has confirmed that, to demonstrate that proposed mitigation would remain effective for the lifetime of the development, information on management and monitoring would be required, together with details of how this would be secured and funded in perpetuity.
9. The appellant has identified a number of mitigation schemes¹ provided by local landowners who are willing to sell credits for mitigation on the grant of planning permission. These landowners are taking land out of agricultural production to off-set the impact of residential development. The appellant states that these arrangements are supported by Natural England, Partnership for South Hampshire and the Council. There are a number of mitigation schemes for the River Itchen Valley, where the site is located.
10. I acknowledge the appellant's commitment to providing appropriate mitigation. However, from the submitted evidence, it does not appear that there is an agreement with any of the identified landowners to secure an allocation for the proposed development.
11. The Council and appellant suggest that a negatively worded condition could be imposed to secure a mitigation package. The Planning Practice Guidance (PPG) advises that conditions prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. Based on the submitted information,

¹ Potential mitigation schemes available to developers (July 2022), Partnership for South Hampshire

I could not conclude that there would be no prospect at all of securing an appropriate mitigation package.

12. A negatively worded condition may therefore meet that guidance in the PPG. However, for the purposes of the AA, I would need to be satisfied that any mitigation for addressing the wastewater impacts of the proposed development on the SPAs are certain and that it would remain effective for the lifetime of the development, so that no reasonable scientific doubt remains as to its effects on the SPAs. I am not persuaded that the suggested condition would provide this certainty.
13. The uncertainty is compounded by not knowing whether it would be necessary for the appellant to make a financial contribution to the Council or a landowner. The PPG advises that no payment of money or other consideration can be positively required through a condition when granting planning permission.
14. An appeal decision has been drawn to my attention where a similar condition to that being proposed was accepted. However, I do not have the details of this case to determine whether the circumstances regarding certainty around mitigation are the same or similar to the current appeal scheme.
15. No other alternative solutions have been put to me that would avoid or reduce the effects on the SPAs. The modest scale of the proposed development would not be sufficient to amount to an imperative reason of overriding public interest.
16. The evidence is that the proposed development would result in an adverse effect on the integrity of the SPAs, without suitable mitigation. Hence it would be contrary to the habitat and biodiversity requirements of Policies CP15 and CP16 of the Winchester District Local Plan Part 1 – Joint Core Strategy, adopted 2013, (the Core Strategy), the Habitats Regulations and the Wildlife and Countryside Act 1981.

Character and Appearance

17. The appeal site comprises part of the relatively large front garden of a single storey detached dwelling located within a small cul de sac of other similar properties. The proposed development would comprise the construction of a single storey dwelling.
18. The properties on the cul de sac have a similar design and appearance and are set within quite generous plots. They are typically arranged on fairly regular building lines. The exception to this is the appeal property which, based on the appellant's information, is set back from the highway by around 35 metres, compared to the 12 to 15 metres of the other dwellings.
19. The proposed dwelling would be of a similar scale to the other dwellings on the close, as would the distance between its side boundaries. It would be set back from the highway by around 10 to 12 metres which would be comparable with other properties on the cul de sac and would therefore be on a similar building line. There would be space to accommodate the required parking and still allow for some garden space to the site frontage.
20. The proposal would involve the shared use of the driveway and parking provision for the proposed dwelling would be to the front. The majority of the dwellings on the close are served by their own driveways with a garage to the

side, other than no. 2 which is now two individual dwellings that share an access and parking area to the front (nos. 2 and 2A). A number of other dwellings have also created parking areas to the front. This feature of the proposed development would not therefore appear out of place, nor would it give a cramped appearance to the development when compared to other nearby properties.

21. The existing dwelling is not particularly prominent in the street scene. This is due to its set back position, the lower level at which it sits and the screening effect of the adjacent properties and the relatively tall conifer hedges that sit along its front boundary and that of no. 4, which also screen much of the front garden from many vantage points on the close. The existing dwelling would be further screened by the proposed one. Therefore, although the existing property would sit behind the proposed dwelling, this would not be readily apparent in the street scene other than at the point of access.
22. For these reasons, the proposed development would integrate with the surrounding built form and would not appear incongruous in the street scene. I therefore conclude that it would not have a harmful effect on the character and appearance of the area.
23. Consequently, the proposed development would accord with Policies DS1 and CP13 of the Core Strategy and Policies DM15 and DM16 of the Winchester District Local Plan Part 2 – Development Management and Site Allocations, adopted 2017. Collectively, these policies seek to ensure that developments meet high standards of design and respect the qualities, features and characteristics that contribute to local distinctiveness, amongst other matters.

Conclusion

24. I have found that the proposal would be acceptable in terms of its effect on the character and appearance of the area. However, I am unable to conclude that it would not adversely affect the integrity of the SPAs. This is a matter of overriding concern and to this extent there would be conflict with the development plan when considered as a whole. Therefore, the appeal should be dismissed.

F Wilkinson

INSPECTOR