



Appeal Decision

Site visit made on 29 October 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2024

Appeal Ref: APP/B1740/W/24/3338503

Cairns, 12 Langdown Lawn, Hythe, Hampshire SO45 5GR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Harding on behalf of Ibex Homes Limited against the decision of New Forest District Council.
 - The application Ref is 23/10358.
 - The development proposed is construction of 5 residential unit and all associated works.
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Decision

1. The appeal is allowed and planning permission is granted for construction of 5 residential unit and all associated works at Cairns, 12 Langdown Lawn, Hythe, Hampshire SO45 5GR in accordance with the terms of the application, Ref 23/10358, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs has been made by Ibex Homes Limited against New Forest District Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the character and appearance of the area, and
 - the living conditions of neighbouring occupiers with regard to outlook, sunlight, privacy, noise and disturbance.

Reasons

Character and appearance

4. The appeal site is a parcel of land located to the rear of No's 14 and 16 Langdown Lawn which are a pair of large semi-detached dwellings that face towards the road. The appeal site is generally overgrown and is surrounded by mature trees and vegetation including a large area of woodland which results in an open and verdant character and appearance.
5. The appeal site is surrounded by residential properties which are mixed in age and design, including flats, semi-detached and detached houses. The trees and vegetation, and the houses that surround it screen the appeal site and only allow glimpsed views from public vantage points.

6. The Council consider that the character and density of the proposed development differs from the surrounding area and that dwellings nearby generally front the street. However, this is generally not the case with many dwellings, including No's 10 – 16 Langdown Lawn, all of which surround the site that while they face towards the road, are significantly set back, screened by vegetation and accessed by separate road and driveways off Langdown Lawn. No's 10 and 16 in particular are located towards the rear of the existing building line and instead would align with the proposed developments building line.
7. The appeal site is currently open; however, views are generally limited other than from private properties. The open character of the appeal site is also unusual as many properties on Langdown Road have smaller plot sizes. Notwithstanding the limited public views of the appeal site, the proposed dwellings would occupy a modest proportion of the appeal site directly behind the existing properties at No's 12 and 14.
8. The space to the frontage of the building would be most visible from Langdown Road due to the access, however, this would be for car parking and while there would be hardstanding it would still be predominantly open, and the sloped gradient of the site and proposed landscaping would also mitigate the built form and maintain the open and verdant character and appearance of the area.
9. I therefore conclude that the proposed development would not unacceptably harm the character and appearance of the area. I find no conflict with ENV3 of the Local Plan Part 1¹ and Paragraph 135 of the National Planning Policy Framework (the Framework). Amongst other things, these seek to ensure that all development should achieve high quality design that contributes positively to local distinctiveness and maintains a strong sense of place.

Living conditions

10. The appeal site is generally surrounded by residential properties; however, they are moderate distances away due to the large gardens and open spaces between them. The proposed dwellings would be located to the rear of No's 12 and 14 Langdown Close and No's 46-52 Fairview Close. The side of plots 1 and 5 would have views towards these neighbouring properties, however the only window proposed at first floor level is for plot 1 which serves a bathroom and would be obscure glazed which will prevent any overlooking. As a result, there would be no unacceptable loss of privacy for the occupiers of these properties.
11. The separation distance, combined with the limited bulk of built form due to the orientation of the proposed development would also not result in an unacceptable outlook for the occupiers of Fairview Close.
12. The position of the proposed dwellings would result in some loss of sunlight for the occupiers of the ground floor flats at Fairview Close; however, this is likely only to be for a short period of time during the early morning. The proposal has also been designed with a hipped roof which combined with the separation distance, would result in a short extent of time sunlight would be lost which would not be unacceptable for the occupiers of neighbouring properties.

¹ New Forest District Council Local Plan 2016-2036 Part One: Planning Strategy New Forest District outside the New Forest National Park Adopted 6 July 2020

13. The proposal includes a parking area to the front of the dwellings and while the proposal would result in frequent vehicle movements, these are likely to be at regular times of the day, which combined with the separation distance, landscaping and boundary treatment would unlikely result in unacceptable noise and disturbance to the occupiers of neighbouring properties.
14. I therefore conclude that the proposed development would not unacceptably harm the living conditions of neighbouring occupiers with regard to outlook, sunlight, privacy, noise and disturbance. I find no conflict with Policy ENV3 of the Local Plan Part 1 and Paragraph 135 of the Framework. Amongst other things, these seek to avoid unacceptable effects by reason of visual intrusion or overbearing impact, overlooking, shading, noise and light pollution or other adverse impacts on local character or residential amenity and have a high standard of amenity for existing users.

