



Appeal Decision

Site visit made on 9 May 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2023

Appeal Ref: APP/B1740/W/22/3307917

Crossways, Lower Pennington Lane, Pennington SO41 8FT

- 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 M Vokes of Harnden Homes Limited against the decision of New Forest District Council.
 - The application Ref 22/10566, dated 4 May 2022, was refused by notice dated 21 July 2022.
 - The development proposed is demolition of existing house and erection of 5.no houses with access and parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) the effect of the proposed development on the character and appearance of the area, including with reference to protected trees; and
 - b) the effect on biodiversity, including protected species and European sites.

Reasons

Character and appearance

3. The site is located within the built-up area of Lymington, on the west side of Lower Pennington Lane and immediately to the south of the junction with Ridgeway Lane and its roundabout connection with Milford Road. The land is occupied by a detached house with separate double garage, set within a spacious plot. There are several protected trees along the lane frontage and a sizeable copper beech adjacent the southern boundary.
4. Lower Pennington Lane contains various estate-type cul-de-sacs, including terraced housing within Curzon Place, but it is mainly comprised of two-storey, detached housing, much of it traditional in appearance. The local character is predominantly rural with views along the lane being dominated by hedging, grass verges and mature trees. Crossways is more prominent than some of the other plots on account of its position backing onto an adjoining petrol filling station. There are views of the existing dwelling, against a backdrop of trees, from Milford Road in addition to those available from Lower Pennington Lane.

5. The proposal would take the form of two pairs of semi-detached houses and a further detached property in a row. At three storeys, the dwellings would resemble townhouses; they would be significantly taller than the buildings they would be replacing, and their footprint would be substantially greater, with tight spacing. The size of the site provides the opportunity for developing at an increased density. However, the scale and massing of the proposed dwellings would create a form of development which is unduly urban. I accept that the dwellings would be set back from the lane on a similar building line to neighbouring plots; however, this does not alter my view that the scheme would be out of character with other properties on Lower Pennington Lane.
6. I have noted that the adjoining site at 'Springfield' has been redeveloped at a similar, if not higher, density. However, these dwellings are two-storey and modest in appearance, and their siting allows for larger gardens. By contrast, the appeal scheme would be more imposing, and it would be cramped. Whilst I can find no reason in policy or contextual terms why contemporary architecture should not be adopted on this site, its execution in the manner proposed – with dominant, three storey 'framed' gables to front and rear elevations – would emphasise the incongruent scale and bulk.
7. The Lymington Local Distinctiveness Supplementary Planning Document (2011) (SPD) places the site within the Pennington Village Character Area. However, the location is at the periphery of this area, which means that it is visually connected with the Rural Lanes Character Area. The proposed buildings would not reflect the defining characteristics of either and they would stand out as discordant features. The scheme would not comply with the SPD guidance.
8. The Council raises concerns over the extent of hard surfacing being proposed at the front of the site. Provided that the trees along the road frontage are retained, this surfacing would not be unduly prominent, meaning that it would be assimilated into the street scene. However, many of the proposed parking spaces would be located beneath the canopies of mature trees. There is a significant risk that future residents would place pressure on the Council to permit the felling or reduction of the trees, to prevent damage to cars from falling branches and detritus. Even if I were to accept the extent of no-dig construction within the Root Protection Areas – and I am not persuaded by the appellant's evidence on this point – the layout of the site would not guarantee the long-term retention of the protected trees. These trees are important to public amenity and their loss would not only harm the area's verdant character, but it would also increase public visibility of an unacceptable development.
9. I conclude that the proposal would cause material harm to the character and appearance of the area. There is conflict with Policies STR1 and ENV3 of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (2020) (LPP1) insofar as they seek high quality design that contributes positively to local distinctiveness and quality of life, and enhances the character and identity of the locality.

Biodiversity – protected species

10. The preliminary ecological appraisal and preliminary roost appraisal report identifies the existing house as supporting a confirmed roost for brown and grey long-eared bats. The report explains that a suite of 3 bat activity surveys is required to inform the planning application. These will determine if a maternity bat roost is present within the property and will also establish if any additional

species of bat are present, the numbers of bats and the locations of any bat access points. According to the appellant's ecologist, the surveys will be 'crucial' in informing the bat mitigation strategy and determining whether a licence would be necessary from Natural England to allow works to proceed lawfully.

11. The appellant contends that the surveys can be secured by planning condition. However, this approach does not comply with guidance set out within ODPM Circular 06/2005¹. Paragraph 99 of this circular explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.
12. No such circumstances have been demonstrated in this case and therefore it is a reasonable expectation that the surveys be carried out prior to any grant of permission. That the Council did not formally request the surveys is not a valid reason for the failure to provide the information during the application or with the appeal. Neither can the promise of biodiversity enhancements provide justification for the lack of surveys.
13. The failure to supply the relevant survey information brings the scheme into conflict with Policy DM2 of the New Forest District Local Plan Part 2: Sites and Development Management Policies Document (2014). This policy allows for conditions in relation to mitigation and site management measures and, where appropriate, compensatory and enhancement measures. However, there is no explicit provision within the policy for conditions to be used to secure survey work in relation to protected species.

Biodiversity – European sites

14. The site lies within the zone of influence of the New Forest Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site, the Solent and Southampton Water SPA and Ramsar site and Solent Maritime SAC. The appellant is amenable to making the necessary financial contributions to mitigate or avoid adverse impacts upon these sites, in line with the Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document (2021) (Recreational Impacts SPD) and the Air Quality Monitoring and the Bird Aware Solent Strategy (Strategy).
15. The proposal is likely to have a significant effect on European sites, when considered in combination with other plans or projects. An appropriate assessment would therefore be required prior to any grant of permission. This exercise would need to demonstrate, beyond all reasonable scientific doubt, that the proposal would not harm the integrity of European sites. There is no s106 planning obligation before me to secure the monies required under the Recreational Impacts SPD and Strategy. As such, I cannot be satisfied that the proposal would mitigate or avoid adverse impacts on European sites. This leads to conflict with Policy ENV1 of the LPP1 and the provisions of The Conservation of Habitats and Species Regulations 2017. The latter would have been fatal to the appeal, even in the event of all other matters being acceptable.

¹ *Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system*

Other Matters

16. The decision notice indicates that the proposal would result in a poor standard of amenity for future residents. The gardens for the proposed dwellings would be smaller than the gardens to some of the properties surrounding, but not to the extent that they would provide unacceptable living conditions. The Council has not directed me to any minimum standards for gardens and moreover does not provide any substantive evidence to support its position on this issue. As such, the amenity value of the gardens has not had a bearing on my decision.
17. I have taken account of all other concerns raised by interested parties, including those relating to highway safety and the effects on living conditions of the occupiers of neighbouring properties. However, based on the information before me, and my own observations at the site visit, these matters would not constitute reasons to dismiss the appeal.

Planning Balance and Conclusion

18. The Council concedes that it is unable to demonstrate a 5-year supply of deliverable housing sites. A figure of 3.07 years is cited by the appellant, and this is not challenged. Paragraph 11 d) of the National Planning Policy Framework (the Framework) indicates that in circumstances such as this, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Footnote 7 of the Framework indicates that the policies under the first limb include habitats (European) sites. The failure to ensure that the proposal would not harm these sites means that the tilted balance under the second limb of paragraph 11 d) is not engaged.
19. The proposal conflicts with the development plan taken as a whole, due to its adverse impacts on the character and appearance of the area and biodiversity. The scheme would help to address a significant housing shortfall by delivering new 4-bed homes to meet an identified need. It would also bring economic benefits during construction and thereafter through additional spending in the local economy. The proposal would represent an efficient use of land on a site which is accessible to shops and services. These are all positive factors which weigh in favour of granting permission. However, they do not outweigh the identified harm or justify a decision otherwise than in accordance with the development plan. Even in the scenario that a s106 planning obligation had been submitted in relation to European sites, the adverse impacts would significantly and demonstrably outweigh the benefits of the scheme.
20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR