
Appeal Decision

Site visit made on 25 November 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2025

Appeal Ref: APP/C1760/W/24/3340684

Land adjacent 4 Chilworth Close, Chilworth, Hampshire SO16 7JJ

- 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 Aster Communities against the decision of Test Valley Borough Council.
 - The application Ref is 23/02788/FULLS.
 - The development proposed was described as 'Construction of a detached chalet bungalow with associated access, parking and landscaping (revised scheme)'.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a detached chalet bungalow with associated access, parking and landscaping at land adjacent 4 Chilworth Close, Chilworth, Hampshire SO16 7JJ in accordance with the terms of the application, Ref 23/02788/FULLS, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. In its decision notice, the Council's reason for refusal (RfR) 01 includes alleged adverse impact on a Conservation Area (CA). There is no evidence that the site is in a CA or in the setting of a CA.
3. The description of development in the banner above is taken from the application form and was used by the Council. My decision omits extraneous words.
4. A revised National Planning Policy Framework was published in December 2024 and altered by minor amendments in February 2025 (the NPPF). This does not materially affect my determination of the appeal.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - whether the proposal would provide satisfactory useable outdoor space for future occupants of the chalet bungalow.

Reasons

Character and appearance

6. The site is a parcel of undeveloped former garden land next to, but now fenced off from, a semi-detached bungalow and its front and rear gardens at No.4 Chilworth Close. It would be developed with a detached chalet bungalow.

7. Chilworth Close is a residential cul-de-sac on one side of Manor Road in the settlement of Chilworth. It contains alternating rows of 1950s semi-detached bungalows and houses. These dwellings have simple, uncluttered rectilinear form with similar light coloured painted brick elevations and brown concrete interlocking roof tiles arranged in a regimented layout, mostly set against a backdrop of surrounding trees. This development is locally distinctive.
8. The quadrant shaped-plot would be unusual in the Close and one corner of the chalet bungalow would be near the arc of the site south boundary. But the roughly square shape and size of the chalet bungalow floorplan would broadly reflect No.4 and at the other end of this row of two pairs, a bungalow is also wider to one side and deeper at the rear. The siting with No.4 and this common boundary would not be unduly tight, similar to some gaps between some pairs of dwellings in the Close and would essentially maintain the building line and linear sequence of this particular row of bungalows in this more secluded position at the end of a short spur. The plot would be similar in overall area to some others in the Close and greater space at the front and on one side of the chalet bungalow would echo the bungalow at the other end of this row next to a curved public open space. The building to plot ratio would be comparable or lower than some plots elsewhere in the Close, so not out of kilter with the prevailing low density of development.
9. The north gable elevation and mostly single-storey front elevation, including at eaves and ridge level, would essentially replicate the equivalent parts of No.4 next to it, including roof slope and pitch with a strong horizontal emphasis. A nub at the front would have a flat roof but with an open porch at one end this narrow, low part of the building would not be unduly intrusive. A step-up in eaves level, with increased vertical form in part of the front elevation would be in a short, narrow section, inset much further back so have a recessive presence. The longest part of the main roof ridge would not be substantially higher than the rest of the roof or the roof of No.4, even at the rear to achieve first floor living space mostly in the roof.
10. Though slightly taller, the south gable would be no wider than the north gable, just staggered back out of direct alignment with an asymmetric form. This part of the chalet bungalow would be unusual in the Close, including the extent of glazing at an elevated level. But taken in the context of the taller houses, this limited step-up in built form on one side and at the rear would be relatively modest and discrete. Although some south site boundary planting has been reduced in height some taller parts are largely intact, including two trees, which would alleviate some light spill from this glazing during hours of darkness on the approach along Manor Road from the south west. This part of this lane is already lit by a streetlight next to this part of the site and views from this direction towards the chalet bungalow would become increasingly acute around this corner.
11. Subject to a condition, the Council would be able to agree a suitable beige facing brick as well as details of a concrete roof tile to integrate with the existing dwellings in the Close. Conditions could also ensure a suitable landscaping scheme, including to retain and protect trees and roadside boundary hedgerow on the site, so reflect the landscaped setting of the other residential development in the Close.
12. Consequently, this sympathetic design and layout would reflect important features of residential development in the Close, especially the bungalows next to the site. The overall simple form, scale and massing of the chalet bungalow, with a subtle modern contemporary slant, would therefore be assimilated into its immediate

