



Appeal Decision

Site visit made on 6 August 2024

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2024

Appeal Ref: APP/B1740/W/24/3338958

37 Denholm Close, Poulner, Ringwood BH24 1TF

- 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 Robin Hoad against the decision of New Forest District Council.
 - The application reference is 23/11233.
 - The development proposed is described as "the building of an additional dwelling on what is the garden to our current property".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal submission included an additional drawing that depicted site sections (drawing ref: Site level changes C 01) to address one of the reasons for refusal. There are several differences between the appeal scheme and that considered by the Council as the drawing depicts the relationship of the proposed dwelling to those around. This new information provides details that would be of relevance to nearby residents. Whilst the Council have had an opportunity to comment upon such fundamental information, others have not. In the interests of openness and fairness the revised plans have not been accepted as part of the appeal.
3. Reference has been made by the appellant to the dwelling being a self-build scheme. However, the original application describes the dwelling as open market housing rather than as a self-build or custom build one. Having regard to this and that the Council dealt with the scheme as an open market dwelling, I have considered the appeal on the same basis.

Main Issues

4. The main issues in this case are:
 - The effect of the proposal upon the character and appearance of the area;
 - The effect upon the living conditions of nearby residents with particular regard to privacy and outlook;
 - The effect upon the stability of the area; and
 - The effect upon protected habitat sites.

Reasons

Character and Appearance

5. Positioned close to the end of a residential cul-de-sac, the appeal site is part of the garden of 37 Denholm Close (No 37). This two-storey house occupies a generous corner plot and is part of a residential estate comprising a mix of mostly detached and semi-detached houses of similar ages and styles. In addition to the repeated styles and materials, the dwellings front the public highway and are set back from it behind similar sized front gardens. These similarities give the estate a cohesive, planned appearance.
6. The houses to the western side of the cul-de-sac form a cohesive row that reflects the planned harmony found within the estate. To the other side of the road, the appeal property and those either side of it (35 and 30 Denholm Close (Nos 35 and 30)) form a short row of differently styled dwellings. Notwithstanding their differences, these dwellings front the highway behind gardens, having wide, active frontages like many of the other houses within the estate.
7. Although the proposed dwelling would be set back within its plot, it would have an attached car port that would extend close to the highway. This, along with the wide breadth and long depth of the dwelling would make it a conspicuously prominent feature within the area. The size of the dwelling, along with its close proximity to No 37 and also to the garage of No 30, would combine to result in a tightly positioned group of buildings of various sizes and styles that would be very close to each other. This proximity would result in the dwelling having a cramped appearance that would be at harmful odds with the surrounding area, and particularly so because the car port would extend not only across much of the site frontage, but would almost abut the highway. Furthermore, as most of the nearby properties have front gardens used for uncovered, open parking and planting, the absence of a drive and garden would serve to exaggerate the constricted nature of the scheme.
8. Whilst No 37 has a larger garden than many of the nearby dwellings, the appeal site would have little active frontage with the public highway. The narrow shape of the plot where it meets the highway would appear incongruously constricted when compared to those nearby. This, when combined with the large size of the dwelling and its close proximity to nearby buildings and the public highway, would make it appear squeezed into its plot, particularly as a substantial part of the house would be visible above the neighbouring garage. The house would appear discordantly intrusive in an area characterised by dwellings that have open, active relationships with the highway, rather than having front elevations that would be partly concealed by other buildings.
9. Future occupiers of the dwelling would benefit from a triangular shaped side garden. Nevertheless, the depth of the house would not only go well beyond that of No 37, but in doing so would leave only a narrow rear garden that would be very close to the deep rockery and retaining walls. Such a relationship would appear harmfully constrained. The size of the dwelling should be informed by and respond to the constraints of the plot and to the character and appearance of the area rather than by providing space for home working to occur.

10. The use of materials to match some nearby homes would be a benefit of the scheme, as would the low-pitched gabled roof. However, such benefits would fail to mitigate the harms arising from the size, form, position and style of the dwelling. Views of the house would be restricted to those from within the cul-de-sac and from neighbouring properties, although as it would appear conspicuously at odds with those nearby, the absence of long views of the scheme would not mitigate the harm that it causes within its context.
11. There have been two permissions upon the site permitting a single storey dwelling (refs: 01/71920 and 06/87892), as well as two other refused applications, one of which was dismissed at appeal (ref 23/10283 and 00/70045). However, the permissions have lapsed, and I note these were for a single storey dwelling, rather than a house, and were determined some time ago under different national and local policy, all of which limits the weight I can attribute to these cases. The other cases were for a chalet bungalow and a house, the former being different in size and position, and the more recent case being refused for similar reasons to the appeal scheme. The appellant has referred to other homes occupying much of their plots, such as No 30, 24 and 28 Denholm Close, and to the principle of consistency established within *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137. Having regard to this principle, none of these comparisons is positioned partially behind another property's building and each has an unobstructed and legible relationship with the public highway. Moreover, the decisions referred to by the appellant permitted extensions to existing dwellings which are subservient to their hosts. Given these substantive differences, neither the planning history of the site nor that for nearby dwellings forms binding precedents for allowing the appeal.
12. For these reasons the scheme would unacceptably harm the character and appearance of the area, and the suggested conditions would not overcome these fundamental harms. The scheme would fail to accord with Policy ENV3 of the New Forest District Council Local Plan Planning Strategy (2020) (PS), which seeks amongst other things, development that is sympathetic to and responds to its environment and context, and that which respects and enhances local distinctiveness, character and identity, thereby reflecting similar objectives within the National Planning Policy Framework (the Framework).

Living Conditions

13. The size and position of the dwelling would result in it being very close to the neighbouring properties. The house has been designed so as to have no windows or doors facing No 37, with rooflights serving some of the first-floor rooms on the northern side. Notwithstanding this, the occupiers of the first-floor rooms especially those near to No 30, would have clear and elevated views into this property. A degree of mutual overlooking is to be expected in residential areas, but in this case the elevated, close proximity of some of the windows of the house would be such that future occupiers would be able to look directly into No 30. Even with tall boundary treatments and the presence of the neighbouring garage that would provide some screening, the occupiers of No 30 would be unacceptably and closely overlooked.
14. The dwelling would form a high, long wall to one side of No 37, and as it would be to the south of this property it would result in a notable loss of sunlight and daylight. The house would project well beyond the depth of No 37 and its rear

extensions, and consequently would overshadow both the house and garden. The dwelling would create a private and enclosed garden to No 37, and it may be that the appellant would value such enclosure, but it does not follow that other occupiers would. The long depth of the house when combined with its height would oppressively dominate the garden of No 37, and would also be clearly visible from the rooms of this property. Whilst the appellant has referred to other properties within Denholm Close having tall walls adjacent to their boundaries, in most cases these walls did not have the same positional relationships to neighbouring properties as that proposed, nor have such substantial depths.

15. For these reasons the scheme would unacceptably harm the living conditions of nearby residents, particularly with regard to privacy and outlook. The conditions suggested by the main parties would not overcome these fundamental harms, and the scheme would fail to accord with PS Policy ENV3, as this seeks amongst other things, that development avoids unacceptable effects upon residential amenity by reason of visual intrusion or overbearing impact, overlooking, and shading, thereby reflecting objectives of the Framework.

Site Stability

16. The Framework and the Planning Practice Guidance (the Guidance) requires that a site should be suitable for the proposed use taking into account ground conditions and any risks arising from land stability. In this case, the appeal site is positioned upon a hillside, with No 30 being lower down the slope. The dwelling would be set into the hill, requiring excavation works and the erection of retaining walls. Given the size of the house, the extensive amount of ground and engineering works required, and its position very close to neighbouring homes, the impact of the slope would need to be ascertained so as to ensure the site and its surroundings remains stable both during and after the completion of the development.
17. Although the appellant has pointed out that the Council did not request site level change details, the Framework makes it clear that the responsibility for securing safe development rests with the developer and or landowner. The appellant has acknowledged that significant excavations would be necessary to create the driveway and basement, and that the precise nature of the foundations and other construction details have yet to be finalised. Where land stability could be an issue, the Guidance requires a preliminary assessment of ground instability to be carried out before a detailed planning application is prepared. In addition, any necessary investigations should ascertain and ensure that the site would and will remain stable or can be made so as part of the development. The site and the development also needs to be assessed in the context of surrounding areas so as not to damage neighbouring land or property. Furthermore, these assessments and investigations need to be undertaken by an appropriately qualified person.
18. It cannot be assumed that the development could be made safe. In the absence of a ground instability assessment and investigations regarding the stability of the development and its surroundings, the reliance upon conditions and Building Control regulations to require the additional information would not provide the certainty that the site could be developed and retained without risk to people and property. For these reasons it has not been demonstrated that the development of the site would remain stable, nor that nearby people and

property would remain safe for the lifetime of the development, and consequently the scheme would fail to accord with objectives of the Framework.

Habitat Sites

19. Within the Council's area there are internationally important habitat sites, that include the New Forest Special Protection Area (SPA), Special Area of Conservation (SAC), and Ramsar; the River Avon Valley SAC, SPA, and Ramsar; the Solent and Southampton Waters SACs, SPA and Ramsar; and also the Dorset Heathlands SAC, SPA and Ramsar. The New Forest designations recognise the national and international importance of the habitats that include bogs, marshes, heaths and woodlands that support a variety of rare birds and insects, and the Dorset Heathlands also host priority habitats and species, including birds, lizards and snakes as well as other typical species of heathlands. The River Avon habitat sites comprise a bio-diverse lowland river system that supports nationally and internationally important species of plants, birds and fish, and this system flows into the Solent and Southampton Waters sites which are important for their bird populations, including rare species. The New Forest and Dorset Heathlands are under significant pressure from public access and use, and a net increase in the number of dwellings and occupiers in the area would increase the pressure upon these important sites, as well as impacting upon air pollution. The River Avon is experiencing high levels of phosphates that includes from waste water from development, and in addition to impacting upon the river it also causes eutrophication of the protected Solent and Southampton Waters.
20. Given the location of the appeal site, future occupiers would be likely to impact upon these habitat sites thereby having a significant effect upon their integrity, due to increased recreational pressures, air quality impacts, and waste water. One of the reasons for refusal of the original application was that the scheme failed to demonstrate it would not have an adverse effect upon these important habitat sites, albeit the Council have confirmed that a Grampian style condition could be imposed to address the impact of the scheme upon the River Avon and Solent and Southampton Waters habitat sites.
21. The Conservation of Habitats and Species Regulations (2017) (the Regulations) require the decision maker to undertake an Appropriate Assessment (AA) where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority in the context of the appeal.
22. In order to avoid impact upon the integrity of the habitat sites, PS Policy ENV1 requires that development will only be permitted where any necessary mitigation, management or monitoring measures are secured in perpetuity and be implemented in a timely manner. Whilst noting the Council's suggestion of a Grampian condition, the appellant has not provided mitigation for the impact of the scheme upon the integrity of the New Forest and Dorset Heathlands habitat sites. Irrespective of the intentions of the appellant to provide a legal agreement to secure mitigation measures, none has been provided. Without mitigation the scheme would adversely affect the integrity of these habitat sites, contrary to the above referenced Regulations, objectives of the Framework, and to PS Policy ENV1.

23. In such circumstances and having regard to my conclusions on the other main issues, it is not necessary for me to undertake the AAs and give further consideration of the likely effectiveness of mitigation measures, including having regard to the Council's suggestion of the use of a condition for securing mitigation for the River Avon sites.

Other Matters

24. The appellant's concerns regarding the Council's handling of the application, including lack of communication and the inconsistency of decision making, are procedural matters. Such concerns fall to be pursued by other means separate from the appeal process and are not for me to consider.

Planning Balance

25. The Council acknowledge that they do not have a five year housing land supply of deliverable homes, and the appellant has referred to a variety of benefits arising from the scheme that should be given great weight when assessing the presumption in favour of sustainable development. These include the provision of an additional dwelling that would make an effective use of land, as well as being near to local services, and there would be a biodiversity net gain and no loss of trees. These would be social and environmental benefits. Even if the dwelling incorporated green energy and heat sources, the benefits arising from the addition of a single dwelling would be modest. Furthermore, nearby trees would be very close to the house and to extensive groundworks, and limited arboricultural evidence has been provided to demonstrate they would survive the development and maintain their vitality. This tempers the weight that can be attributed to this benefit.
26. Weighing against these modest benefits would be the significant social and environmental harms arising from the scheme. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The adverse impacts of granting permission for the scheme would significantly and demonstrably outweigh the benefits, and especially so in this case as policies within the Framework that protect areas and assets of particular importance, such as protected habitat sites, provide clear reasons for refusing the scheme.

Conclusion

27. For the above reasons the adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial and fundamental harms. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR