



Appeal Decision

Site visit made on 12 December 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal Ref: APP/L1765/W/22/3299770

Elswick Cottage, Mislingford Road, Swanmore SO32 2QD

- 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 Mrs Carole Evans against the decision of Winchester City Council.
 - The application Ref 21/02278/FUL, dated 25 August 2021, was refused by notice dated 29 November 2021.
 - The development proposed is replacement dwelling and works to an existing retained dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Carole Evans against Winchester City Council. This is the subject of a separate decision.

Procedural Matter

3. Subsequent to the application being determined, the appellant supplied a Flood Risk Assessment and Drainage Strategy. The Council has confirmed that this information is sufficient to address the second reason for refusal.

Main Issues

4. The main issues are:
 - a) whether the proposal accords with development plan policy on development in the countryside;
 - b) the effect of the scheme on the character and appearance of the area; and
 - c) the effect on the integrity of European protected sites, with particular reference to nutrient impacts.

Reasons

Development plan policy on development in the countryside

5. The site lies just outside of the defined settlement boundary of Swanmore as confirmed by the Winchester District Local Plan Part 2: Development Management and Site Allocations (2017) (LPP2). Policy DM1 of the LPP2 states that countryside policies will apply and only development appropriate to a countryside location will be permitted, as specified in relevant policies.

6. Policy MTRA 4 of the Winchester District Local Plan Part 1: Joint Core Strategy (2013) (LPP1) sets out the strategy for development in the countryside. Development outside the built-up areas of Winchester, Whiteley and Waterlooville and the settlements covered by MTRA 2¹ and MTRA 3² is restricted to that which needs a countryside location, reuse of existing rural buildings for specified uses, expansion or redevelopment of existing buildings for business purposes and small scale sites for low key tourist accommodation. The proposal does not fall into any of these categories.
7. Policy MTRA 4 does not list replacement dwellings as being an acceptable form of development. However, they are referenced within LPP2 Policy DM23 which relates specifically to development outside settlement boundaries. This policy stipulates that a replacement dwelling should not be disproportionately larger than the one being replaced. It is obvious when reading the development plan as a whole that replacement dwellings in the countryside are deemed appropriate, subject to considerations of scale and visual impact.
8. The Cambridge Dictionary defines replacement as 'a thing or person that takes the place of something or someone else'. Quite clearly, that is not the case here. The proposal would not involve the removal of an existing dwelling and the construction of a new dwelling on the same or similar footprint. Rather, the proposal is to construct a detached bungalow on part of the garden, and to reintegrate the accommodation of a former residential annexe into Elswick Cottage. This annexe has been granted a certificate of lawfulness for use as a self-contained dwellinghouse and this use is immune from enforcement action.
9. It is contended that the proposal is policy compliant on the grounds that there would be no net change in the number of dwellings on the site, but this is not the same as a replacement dwelling under development plan policy. The appellant's argument does not take into account the increase in the volume and footprint of buildings on the site. It is impossible to apply the 'disproportionate test' within Policy DM23, given that there is no existing dwelling to be demolished, but the proposal would result in significant additional built form and this would conflict with the policy objective of protecting rural character.
10. Accordingly, I find that the proposal does not constitute one of the forms of development permissible under LPP1 Policy MTRA 4 and LPP2 Policies DM1 and DM23. There is conflict with the development plan in this regard.

Character and appearance

11. The proposed dwelling would be constructed on a parcel of land to the side of Elswick Cottage and its former annexe. This area has been described as garden but it is fenced off and has the appearance of a small paddock. Regardless of its lawful planning status, the land has an open character and it is important as a visual gap between Elswick Cottage and Ina Cottage. The development would intrude into this gap and consolidate the loose-knit pattern of housing on this side of Mislingford Road to the detriment of its semi-rural character.
12. The scheme has been designed to address the Inspector's comments from an earlier appeal decision³. The bungalow would be set further into the site and it would be more modest in scale and mass relative to the previous scheme –

¹ This policy allows for development within the settlement boundary of Swanmore but not outside.

² This policy does not relate to Swanmore.

³ APP/L1765/W/17/3180515

albeit that was an outline proposal and the submitted plans were illustrative. The development would also take its access off the driveway for Elswick Cottage, meaning that there would be no new entrance onto Mislingford Road through which the proposed bungalow could be viewed.

13. The existing roadside hedge screens the site for part of the year, but it would be ineffective at hiding the development during the winter months when the trees are not in leaf. At the time of my visit there were pleasant rural views through the hedge towards trees and farmland at the rear of the site. The development would intrude into these views, urbanising the site and harming the contribution it makes to the spacious character on this side of Mislingford Road. Although the plans show a new native (or Yew) hedge along the front boundary, this would take time to establish and it cannot be guaranteed to mitigate the adverse impacts.
14. I conclude that the proposal would cause material harm to the character and appearance of the area. There is conflict with LPP2 Policies DM15 and DM23 and LPP1 Policy MTRA 4 insofar as these jointly seek to ensure that proposals respect the qualities, features and characteristics that contribute to the distinctiveness of the local area and avoid harm to the character of the area by means of visual intrusion.

European protected sites

15. The location of the site is such that foul water from the development would drain into the Solent Special Protection Areas and Ramsar sites via sewage treatment works. There is a known issue, notified by Natural England at the national level, whereby nutrients enter watercourses and adversely affect environmental conditions for the qualifying features of the European sites. Additional population arising from new housing development leads to an increase in nitrogen and phosphorus within foul water discharge and this has the potential to harm the conservation status of the protected sites through eutrophication effects.
16. The appellant argues that the proposal would not cause such harm on the grounds that it would constitute a replacement dwelling. However, this is an overly simplistic analysis. The total number of dwellings on the site would not change, but there would be a net increase in bedrooms resulting from the retention of the former annexe and its reintegration into Elswick Cottage. With additional bedrooms on the site, the occupancy is likely to be greater and this would lead to higher volumes of foul water being discharged into the sewer.
17. Applying the precautionary principle, I cannot rule out a likely significant effect on the integrity of the protected sites. It has not been demonstrated, beyond all reasonable scientific doubt, that the scheme would achieve nutrient neutrality. I therefore conclude that there is conflict with LPP1 Policy CP16 insofar as it seeks to protect sites of European and international importance from inappropriate development. The proposal also fails to meet the requirements of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). This would be fatal to the appeal, even in the scenario that all other matters were deemed acceptable.

Other Matters

18. The appellant has drawn my attention to planning permissions for other sites⁴ where the Council has granted replacement dwellings in the countryside. I am not bound by those decisions and it is not for me to undertake a detailed analysis of whether the Council has applied its own policies correctly in each case. Nevertheless, it is an established principle that applications should be determined on their own merits. The circumstances of the cases presented are specific to those sites, including in relation to the visual impacts. I have taken the information on the other cases into account, but it does not persuade me that the appeal should be allowed.

Conclusion

19. The proposal is contrary to the Council's policies relating to development in the countryside and it would also cause material harm to the character and appearance of the area. The requirements of the Habitats Regulations in respect of European sites have not been met. I therefore find that the proposal conflicts with the development plan taken as a whole; there are no material considerations to indicate a decision otherwise than in accordance with the development plan.
20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should fail.

Robert Parker

INSPECTOR

⁴ 20/01510/FUL – 6A The Old Piggery, Firgrove Lane, North Boarhunt PO17 6JU, 20/02253/FUL – The Yard, Trampers Lane, North Boarhunt PO17 6BY & 17/02393/FUL Greenwood Farm, Greenwood Lane, Durley, SO32 2AP