



Appeal Decision

Site visit made on 4 October 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

Appeal Ref: APP/M1710/W/21/3282393

Land to the north of 64 Lymington Bottom, Four Marks, Alton GU34 5AH

- 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 Andy Southcott of Farnden Developments Ltd against the decision of East Hampshire District Council.
 - The application Ref 58714, dated 5 May 2020, was refused by notice dated 15 April 2021.
 - The development proposed is Erection of detached house and integral garage with car parking and new access.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During the consideration of the application the appellant provided a site plan indicating a smaller dwelling set further back. However, it is understood that this was not pursued with the Council. There are no amended detailed elevation, floor or site layout plans before me, so I cannot assess the revised dwelling. The Council made its decision upon the original plans and details as set out in the decision notice and so shall I.

Main Issues

3. The main issues are:
 - the effect of the proposed development upon the character and appearance of the area, including upon protected trees;
 - whether or not the proposed development would provide satisfactory living conditions for the future occupiers of the proposed dwelling with particular reference to daylight; and,
 - the effect of the proposed development upon protected species.

Reasons

Character and appearance

4. The appeal site is a verdant maturely treed parcel of land sloping upwards from the highway within Four Marks, between a detached dwelling and another treed plot that includes a disused single storey church building. This part of

Lymington Bottom is lined by groups of well set-back dwellings, a diverse range of individual and groups of trees, and views into the countryside resulting in a sylvan semi-rural feel. By virtue of the height, structure and amount of tree cover and vegetation, and its informal appearance, the appeal site makes a positive contribution to the character and appearance of the area. This is discernible from a limited number of neighbouring properties, when traversing the highway, and the public footpath rear site boundary.

5. The appeal site is the subject of a replacement Tree Preservation Order (TPO) confirmed on 13 January 2021. I have noted the appellant's views in respect of the worthiness of some of those trees of protection. However, there is no evidence before me that the order is not confirmed, so my assessment is of the trees and their value as protected trees.
6. The new dwelling, access, driveway, land level changes, car parking, patio and associated paraphernalia would significantly alter the appeal site. The large, protected highway frontage Cypress trees (G15) are a strong and prominent feature that positively contribute to the amount and diversity of tree cover. Their loss would be significantly harmful to the character and appearance of the area. Although the Arboricultural Implications Assessment and Method Statement¹ and subsequent correspondence² states they have some conditions and defects associated with a higher propensity of failure, it is not demonstrated these trees are either unsafe or there is any significant risk of failure. Therefore, it is not demonstrated their loss is in the interests of good arboricultural practice.
7. Although Scots Pine T8 has an unbalanced canopy this is not uncommon for such species growing within a group and the tree positively contributes to the group. Its loss would markedly diminish the value of the group. A replacement tree and new planting would be likely to take a considerable number of years to make a similar overall positive contribution to the character and appearance of the area, if at all. The loss of the protected trees would therefore be harmful to the character and appearance of the area and not be in the interests of good arboricultural practice.
8. As they grow, the position and extent of remaining protected Scots Pines including through restricting garden space and light, may result in future pressure for significant reduction works or removal of some altogether. If permitted this would further adversely affect the character and appearance of the area.
9. The footpath to the rear is enclosed by hedgerows to the rear of dwellings, contributing to the verdant character of the area. The removal of the hedgerow and replacement with a 1.8m high fencing would be stark and harmfully out of keeping with the verdant surrounds of the right of way, and appear strident to users when walking past the site.
10. Dwellings along this section of Lymington Bottom are of a variety of age, scale and architectural appearance. The dwelling would not be of a significantly greater height, scale and massing to two recently constructed dwellings I saw. Given their existence and proximity to the appeal site, of itself I do not find the height, scale and massing to be significantly out of keeping with these.

¹ By Eco Urban Limited (Ref. 201245-AIA) dated 21 April 2020.

² Letter from Eco Urban Arboricultural dated 2 September 2021.