Other Matters

15. The appeal scheme proposes dwellings on a site that lies within the Zone of Influence of the New Forest European Site (The New Forest SAC, SPA and Ramsar sites), The Solent and Southampton Water European site (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, Isle of Wight Lagoons SAC/Solent Maritime SAC (Solent Coastal European sites) and Dorset Heathlands SAC, SPA and Ramsar (the Protected Sites).
16. The Conservation of Habitat and Species Regulations 2017 require that, where a project is likely to have a significant effect on a European site², either alone or in combination with other projects, the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
17. Policy ENV1 of the Local Plan Part 1 seeks to protect such sites from harm and, where necessary, seeks mitigation against any adverse effect of development. Within the Development Plan the Recreational Impacts SPD and in the Solent Recreational Mitigation Strategy incorporate strategic mitigation measures to be delivered to avoid adverse impacts.
18. Through the development of these policies, the Council has, with the agreement of Natural England, produced a strategic, district wide approach to mitigating recreational pressures on the Protected Sites through the securing of financial contributions for access management schemes and monitoring proposals. As this is an agreed approach with Natural England the proposed development can be assessed within the context of the Recreational Impacts SPD and the Solent Recreational Mitigation Strategy. On this basis I consider that this is an appropriate approach to mitigating identified harms.
19. It is common ground that the appeal scheme would give rise to increased recreational activity affecting protected habitats and species in the New Forest and Solent and result in increased vehicle trips through the New Forest, potentially increasing acid deposition from nitrogen oxide and ammonia in exhaust fumes, which would be harmful to New Forest habitats.

² as defined at regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended)

20. It is also common ground that the development would have an adverse effect due to the impacts of additional nitrate loading on the River Solant Catchment. The Council have also proposed a condition in relation to nutrient neutrality. Having considered the evidence before me, I am satisfied that there is certainty that the mitigation could be provided through this condition.
21. The appellants have submitted a signed S106 agreement to secure a number of payments for the New Forest Recreational Impact mitigation Infrastructure, New Forest Recreational Impact mitigation Non-infrastructure, Solent Bird Aware mitigation, New Forest Air Quality Monitoring and Commencement Monitoring. The Council agree that the S106 satisfactorily addresses the matters of recreational disturbance and air quality.
22. I am satisfied that the S106 secured would enable the expedient delivery of mitigation sufficient to address the likely recreational effects of the development. I therefore find that, in light of this mitigation, the proposal would not result in an adverse effect on the integrity of the Protected Sites. There is thus compliance with Policy ENV1 of the Local Plan Part 1 and guidance contained within the Mitigation for Recreational Impacts SPD³ and the Bird Aware Solent - Solent Recreation Mitigation Strategy December 2017 so far as these requires that contributions will be secured towards mitigation measures.

Conditions

23. I have considered the Council's suggested conditions in the event I were to allow the appeal. Where necessary, and in the interests of clarity and precision, I have slightly altered them to more closely reflect the advice in the Framework and the Planning Practice Guidance.
24. Condition 1 is the standard condition which relates to the commencement of development and condition 2 specifies the approved plans for the avoidance of doubt.
25. Condition 3 is required in order to ensure the access is widened prior to construction and access drive is surfaced in the interests of highway safety. Condition 4 is required in order to ensure details of hard surfaced areas and a method statement for construction works in the interests safeguarding trees and the living conditions of neighbouring occupiers.
26. Condition 5 is required in order to ensure that existing trees and hedges shown to be retained are protected. Condition 6 is required in order to ensure that mitigation for is provided against any impacts which might arise upon the designated sites. Conditions 7, 8, 9 and 10 require parking spaces to be laid out, bicycle and refuse storage and in the interests of highway and pedestrian safety and ensuring reliance on using a private car is reduced.

³ New Forest District outside the National Park – Mitigation for Recreational Impacts On New Forest European Sites Supplementary Planning Document Enabling the Delivery of Green Growth Adopted 5 May 2021

27. Condition 11 requires details of a landscaping scheme and condition 12 is required in order to ensure ecological enhancements are implemented. Condition 13 requires details of the dropped kerb on Langdown Lawn in the interests of highway safety and condition 14 required the windows shown to be obscured glazed to be implemented to protect the living conditions of neighbouring. Condition 15 is required in order to ensure that any unexpected contamination issues are appropriately dealt with.
28. I have found it exceptionally necessary to remove some permitted development rights including to prevent the extension of the proposed dwellings, outbuildings within the gardens and gates on the access roads. This is required in order to protect trees and highway safety.

