



Appeal Decision

Site visit made on 27 July 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/W1715/W/22/3306656

Land rear of Oakfields, Winchester Road, Fair Oak

- 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 Harding against the decision of Eastleigh Borough Council.
 - The application Ref F/21/90322, dated 9 April 2021, was refused by notice dated 15 March 2022.
 - The development proposed is the erection of 8no. dwellings with parking, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Messrs Harding against the Council. That application is the subject of a separate decision.

Preliminary Matters

3. I have used the Council's description of development as this more accurately describes the proposed development.
4. Since the application was determined, Eastleigh Borough Local Plan (2016-2036) was formally adopted (in April 2022). This supersedes the Adopted Eastleigh Borough Local Plan Review (2001-2011) as well as the, then, emerging local plan. I have determined the appeal in accordance with the plan in force at the time of this appeal decision. The appellant has had the opportunity to comment on this matter and would not be prejudiced.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the living conditions of occupants of neighbouring properties, with particular regard to overlooking;
 - whether a satisfactory standard of accommodation would be provided to future occupants with particular regard to noise and overheating;
 - the effect on the character and appearance of the area;
 - the effect on highway and pedestrian safety; and
 - the effect on designated nature conservation sites.

Reasons

Living conditions – neighbouring

6. The proposed development would introduce eight dwellings to a currently undeveloped site. This would undoubtedly change the relationship between the site and the nearest properties to the east, known as Hill Cottage and Oakfields. Rear facing windows would exist in the rear elevations of the proposed dwellings, although these would typically be limited in number and include obscured glass in bathrooms.
7. The Council's Quality Places Supplementary Planning Document (the SPD, 2011) sets out a minimum back-to-back separation distance of 22 metres. Front to front separation distances are set out as being dependant on local context, with no specific measurement quoted.
8. There is no dispute that the separation distances between proposed Plots 1 and 2 and Hill Cottage would meet the SPD guidance. However, the separation distance between Plot 3 and Oakfields falls short of the SPD guidance. Nevertheless, from the evidence before me and my observations on site, this arrangement, falling just short of the SPD guidance, would be acceptable in this location. Ultimately, the proposed development would not give rise to an unduly harmful loss of privacy to the occupiers of those neighbouring properties. In respect of the established properties on the opposite side of Delamere Gardens, a typical cross-street relationship would be created. There would be no harmful loss of privacy to the occupants of those properties.
9. Overall, I conclude that the proposed development would not harm the living conditions of neighbouring occupants, in accordance with the relevant provisions of Policy DM1 of the Eastleigh Borough Local Plan (2016-2036) (LP, adopted 2022). This policy, in summary, seeks to ensure residential living conditions are protected. This is in a similar vein to the objectives of the SPD insofar as the protection of living conditions is concerned.

Standard of accommodation for future occupants

10. It has been determined that future occupiers have the potential to be affected by road noise due to the position of the development relevant to Winchester Road. Appropriate mitigation measures have been put forward by the appellant's acoustic specialists. These measures were reviewed and accepted by the Council's environmental health officers. Those specialists raised no objection to the proposed development from a noise perspective, subject to the imposition of a condition in respect of acoustics. I have no reason to disagree with those findings, and agree that the matter of noise could be suitably dealt with by condition.
11. The Council included reference to overheating in its reason for refusal. However, there is no substantive evidence before me to demonstrate that the inclusion of acoustic mitigation measures, including the potential for mechanical ventilation systems, would automatically result in the overheating of the proposed dwellings. The size and position of the proposed windows are typical of a domestic property and would be openable, and the dwellings are dual aspect. Details of landscaping, insofar as it may assist with cooling, can be dealt with by condition. Moreover, I accept the evidence before me in respect of overheating being dealt with through Building Regulations processes. I note

the Council's reference to LP Policy DM3 b), however this relates to cooling measures such as the inclusion of planting and building orientation. It does not require detailed calculations or similar. On this basis, I am satisfied that the proposed development would meet the objectives of that policy.

12. Consequently, I conclude that the proposed development would provide an acceptable standard of accommodation for future occupants, in accordance with the relevant provisions of LP Policies DM1 and DM3. These policies, taken as a whole, seek to ensure that a high standard of accommodation is provided for future occupants. This is in a similar vein to the objectives of the SPD insofar as living conditions are concerned.

Character and appearance

13. The appeal site forms a parcel of land to the east side of Delamere Gardens. It comprises grassland set behind a timber fence and provides a sense of separation between the established properties along Winchester Road and the more recent residential development to the west, including along Delamere Gardens. The surrounding area is, generally, one which is residential in character with some areas of public amenity space to the north.
14. Notwithstanding this, the site could not reasonably be described as forming a 'rural edge' or contributing in any meaningful way to any nearby countryside or landscape character. The immediately surrounding area is one that would be better described as suburban.
15. From that perspective, the proposed development, visible from both Delamere Gardens and Winchester Road, would introduce development where there is currently none. However, the design, form and layout of the development is such that it would assimilate to an acceptable standard with the surrounding area, set against the background of established properties, and with each individual dwelling accommodated comfortably within its plot.
16. In conclusion, the proposed development would have an acceptable effect on the character and appearance of the area, in accordance with the relevant provisions of LP Policy DM1. This policy, in summary, seeks to achieve high quality design in development. This is in a similar vein to the objectives of the SPD insofar as good design is concerned.

Highway and pedestrian safety

17. The appeal site comprises an undeveloped parcel of land, accessed via Delamere Gardens. Delamere Gardens is a residential road serving a number of established dwellings.
18. Vehicular and pedestrian access to the proposed dwellings would be directly from the existing carriageway. No dedicated footway would exist to the front of the proposed development to connect the site with the established footway network. As a result, pedestrians who wished to access or exit the proposed development by foot would need to cross the existing road or traverse along a short stretch of the carriageway.
19. I accept that this arrangement is atypical in a relatively urban environment such as this. Nevertheless, reasonably convenient, and accessible, walking links would be provided through established footways, albeit with the need to cross Delamere Gardens first. No highway safety concerns have been raised by the

highway authority with no substantive evidence before me to demonstrate evidence to the contrary. Consequently, I am satisfied in those respects.

20. Overall, I conclude that matters relating to highway and pedestrian safety and convenience are acceptable. The proposed development would therefore accord with the relevant provisions of LP Policy DM13. This policy, in summary, seeks to ensure that development proposals have safe and convenient access to the highway network.

The effect on nature conservation sites

21. The Council has indicated that the water environment within the Solent region is one of the most important for wildlife in the UK. Natural England have advised that there are high levels of nitrogen input to this water environment, with evidence that these nutrients are causing eutrophication. All new housing developments across the Solent region have the potential to exacerbate nitrate impacts, and consequently the region's protected habitats and species. In addition, phosphate input has been identified in the catchment of the River Itchen.
22. The Conservation of Habitats and Species Regulations 2017 (the Regulations) require competent authorities, before granting consent for a plan or project, to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on protected sites, alone or in combination with other plans or projects. I must therefore consider whether measures could be put in place to avoid or mitigate the impact of the development on the protected sites.
23. The appeal proposal would result in additional occupiers residing at the site. Although the effect of this would be likely to be reasonably limited by reason of the scale of the development, the evidence before me indicates that it cannot be concluded that the additional residents would not have a likely significant effect, in-combination with other plans and projects, on the protected sites.
24. An approach of seeking nitrate and phosphate credits from developers, secured through a legal agreement, has been agreed to offset the impact of new development and ensure nutrient neutrality is achieved. The appellant has opted for this approach in relation to the appeal scheme. A draft legal agreement has been submitted which provides a clause relating to necessary mitigation in these respects. I consider the measures within the legal agreement are necessary, related directly to the development and fairly relates in scale and kind. As such, they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the NPPF.
25. However, I have concerns about the document itself, its execution and whether the Council could rely on it to secure the obligations it contains. Most notably the legal agreement has not been signed by all parties, irrespective of their role in the legal agreement, or dated. For this reason, I am not satisfied that the submitted legal agreement would be capable of taking effect and securing the intended obligations. As such I cannot afford weight to the obligations which it contains.
26. I note that the appellant states that the Council consider that a suitably worded condition could, in lieu of a legal agreement, mitigate this matter. The Planning

Practice Guidance (PPG) sets out that it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure). However, it indicates that this approach is unlikely to be appropriate in the majority of cases, except in exceptional circumstances. I do not have clear evidence before me of exceptional circumstances in this case and, in line with the PPG, such a condition would not be appropriate.

27. Overall, and in the absence of a satisfactorily executed legal agreement, the proposed development would fail to provide the required mitigation to offset the impacts of the proposed development on the protected sites. The proposed development would therefore fail to accord with the relevant provisions of LP Policy DM11. This policy, in summary, seeks to protect, conserve and enhance biodiversity and habitats. This is in a similar vein to the objectives of the National Planning Policy Framework (the Framework) and the Regulations insofar as the protection of habitats and species is concerned.

Other Matters

28. I note that the proposal would have some benefits, namely it would provide employment during construction and local trade would be boosted following the occupation of the dwellings.
29. I also acknowledge that the proposed development would be positioned in a sustainable location, optimise the site's potential, contribute to housing supply in the borough, and that it proposes measures towards improving on-site biodiversity. Nevertheless, these benefits do not overcome or outweigh the conclusion I have reached with respect to the main issues.

Conclusion

30. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is dismissed.

A Price

INSPECTOR