However, the dwellings opposite and south of the appeal site are all well set-back from the highway resulting in a similar established building line, which is a notable defining characteristic of this part of Lymington Bottom which contributes to the character and appearance of the area.

11. Being sited significantly forward of the established building line, the height, scale and massing means the new building would appear highly incongruent in the street scene, harmfully affecting the character and appearance of the area. Although the church building to the north and a detached garage to the south are further forward, these are considerably smaller in scale. The church building would also remain well screened by vegetation. Therefore, they do not make the position of the new dwelling justifiable.
12. The harm from the development would be visible from a limited number of surrounding properties, from the highway opposite and to the south, and from part of the public footpath to the rear. Even after a number of years growth and maintenance, based upon the evidence before me, the new planting and further landscaping secured by means of a suitably worded planning condition could not mitigate the harm. Although the proposal would result in some formalisation of the site, and while the dwelling might be compliant with other aspects of relevant policies such as in its design and appearance, such matters set out do not mitigate or overcome the harmful effects above.
13. For the reasons set out above, the proposed development would be harmful to the character and appearance of the area, including as a result of the loss of protected trees. It would conflict with Policies CP20 and CP29 of the East Hampshire Joint Core Strategy (2014) (the JCS). Amongst other things these require development respects and is sympathetic to local character, is of an exemplary standard of design including a layout that contributes to local distinctiveness, conserves and enhances natural features and incorporates new planting to enhance the setting of new development. The proposals would conflict with the aims of Policy C6 of the East Hampshire Local Plan Second Review (2006) which states that permission will not be granted for development that would damage or destroy protected trees unless it is in the interests of good arboricultural practice.
14. The proposed development would also conflict with paragraph 130c) of the National Planning Policy Framework (2021) (the Framework) insofar as this requires development is sympathetic to local character, including the surrounding built environment and landscape setting.

Living conditions

15. A number of trees to the west of the plot would be retained, including pines within the TPO. The retained trees within the appeal site would have crowns a short distance from the patio and the rear of the dwelling, decreasing as the trees grow. Although the row of Cypress trees is to be removed along the northern boundary, there are other sizeable trees to the north that contribute to shading.
16. Retained hazels can be coppiced as part of on-going management which would limit their crown size and coverage depending upon the frequency and nature of works. Although the retained Scots Pines have relatively high canopies, the height, canopy size and position of them and other remaining trees within and outside the appeal site would result in a significant level of shading and some

overshadowing to the patio area, rear garden and habitable rooms served primarily by rear windows. This includes the lounge, kitchen/dining/living space, master and third bedroom. There would be greater future shading from the suggested replacement Norway Spruce, and as the retained trees grow.

17. The shading would have some seasonality when deciduous trees shed leaves. However, even allowing for this, retained and surrounding trees would result in an enclosed, shaded and somewhat darkened environment for the future occupiers in the rear facing habitable rooms and rear garden. This would result in a large proportion of internal and private external space where levels of daylight would be significantly restricted. For these reasons the development would not provide satisfactory living conditions for the future occupiers.
18. Therefore, for the reasons set out above, the proposed development would fail to provide satisfactory living conditions for the future occupiers of the dwelling with particular reference to daylight. Therefore, it would conflict with Policy CP29 of the JCS, which requires that development is of an exemplary standard of design that creates places where people want to live.
19. I do not find a conflict with Policy CP27 of the JCS, as this primarily relates to the effects of pollution. The development would also not conflict with paragraph 17 of the Framework referenced in the Council's fourth reason for refusal, as this relates to the preparation of strategic policies. Therefore, these are of less relevance than the other policy referred to above.