Conclusion

29. For the reasons given above the appeal should be allowed.

D Wilson

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development permitted shall be carried out in accordance with the following approved plans:
 - Location Plan Ref:315/DP/001 rec'd 20/09/23
 - Block Plan Ref:315/DP/002 rev D rec'd 20/09/23
 - Proposed Ground Floor Plans Ref:315/DP/003 rev A rec'd 20/09/23
 - Proposed First Floor Plans Ref:315/DP/004 rev A rec'd 20/09/23
 - Proposed Roof Plan Ref:315/DP/005 rev B rec'd 20/09/23
 - Proposed Elevations 1 of 3 Ref:315/DP/006 rev B rec'd 20/09/23
 - Proposed Elevations 2 of 3 Ref:315/DP/007 rev B rec'd 20/09/23
 - Proposed Elevations 3 of 3 Ref:315/DP/011 rev A rec'd 20/09/23
 - Street Scene Ref:315/DP/008 rev B rec'd 20/09/23
 - Bicycle & Bin Store Details Ref:315/DP/009 rev A rec'd 20/09/23
 - Electric Entrance Gates Ref:315/DP/010 rec'd 20/09/23
 - Site Entrance Details Ref:315/DP/012 rec'd 20/09/23
 - Block Plan - with proposed and existing levels Ref:315/DP/013 rec'd 20/09/23
3. Prior to the commencement of construction, including any foundation groundworks, the access to the site shall be widened as shown on the approved plans. Prior to first occupation of the scheme hereby approved the access widening, front boundary wall and surface treatment of the access drive, the manoeuvring space and turning head, as shown on the approved plans shall be completed and thereafter retained.
4. No development, demolition or site clearance shall take place until the following information has been submitted and agreed to in writing with the Local Planning Authority:
 - A method statement and engineering drawings for the installation of new hard surfaced areas for the access drive to the development and driveway for 12 Langdown Lawn. A method statement and drawings for the construction of the shed for plots 2 & 3. A plan showing the location of service routes, including the position of soakaways; A plan showing the location of site compound and mixing areas; Development shall only take place thereafter in accordance with these approved details.

5. The trees/hedges on the site which are shown to be retained on the approved plans shall be protected during all site clearance, demolition and building works in accordance with the measures set out in the submitted Arb-Solute Tree Management Tree Survey, Arboricultural Impact Assessment & Preliminary Method Statement A dated Aug 2023 Ref AS_1000-160 and associated Tree Protection & Removal Plan ref AS_1000 Drawing no. 110 Rev A. 3 working days notice shall be given to the Local Planning Authority Tree Officer to attend a pre-commencement site meeting to inspect all tree protection measures and confirm that they have been installed as illustrated on the above plans.
6. The development hereby permitted shall not be occupied until:
 - a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; all measures necessary to meet the agreed waste water efficiency calculation must be installed before first occupation and retained thereafter;
 - b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and
 - c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.
7. The development hereby permitted shall not be occupied until the spaces shown on the approved plans for the parking of motor vehicles have been provided. The spaces for the parking shall be retained and kept available for the parking for the dwellings hereby approved at all times.
8. Prior to occupation of the relevant house, its bike store and access, as shown on the approved plans shall be provided.
9. Notwithstanding the approved plans a revised strategy for the storage of refuse and presentation for collection shall be submitted to and approved in writing by the LPA. The strategy shall be implemented and available for use prior to occupation of the each house in turn and thereafter retained.
10. A scheme for the design, layout and installation of bollard lighting along the driveway and parking courtyard shown on the approved plans, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be installed prior to first occupation of the scheme hereby approved and thereafter maintained in accordance with the manufacturers instructions and retained.

11. Prior to the commencement of construction above Damp Proof Course a scheme of landscaping of the site shall be submitted for approval in writing by the Local Planning Authority. This scheme shall include :
 - (a) the existing trees and shrubs which have been agreed to be retained;
 - (b) a specification for new planting (species, size, spacing and location);
 - (c) areas for hard surfacing and the materials to be used;
 - (d) other means of enclosure;
 - (e) a method and programme for its implementation and the means to provide for its future maintenance.

The approved programme for implementation and future maintenance shall then be followed.
12. The conclusions, recommendations, mitigation and enhancement included in the Ecosa EIA received 27/03/23 shall be implemented and followed through the implementation of the development hereby approved and installed prior to occupation of the relevant dwelling hereby approved.
13. Construction of the scheme hereby approved shall not proceed above Damp Proof Course until details of a scheme for the alteration of the dropped kerb access with Langdown Lawn have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be implemented prior to first occupation of the development and thereafter retained.
14. The first floor windows shown as 'Obscure Glazed' on the plans of the buildings hereby approved shall be:
 - (i) obscurely glazed, and
 - (ii) non-opening at all times unless the parts that can be opened are more than 1.7m above the floor, and the windows shall be retained as such in perpetuity.
15. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing, until an investigation and risk assessment has been undertaken in accordance with Environment Agency's technical Land Contamination Risk Management (LCRM) guidance. Where remediation is necessary a remediation scheme must be prepared to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by Class G of Part 1 of Schedule 2 to the Order, garage or other outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order, shall be erected or carried out without express planning permission first having been granted.
17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order) no gates at the access on to Langdown Lawn otherwise approved by Class A of Part 2 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.