context and make efficient use of this land. Though it would be seen in whole or in part to differing degrees in public views from the Close, Manor Road and the public footpath that runs past the front boundary of the site, it would not appear unduly prominent or overly conspicuous and certainly not 'dominant' in any streetscene.

13. Taking account of all the above, I find that the proposal would not cause harm to the character or appearance of the area. As such, it complies with Policy E1 of the Test Valley Borough Revised Local Plan, January 2016 (the LP) which includes that new development should integrate, respect and complement the character of the area in layout, appearance, scale, materials and building style. Though not cited in the RfR but mentioned in the officer report, the proposal would not offend the Chilworth Village Design Statement, February 2005¹ because the chalet bungalow would incorporate appropriate architectural detailing and by this means enhance the character of the area.

Outdoor space

14. I have not been informed of any specific outdoor garden space standards used by the Council. The front garden would be similar in size and layout to No.4 and other bungalows in the Close. It could be used for domestic activity open to public scrutiny. Some private outdoor space behind the chalet bungalow would be truncated by the arc of the site boundary and, because of the siting of the chalet bungalow, be smaller in area and depth than the rear garden of No.4 and the other bungalows in this row. But this section of boundary hedgerow and shrubs has been lowered in height. While the chalet bungalow would be in close proximity, this gap in this planting means that this part of a back garden would receive natural light, including sunlight, for a significant proportion of the day. It could be more suitable for some secondary domestic activity, such as the bike storage shown in the submitted plans or for a shed, a vegetable garden or to dry clothes.
15. A narrow area next to one side of the chalet bungalow would be close to the south boundary, including where there is some taller hedgerow and shrubs. But a more secluded 'break out' patio space beside the main downstairs living accommodation and French doors would be appropriate, with a much larger area further to the west including forward of the chalet bungalow. Though partly irregular in shape, this part of the garden would be suitable for a wide range of domestic activity such as sitting out, relaxing, entertaining or children's play. It is not unusual or unacceptable for a 'back' garden to also wraparound to the side of a dwelling in this way and as at some of the houses elsewhere in the Close. Subject to a condition, a new 1.8m high close boarded boundary fence with some new planting along the edge of the public footpath and along the 'return' boundary, next to the front garden, would provide suitable means of enclosure and adequate privacy.
16. LP paragraph 7.23 includes that buildings should be placed sufficiently far away from trees to allow adequate daylight and sunlight to reach proposed 'properties', so not just dwellings but also gardens. In essence, LP paragraph 8.21 refers to this same point in the context of not overshadowing the 'proposed development', ie as a whole, so as not to reduce daylight and sunlight levels to unacceptable levels. The chalet bungalow would be much closer in certain directions to the edge of a mature canopy, including trees, than the approximately 15m guideline set out in LP paragraph 7.23. But this is not said to be an 'exclusion zone', especially with

¹ Adopted by the Council as Supplementary Planning Guidance, February 2006

regard to gardens. Moreover, a significant part of this garden would not be over hung by boundary planting and have a more open aspect to the north, past or over trees and a communal parking area as well as east over the chalet bungalow which would be notably lower in height than a house.