Protected species

20. Woodland, tall ruderal vegetation and planted trees present across much of the site provide suitable habitat for reptiles and dormice, recorded in the area. These are protected species under the provisions of the Conservation of Habitats and Species Regulations 2017 and the Wildlife & Countryside Act 1981 (as amended) respectively. Paragraph 99 of Circular 06/2005 states that it is essential the presence or otherwise of protected species, and the extent they may be affected by a development, is established before permission is granted, otherwise all relevant material considerations may not have been addressed.
21. The Phase 2 survey³ recorded a 'very low' population of breeding slow worm. Although understood to be widespread in the wider area and the presence of suitable hazel coppice, the surveys found no evidence of dormouse at the site. While potential habitat loss would have limited effects upon dormouse, I am advised the remaining vegetation is suitable habitat for protected species.
22. Both the construction and operation (habitation) phase effects of the development would result in disturbance to potential dormouse and to slow worm habitat. Therefore, there is a reasonable likelihood protected species could be present and affected by the development. The Council's ecological adviser is of the view that protection, management and mitigation measures must be submitted with a planning application, so it can be demonstrated that impacts have been fully considered and material considerations addressed.
23. Suitable habitat is present across much of the appeal site including on the construction area, tree felling and garden areas. Construction works and habitation of the appeal site would result in significant potential for harmful effects to protected species. Although reference is made to a Construction and

³ Phase 2 Ecology Surveys, Reptile and Dormouse on behalf of Vivid Design Studio (October 2020).

Environmental Management Plan in the appellant's submissions, there is very little detail about how one could be effectively designed and implemented for this appeal site. Therefore, it is simply not clear how protected species would be safeguarded, and the effects could be managed and mitigated during the construction and operation phase of the development. Therefore, it is not demonstrated that the proposal would not be harmful to protected species or that harmful effects can be adequately mitigated.

24. For the reasons set out above I cannot be certain the proposed development would not result in harmful effects upon protected species, in conflict with the aims of Policies CP20 and CP21 of the JCS. Amongst other things these require development protects, maintains and enhances natural features and biodiversity, that populations of protected species are protected and strengthened, and any adverse impacts upon wildlife are avoided where possible or, if unavoidable, are appropriately mitigated. It would also conflict with paragraphs 174 and 179 of the Framework, which have similar objectives.

Other Matters

25. I saw little evidence of anti-social behaviour on the appeal site itself. Although there were signs this may take place on neighbouring land. The removal of some boundary trees would reduce the cover to a limited extent, although the new dwelling would not directly face and overlook that site, so would be likely to have limited benefits in this regard.

Planning Balance

26. The proposed development would result in a small economic benefit during construction and once constructed a small on-going spend in the local economy, attracting limited weight in favour of the scheme. It would make a more efficient use of the appeal site in providing one additional dwelling, making a small contribution to supply. Even if need were particularly acute, this would be a small benefit in favour of the scheme attributed limited weight.
27. Given size and the extent of opportunities across the appeal site, and the nature of the biodiversity enhancements listed in the Preliminary Ecological Appraisal, these are attributed limited weight in favour of the scheme, although this does not overcome the harm in respect of protected species. The benefits in respect of anti-social behaviour attract limited weight. It is not demonstrated that any benefits to drainage could achieve anything other than a limited benefit at best. Overall, the benefits of the development attract limited weight in favour of the scheme.
28. Compliance with policies in respect of matters such as with respect to the location of the development, density, design and construction materials, the living conditions of neighbouring occupiers, accessibility, resource and energy efficiency, cycle and bin storage, are neutral matters in the planning balance. Were to agree the proposed development is or could be made compliant with policies and standards in respect of matters such as access, parking and highway safety, these would be neutral matters in the planning balance. There is no substantive evidence to suggest the payment of the Community Infrastructure Levy is anything other than a neutral matter.
29. However, the proposed development would be harmful to the character and appearance of the area including through the loss of protected trees, would not

provide satisfactory living conditions to future occupiers, and I cannot be certain the development would not result in harmful effects to protected species. These are matters that attract significant weight against the scheme. Therefore, the harmful effects of the proposed development significantly outweigh the policy compliance and the benefits of the scheme. Therefore, planning permission should be refused.

Conclusion

30. The proposed development would be contrary to the development plan and the National Planning Policy Framework taken as a whole, and there are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR