



Appeal Decision

Site visit made on 31 October 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Appeal Ref: APP/B1740/W/23/3314330

Land at Cygnus Gardens, Dibden, Southampton SO45 5UH

- 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 David Carr against the decision of New Forest District Council.
 - The application Ref 22/10907, dated 27 July 2022, was refused by notice dated 13 October 2022.
 - The development proposed is new 2 bed dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the integrity of the New Forest Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites, the Solent and Isle of Wight Lagoons SAC, Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar sites, the River Avon SAC, SPA and Ramsar sites; and Dorset Heathlands SAC, SPA and Ramsar sites (the 'Habitats sites');
 - the character and appearance of the area; and
 - the living conditions of neighbouring occupiers, with particular regard to outlook.

Reasons

Habitats Sites

3. The proposal would support an increase in population within reasonably close proximity to the Habitats sites. SPAs and SACs are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). The designation of the sites relates to the range of protected priority habitats and species that they support. Their conservation objectives seek to maintain or restore integrity, including that of qualifying features. Increased recreational use and eutrophication caused by nutrients would be at odds with these objectives.

Nitrates

4. Following the precautionary principle, and having regard to the conservation objectives of the site, the proposal, in combination with other plans and projects, would have likely significant effects on the integrity of the Solent and

Southampton Water SPA and Ramsar sites, Solent and Isle of Wight Lagoons SAC, and Solent Maritime SAC (the nutrient-sensitive sites).

5. The Council have cited advice provided by Natural England which sets a hierarchical approach to the selection of appropriate mitigation measures to ensure that development does not add to existing nutrient burdens. A calculator is used to work out the change in nutrient input which would result from new development and to inform the amount of nutrient loading that requires counterbalancing. In respect of the appeal scheme, no such calculation has been provided, therefore the extent of additional nutrient loading resulting from the development is unquantified.
6. Moreover, although the main parties have stated that there are a number of different solutions to offset nitrate impact arising from development, I have not been provided with any obligation that secures strategic or other mitigation schemes. Thus, aside from implementing generic water efficiency measures which would limit but would not eliminate the production of wastewater, no means of mitigation has been secured in relation to the appeal scheme.
7. Nonetheless, the parties have proposed that mitigation in this case could be secured via a 'grampian' condition. This condition would prevent occupation of the proposal until a mitigation package has been approved in writing by the Council that demonstrates that the additional nutrient loading generated by the proposal would not have an adverse effect on the integrity of the nutrient-sensitive sites.
8. However, such an approach is specifically addressed in the Planning Practice Guidance (PPG). This sets out that a negatively worded condition is unlikely to be appropriate in the majority of cases. Nonetheless, it does note that in exceptional circumstances such a condition may be appropriate where there is clear evidence that the delivery of that development would otherwise be at serious risk, stating that this may apply in the case of particularly complex development schemes, and where the six tests for conditions are also met.
9. I note that the Council may well have attached such a condition on other planning permissions. However, the circumstances of this case relating to a new single unit of accommodation would apply to other similar proposals in the district. This does not lead me to conclude the appeal scheme represents an exceptional situation that allows me to impose a negatively worded condition.
10. Whilst I accept it may be possible to purchase nutrient off-setting credits, I have no evidence before me demonstrating that the necessary credits have been purchased by the appellant. Furthermore, there is no guarantee that credits would be available to the appellant to purchase at the required time. Given that nutrient neutrality has not been secured and given the absence of an appropriate mechanism by which it could be secured, adverse effects on the integrity of the nutrient-sensitive sites cannot be excluded.
11. In arriving at this conclusion, I have had regard to the case the Council has provided for the use of 'grampian' conditions prepared in relation to mitigation of impacts on European sites. Whilst the material is of indirect relevance, it is otherwise dated in terms of its age, inclusion of superseded documents and its reference to revoked legislation. Insofar as appeal decisions are included, Inspectors in the most recent of these, rejected the Council's proposed use of

Grampian conditions. Therefore, I am not persuaded that this historical information supports the Council's approach.

Recreational pressure and air quality

12. Visits by the intended occupiers of the proposal to the New Forest and the Solent and Southampton Water SPA/SAC/Ramsar sites (the recreation-sensitive sites) for personal recreation may lead to disturbance to the habitat of ground nesting birds, overwintering waders and wildfowl which contribute to the designation of these areas as European nature conservation sites. In this regard, considered alone and in combination with other plans or projects, the development would have likely significant effects on the integrity of the recreation-sensitive sites.
13. The Council's strategy for achieving mitigation of increased recreational pressure on European sites is currently set out within the Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document 2021 (the SPD), and the Solent Recreation Mitigation Strategy 2017 (SRMS).
14. In each regard mitigation comprises funding for provision of sites of alternative natural green space, and provision of site access management and monitoring measures. The SPD indicates that funding will be through a mix of CIL and financial contributions, and the SRMS, through financial contributions. Furthermore, air quality is covered within Policy ENV1 of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (LP) in relation to the New Forest SPA and SAC. The supporting text states that the deposition of nitrogen and ammonia from vehicle exhausts is a risk factor which requires a financial contribution to cover monitoring.
15. The appellant has submitted a signed Unilateral Undertaking (UU), and I understand has paid financial contributions towards habitats mitigation and air quality monitoring. However, the SPD and SRMS specifically notes that contributions will be subject to indexation and will be revised on the 6 April each year in line with the Retail Price Index, with April 2020 being the base year. The current UU before me and contribution that the appellant has already paid, does not reflect the indexation uplift, and therefore is not reflective of the contribution specified within the SPD.

Habitats sites conclusion

16. The proposed development would give rise to adverse effects on the integrity of the Habitats sites in terms of its recreational, air quality and nutrient discharge effects.
17. Even if a policy compliant financial contribution towards mitigation for the recreational and air quality effects were secured by the submitted planning obligation, I am not satisfied that mitigation of an adverse effect on the integrity of the nutrient-sensitive sites in terms of nitrates can be secured by the imposition of the suggested condition. The suggested condition is not sufficiently precise to provide certainty that the development would not result in an adverse effect on the integrity of the SAC. Consequently, it would not satisfy the precision test as set out in the National Planning Policy Framework (Framework) and the PPG.

18. Alternative solutions which would have lesser effect exist, insofar as provision of appropriately secured mitigation would address the likely significant effects outlined above. I therefore conclude that the appeal scheme would be unacceptable in the context of the Habitats Regulations. It follows that the proposal would fail to comply with LP Policy ENV1, which requires new development to mitigate its impacts on international nature conservation sites.

Character and Appearance

19. The appeal site is a vacant area of land located adjacent existing residential dwellings. Adjoining woodland provides a wooded backdrop, with the character of the area being that of a verdant residential housing estate. Due to the close spatial relationship of the appeal site to the existing modern residential development and the sites fenced boundaries, it is observed as being part of the surrounding estate as opposed to the adjacent woodland or any informal open space.
20. The proposal would be of a design and appearance similar to that of the adjacent dwellings. Whilst the front elevation would be set back from the adjacent dwellings, the resulting staggered building line would retain views of the wooded backdrop from public vantage points within Cygnus Gardens and the proposal would appear as a natural continuation and rounding off of the housing estate. Furthermore, due to the staggered building line, scale of the proposal being similar to dwellings elsewhere in the area, and position of the proposal within the appeal site resulting in a gap between neighbouring built form, the proposal would not appear as a cramped form of development.
21. There are a number of trees in close proximity to the site. These include a visually attractive prominent large oak tree which is the subject of a recent Tree Preservation Order (TPO) as well as a number of semi-mature trees and scrub growth. The proposal would not result in any felling of trees and the accompanying 'Tree Survey, Arboricultural Impact Assessment, Tree Protection Plan & Arboricultural Method Statement (Rev:2)' has identified root protection areas and protection measures which could be secured through the imposition of appropriate planning conditions.
22. Although the Oak tree would cast shade over the front of the proposal, given the size of the plot and location of other surrounding trees, sufficient light would be available to future occupiers both within the dwelling and in the rear garden. I also note that the Council's Tree Officer has reached the same finding.
23. Given both the protection afforded by the TPO, and the availability of light to future occupiers, I see no reason why there would be additional pressure for any tree works outside of the appeal site. Therefore, combined with the proposed setback of the dwelling, the proposal would not affect the positive contribution that the woodland edge or wooded backdrop provides to the area.
24. To conclude, the proposal would not have a harmful effect on the character and appearance of the area. The proposal would therefore accord with LP Policy ENV3 and policies D1 and D3 of the Hythe and Dibden Neighbourhood Plan 2019 (NP). These policies, amongst other things, seek to ensure development enhances and responds to the character, identity and distinctiveness of the locality and is appropriate in appearance and attractive.

Living Conditions

25. The appeal site is to the south of the nearest neighbouring property, 46 Cygnus Gardens. I observed that this property features ground floor and upper floor windows facing the appeal site, and a conservatory. Due to both the siting of the proposal setback within the appeal site and the distance between the proposal and 46 Cygnus Gardens, the proposal would not result in a significant loss of light or outlook to the upper floor window.
26. In terms of the ground floor side window and conservatory, I note that the Council's report indicates that this window serves a living room, which is also served by glazed doors leading to the conservatory. Due to the proximity of the existing boundary treatment to the window, there is currently already some existing restriction to outlook. As such, given the proposed distance between the window and the flank elevation of the proposal, outlook would not be significantly diminished further. Moreover, the effected window is not the only source of light to this room.
27. Furthermore, although the rear elevation of the proposal would extend beyond the rear elevation of the neighbouring property, the use of a single storey element to the rear would limit any significant overbearing visual effect from the rear conservatory or garden of the neighbouring property.
28. While not forming a part of the Council's reasons for refusal, a third party has raised concerns regarding overlooking. An upper floor window is proposed to the side elevation facing 46 Cygnus Gardens. However, this is a landing window which is proposed to be obscure glazed. Similarly, the closest upper floor window in the rear elevation to the neighbouring property serves a bathroom and would also be obscure glazed. The remaining upper floor window, serving a bedroom, would be at an oblique angle to the neighbouring garden and of sufficient distance as not to result in any significant overlooking. Therefore, subject to the imposition of appropriate planning conditions to secure the obscure glazing, the proposal would not result in any significant overlooking.
29. Consequently, the proposal would not harm the living conditions of neighbouring occupiers with particular regard to outlook. The proposal therefore accords with LP Policy ENV3 and NP policies D1 and D3 which seek, amongst other things, to avoid unacceptable effects on residential living conditions by overbearing impacts and overlooking, and ensure development responds to its local context.

Other Matters

30. The Council are unable to demonstrate a five-year supply of deliverable housing sites and therefore paragraph 11 of the Framework is engaged. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is one such material consideration. Notwithstanding the contribution that one dwelling would make to housing supply, given the effect of the proposal on the habitats sites, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.

Conclusion

31. The proposal would conflict with the development plan, read as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

S Harrington MA MRTP

INSPECTOR