17. The appellant's Tree Report² includes an arboricultural impact assessment drawing³. This shows that most of this part of the garden would be within areas of potentially significant shade from two trees on the site (T1 and T2). However, the Tree Report has considered relevant British Standards and Building Research Establishment guidance about future pressure to prune or fell retained trees due to shade⁴. While this garden would experience a degree of shade in direct sunlight, increasingly so closer to these trees, this would provide some relief from high temperature and at least half of it would not experience significant tree shade, especially during winter months when not in leaf, so give flexibility for use. Diffused natural light from all parts of the sky would also reach the ground, including in the areas shaded by these trees⁵.
18. As a result, having regard to the size and layout of the back garden as a whole, including the main part to the side and forward of the chalet bungalow, I am satisfied that it would not be overshadowed to the extent that natural daylight and sunlight levels would be reduced to unacceptable levels across this entire garden. As such, adequate daylight and sunlight would reach this part of the property so there is not likely to be undue pressure to fell woodland trees to the north of the site or site boundary trees or planting. There is anyway no evidence that the trees to the north are owned by the appellant and they are protected by a Tree Preservation Order. Subject to a condition, the existing south boundary roadside planting and trees T1 and T2 could be retained, including in height and extent.
19. Considering all the above, I find that the proposal would provide satisfactory useable outdoor space for future occupants of the chalet bungalow. It therefore complies with LP Policies E1, E2 and LHW4. These include that development should provide private open space in the form of gardens appropriate for the needs of residents with acceptable levels of daylight and sunlight and to retain important landscape features so respect the character or the area.

Other Matters

Nature conservation

20. According to the Council's Habitats Regulation Assessment (HRA), the site is within zones of influence of the Solent and Southampton Water Special Protection Area (SSWSPA) and the New Forest Special Protection Area (NFSPA). Both of these European Sites are important for nature conservation, including habitat for over-wintering breeding bird species. High levels of nitrates generated by waste water from new development, such as housing, is causing harmful eutrophication to the water environment of the SSWSPA and additional people from such development who visit the SSWSPA and the NFSPA for recreational purposes cause loss of habitat or disturbance to breeding birds. The proposal is not directly connected with

² MJC Tree Services Limited - Tree Survey, Arboricultural Impact Assessment, Tree Protection Plan & Arboricultural Method Statement Rev:0, 2 August 2023 Ref MJC-23-0163

³ Appendix 3

⁴ Appendix 3, paragraphs 4.1 and 4.3

⁵ The Tree Report shows in error a similar footprint of a previous floorplan for the chalet bungalow. This does not materially affect the substance of its provisions with regard to natural light and sunlight into this part of the garden or for tree protection.

or necessary for nature conservation in either of these European Sites and it would result in an adverse individual or in-combination likely significant effect on them. In conjunction with Natural England (NE), the Council has adopted strategic mitigation measures. It has provided me with copies of relevant documents in these respects, including an updated New Forest International Nature Conservation Designations: Recreation Mitigation Supplementary Planning Document, January 2025.

21. The appellant's nutrient budget calculation for nitrates that would result from the proposal confirms that a financial contribution is required towards implementing and maintaining the Council's offsetting scheme, which it delivers by a section 106 legal agreement entered into with the owner of farmland elsewhere. In essence, this involves taking farmland, that would otherwise have generated its own level of nitrates, out of production so that resulting nitrate 'credits' can facilitate an equivalent level of new development. Financial contributions based on a tariff per dwelling by number of bedrooms are also required to manage the recreational impact of the additional visitors. This includes to provide suitable alternative natural greenspaces or deploying field rangers to manage such use and education or monitoring initiatives to raise public awareness of the issues.
22. The Council consulted NE on the proposal at application stage⁶. NE did not object based on the HRA and the strategic mitigation measures secured by planning conditions or obligations. Other than the Council's January 2025 document update, there is no evidence that the relevant evidence base has changed or that the HRA was not robust.
23. With final comments the appellant submitted a 'Nitrate Allocation Agreement' dated 24 June 2024. This Deed does not purport to be a section 106 planning obligation (legal agreement or unilateral undertaking). Nevertheless, it contains clauses which are personal undertakings between the appellant (referred to therein as 'Developer') and Roke Manor Limited ('Owner' of the farmland under the Council's offsetting scheme). It includes a clause for a 'Planning Agreement' under section 106 if necessary but in this appeal that would relegate certainty about securing the required mitigation until after an in principle decision to grant planning permission so would not be appropriate.
24. The Deed is, though, a legally binding means for the appellant to secure the necessary nitrate credits in accordance with the Council's offsetting scheme, if the appeal is allowed and planning permission is granted. The Deed has been signed by the appellant and Roke Manor Limited in counterparts, which the Council has confirmed in writing it has received and that it considers the Deed to have been properly executed. On this basis, I am satisfied that this mitigation by this means would be sufficiently secured and likely to work in practice⁷.
25. During the appeal the appellant made a financial contribution by direct payment to the Council for recreational impact on the SSWSPA and the NFSPA using the Council's proforma for this purpose⁸. Thereafter the appellant made a 'top up' payment to meet an increased tariff in the Council's January 2025 update document⁹. I have received written confirmation from the Council that these payments have been received by it to be used for this purpose.

⁶ NE confirmed that its advice should be taken as its formal representation for Appropriate Assessment under Regulation 63(3)

⁷ Planning Practice Guidance paragraph 65-004-20190722

⁸ An agreement under section 111 Local Government Act 1972

⁹ The proforma before me contains the new total contribution figure

26. The Council has also confirmed in writing to me that it considers the above measures overcome its objections in RfR 03, 04 and 05. I have no reason to find otherwise in these regards. In these circumstances, as the Competent Authority in this appeal and after Appropriate Assessment¹⁰, I am satisfied that the proposal would not undermine or harm qualifying features or conservation objectives for habitat and species in this case, so not adversely affect the integrity of the European Sites.

Other considerations

27. Some interested parties also objected for other reasons. In particular, whether the proposal could be carried out in accordance with the submitted plans entirely on land within the red line of the site as shown in these plans, which the appellant has certified to own or control, including any overlap with the public footpath, would be a matter for the respective parties. Cars inconsiderately parked in the communal parking area obstructing access to parking within the site would also be a matter for the respective parties. The Council has planning enforcement powers to investigate alleged breaches of planning control, including if development was not carried out in accordance with approved plans.

Conditions

28. Without prejudice, the Council and the appellant suggested some other conditions if the appeal was allowed. In that eventuality, I have considered modified wording in the interests of clarity or precision and have had regard to the relevant tests for conditions, as well as to keep them to the minimum necessary. I have written agreement from the appellant to pre-commencement of development conditions. These would be justified because the matters concerned would need to be secured before works progressed too far.
29. In addition to the standard three year time limit condition to begin development, a condition to specify the approved plans would give certainty about the development that would take place. Although a single dwelling, the site is near other dwellings so construction works could cause noise and other disturbance or nuisance, including contractors vehicles using the public highway. A condition would therefore be justified to secure proportionate arrangements to alleviate undue impacts, including a separate condition which could ensure hours of working did not occur at the most potentially antisocial times.
30. To achieve biodiversity net gain, conditions could reasonably require ecology enhancement at the site, including to prevent external lighting harmful to bats which are a protected species. A condition could ensure convenient parking was provided on the site and not displace existing residents' cars in the communal parking area. The Highway Authority did not object to the proposed tandem parking arrangement, with no apparent requirement for turning space on the site nor any apparent technical reason why this could not be achieved in the communal parking area.
31. There is no scheme before me to suggest that conditions or limitations of relevant 'householder' permitted development rights would prevent potential over development of the site harmful to living conditions of future occupants or not adversely affect the character and appearance of the area. A condition would therefore be justified to remove permitted development rights for, in essence,

¹⁰ The Conservation of Habitats and Species Regulations 2017 (as amended)

extensions, additional stories, additions or other roof alterations and outbuildings as well as means of enclosure such as walls and fences. A condition suggested by the Council for water efficiency would not be necessary because this can already be achieved by other means¹¹. There would be no apparent justification to prevent additional conventional windows in the dwelling once built, such as for reason of loss of privacy, including because of the screening effect of the existing 1.8m high intervening fence with No.4 Chilworth Close.

Conclusion

32. The proposal does not conflict with the development plan. There are no other material considerations to indicate that the appeal should be determined otherwise than in accordance with the development plan taken as a whole¹². Consequently, for the reasons given above the proposal is acceptable and the appeal succeeds.

Robin Buchanan

INSPECTOR

Schedule of Conditions (11)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - drawing number 01F Location plan
 - drawing number 200 Site plan - proposed
 - drawing number 201 Roof plan - proposed
 - drawing number 205 Floor plans - proposed
 - drawing number 210 North west elevation & section A-A
 - drawing number 211 South west elevation & section B-B
 - drawing number 211 North east & south east elevations
 - drawing number 220 View A from Chilworth Close
 - drawing number 221 View B from Manor Road
 - drawing number 223 View C south west elevation
 - drawing number 224 View D from south east looking north
 - drawing number 225 Aerial view
- 3) No development hereby permitted shall take place until an Environmental Management Plan (EMP) shall have been submitted to and approved in writing by the local planning authority. The EMP shall include details for:
 - (a) A layout for the parking and manoeuvring on site of contractor's and delivery vehicles during the construction period.

¹¹ Part G2 of the Building Regulations 2015 (as amended).

¹² Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended)

- (b) Control of noise, dust and spoil during site preparation and construction phases of development.
- (c) The provision of wheel washing, and any other suitable facility, to avoid the deposit of spoil onto the highway network.

The approved EMP shall be implemented prior to the commencement of the development and retained for the duration of the construction period.

- 4) Notwithstanding what is shown in the plans approved by condition 2), no development shall take place above damp proof course (DPC) level until:
- (a) Samples and details of the materials to be used in the construction of all external surfaces shall have been submitted to and approved in writing by the local planning authority.
 - (b) A brick sample panel comprised of the approved materials shall have been constructed on the site, inspected and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved details.

- 5) Notwithstanding what is shown in the plans approved by condition 2), no development shall take place above DPC level until full details of hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority. The details shall include:
- (a) Means of enclosure, car parking layout, vehicle and pedestrian access and circulation areas, hard surfacing materials and minor artefacts and structures.
 - (b) Planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities, soft boundary treatments to the outside edges of the site and an implementation and management plan.

The hard and soft landscape works shall be carried out in accordance with the approved details.

- 6) There shall be no construction works, no machinery operated, no processes carried out and no deliveries received or dispatched at the site outside the following times: 07:30 to 18:00 hours Monday to Friday and 08:00 to 13:00 hours on Saturday. No such activities shall take place on Sundays, Bank or Public holidays.
- 7) The development hereby permitted shall be undertaken in accordance with the MJC Tree Services Limited Tree Survey, Arboricultural Impact Assessment, Tree Protection Plan & Arboricultural Method Statement Rev:0 (Ref MJC-23-0163, 2 August 2023), including the retention of trees T1 and T2 and roadside boundary hedgerow with tree protection measures maintained and retained for the duration of works with no activities, materials storage, placement of site huts or other equipment what-so-ever within the tree protection area and all service routes, drain runs, soakaways or excavations in connection with the development hereby permitted shall remain wholly outside the tree protection area.

- 8) The development hereby permitted shall be undertaken in accordance with the Enims Preliminary Ecological Appraisal (Ref EC2075, October 2023), including the ecological enhancements in section 5.4 and thereafter retained in perpetuity.
- 9) Prior to first occupation of the dwelling hereby permitted, details of any external lighting shall have been submitted to and approved in writing by the local planning authority and installed in accordance with the approved details. Such lighting shall follow best practice guidelines outlined by the Bat Conservation Trust and the Institute of Lighting Professionals (Guidance note 08/18 Bats and artificial lighting in the UK).
- 10) Prior to first occupation of the dwelling hereby permitted, space shall have been laid out and provided for the parking of vehicles in accordance with the approved plan. This space shall thereafter be retained for this purpose at all times.
- 11) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Part 1 Class A, AA, B, C, D or E or Part 2 Class A of Schedule 2 to the Order shall be undertaken.